

CHAPTER 24**(HB 393)**

AN ACT relating to reorganization.

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

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

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

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

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

continuation of insurance after retirement, and such other provisions as the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance may approve.

- (4) The secretary of the Finance and Administration Cabinet is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining insurance under the provisions of this section.

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

- (1) For purposes of this section, "mandated health benefit" means any requirement that any health benefit plan, as defined in KRS 304.17A-005:
- (a) Provide a specified benefit;
 - (b) Include a specified coverage;
 - (c) Pay, indemnify, or reimburse for a specified medical service; or
 - (d) Pay, indemnify, or reimburse specified health care providers for specific health care services.
- (2) (a) On and after June 24, 2003, in the General Assembly, a sponsor of a bill or an amendment that contains a mandated health benefit shall cause a financial impact statement to be prepared and attached to the measure before final consideration by the standing committee to which the measure has been referred.
- (b) A bill in the orders of the day in the House or the Senate which does not have attached a financial impact statement as required by this section shall be retained in the orders of the day but passed over in the orders of the day until the financial impact statement is attached. Members may require, by a majority vote, that a financial impact statement be prepared on any bill and on any amendment in the orders of the day. Any member proposing an amendment from the floor which contains a mandated health benefit shall cause a financial impact statement to be prepared and attached to the amendment. Until the time a financial impact statement is prepared and attached to an amendment that contains a mandated health benefit, action on the proposed amendment shall not be in order.
- (3) The financial impact statement shall be prepared by the *Department*~~{Office}~~ of Insurance as provided in subsection (6) of this section.
- (4) The sponsor of a bill or amendment that contains a mandated health benefit shall request the *Department*~~{Office}~~ of Insurance, as soon as practicable, to prepare a financial impact statement. If the sponsor submits a request prior to filing the measure with the clerk of the House or Senate, the *department*~~{office}~~ shall keep the measure confidential until the sponsor authorizes public distribution. The *department*~~{office}~~ shall keep all financial impact statements and all requests for statements confidential until the person requesting the financial impact statement authorizes public distribution.
- (5) A majority of the members present at a meeting of any standing committee of the General Assembly, acting through the committee chair, may request the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance to prepare a financial impact statement for any measure before the committee and submit the statement in accordance with subsection (6) of this section.
- (6) (a) The financial impact statement shall be in writing and signed by the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance or the *commissioner's*~~{executive director's}~~ designee, and shall determine the extent to which:
1. The mandated health benefit will increase or decrease the administrative expenses of insurers;
 2. The mandated health benefit will increase or decrease premiums; and
 3. The mandated health benefit will impact the total cost of health care in the Commonwealth, including any potential cost savings that may be realized.
- (b) 1. If the sponsor of a bill that contains a mandated health benefit submits the request for a financial impact statement prior to filing the bill, the financial impact statement shall be completed as soon as possible, but no later than thirty (30) days after the request by the sponsor, unless the sponsor and the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance agree otherwise.
2. The financial impact statement shall be completed as soon as possible, but no later than thirty (30) days after the request by the sponsor of a measure before a standing committee under subsection (2) of this section or by the committee chair under subsection (5) of this section.

3. The financial impact statement shall be completed as soon as possible after the request by a majority vote of the House or Senate or by the sponsor of a floor amendment pursuant to subsection (2)(b) of this section.

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

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

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

- (1) There is created the Commission on Small Business Advocacy. The commission shall be a separate administrative body of state government within the meaning of KRS 12.010(8).
- (2) It shall be the purpose of the Commission on Small Business Advocacy to:
 - (a) Address matters of small business as it relates to government affairs;
 - (b) Promote a cooperative and constructive relationship between state agencies and the small business community to ensure coordination and implementation of statewide strategies that benefit small business in the Commonwealth;
 - (c) Coordinate and educate the small business community of federal, state, and local government initiatives of value and importance to the small business community;
 - (d) Create a process by which the small business community is consulted in the development of public policy as it affects their industry sector;
 - (e) Aid the small business community in navigating the regulatory process, when that process becomes cumbersome, time consuming, and bewildering to the small business community; and
 - (f) Advocate for the small business, as necessary when regulatory implementation is overly burdensome, costly, and harmful to the success and growth of small businesses in the Commonwealth.
- (3) The Commission on Small Business Advocacy shall consist of thirty (30) members:
 - (a) The Governor, or the Governor's designee;
 - (b) The secretaries of the following cabinets, or their designees:
 1. Economic Development;
 2. **Energy and Environment**~~Environmental and Public Protection~~;
 3. Finance and Administration; and
 4. Transportation;
 - (c) The state director of the Small Business Development Centers in Kentucky;

- (d) One (1) representative of each of the following organizations, appointed by the Governor from a list of three (3) nominees submitted by the governing bodies of each organization:
 - 1. Associated Industries of Kentucky;
 - 2. National Federation of Independent Business;
 - 3. Kentucky Chamber of Commerce;
 - 4. Kentucky Federation of Business and Professional Women's Club, Inc.;
 - 5. Kentucky Retail Federation;
 - 6. Professional Women's Forum;
 - 7. Kentuckiana Minority Supplier Development Council;
 - 8. Greater Lexington Chamber of Commerce;
 - 9. Lexington chapter of the National Association of Women Business Owners;
 - 10. Greater Louisville, Inc.;
 - 11. Louisville chapter of the National Association of Women Business Owners;
 - 12. Northern Kentucky Chamber of Commerce, Inc.;
 - 13. Northern Kentucky - Greater Cincinnati chapter of the National Association of Women Business Owners;
 - 14. Kentucky Association of Realtors;
 - 15. Henderson - Henderson County Chamber of Commerce;
 - 16. Kentucky Farm Bureau Federation; and
 - 17. Kentucky Homebuilders Association;
 - (e) One (1) representative from small business from each of the following areas, appointed by the Governor:
 - 1. A city of the second class;
 - 2. A city of the third class;
 - 3. A city of the fourth class; and
 - 4. A city of the fifth class;
 - (f) One (1) representative who is a small business owner served by each of the following organizations, appointed by the Governor:
 - 1. The Center for Rural Development; and
 - 2. Community Ventures Corporation; and
 - (g) One (1) representative who is a small business owner under the age of thirty-five (35), appointed by the Governor.
- (4) The terms of all members appointed by the Governor shall be for four (4) years, except that the original appointments shall be staggered so that seven (7) appointments shall expire at two (2) years, seven (7) appointments shall expire at three (3) years, and seven (7) appointments shall expire at four (4) years from the dates of initial appointment.
 - (5) The Governor shall appoint the chair and vice chair of the commission from the list of appointed members.
 - (6) The commission shall meet quarterly and at other times upon call of the chair or a majority of the commission.
 - (7) A quorum shall be a majority of the membership of the commission.
 - (8) Members of the commission shall serve without compensation but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.

- (9) The commissioner of the Department for Existing Business Development shall be the administrative head and chief executive officer of the commission. The secretary of the Cabinet for Economic Development shall have authority to hire staff, contract for services, expend funds, and operate the normal business activities of the commission.
- (10) The Commission on Small Business Advocacy shall be an independent agency attached to the Department for Existing Business Development.

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

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

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

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

- I. Cabinet for General Government - Departments headed by elected officers:
1. The Governor.
 2. Lieutenant Governor.
 3. Department of State.
 - (a) Secretary of State.
 - (b) Board of Elections.

- (c) Registry of Election Finance.
 - 4. Department of Law.
 - (a) Attorney General.
 - 5. Department of the Treasury.
 - (a) Treasurer.
 - 6. Department of Agriculture.
 - (a) Commissioner of Agriculture.
 - (b) Kentucky Council on Agriculture.
 - 7. Auditor of Public Accounts.
- II. Program cabinets headed by appointed officers:
- 1. Justice and Public Safety Cabinet:
 - (a) Department of Kentucky State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Office of Drug Control Policy.
 - (g) Office of Legal Services.
 - (h) Office of the Kentucky State Medical Examiner.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Office of Legislative and Intergovernmental Services.
 - (l) Office of Management and Administrative Services.
 - (m) Office of Investigations.
 - (n) Department for Public Advocacy.
 - 2. Education and Workforce Development Cabinet:
 - (a) Office of the Secretary.
 - (b) Office of Legal and Legislative Services.
 - 1. Client Assistance Program.
 - (c) Office of Communication.
 - (d) Office of Budget and Administration.
 - 1. Division of Human Resources.
 - 2. Division of Administrative Services.
 - 3. Division of Technology Services.
 - (e) Office of Educational Programs.
 - (f) Board of Directors for the Center for School Safety.
 - (g) Council on Postsecondary Education.
 - 1. Foundation for Adult Education.

- (h) Department of Education.
 - 1. Kentucky Board of Education.
 - (i) Department for Libraries and Archives.
 - (j) Department of Workforce Investment.
 - 1. Office for the Blind.
 - 2. Office of Vocational Rehabilitation.
 - 3. Office of Career and Technical Education.
 - 4. Office of Employment and Training.
 - (k) Foundation for Workforce Development.
 - (l) Kentucky Office for the Blind State Rehabilitation Council.
 - (m) Kentucky Technical Education Personnel Board.
 - (n) Kentucky Workforce Investment Board.
 - (o) Statewide Council for Vocational Rehabilitation.
 - (p) Statewide Independent Living Council.
 - (q) Unemployment Insurance Commission.
 - (r) Education Professional Standards Board.
 - 1. Division of Educator Preparation.
 - 2. Division of Certification.
 - 3. Division of Professional Learning and Assessment.
 - 4. Division of Legal Services.
 - (s) Kentucky Commission on the Deaf and Hard of Hearing.
 - (t) Kentucky Educational Television.
 - (u) Kentucky Environmental Education Council.
3. ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet:
- (a) Office of the Secretary.
 - 1. Office of Legislative and Intergovernmental Affairs.
 - 2. Office of ***General Counsel***~~{Communications and Public Outreach}~~.
 - a. ***Environmental Protection Legal Division.***
 - 3. ~~{Office of Regulatory Affairs.~~
 - 4. ~~Office of Legal Services.~~
 - 5. ~~Office of Administrative and Information Services.~~
 - 6. ~~Office of Administrative Hearings.~~
 - 7. ~~Office of Inspector General.~~
 - 4~~8~~. Mine Safety Review Commission.
 - 9. ~~Workers' Compensation Board.~~
 - 5~~10~~. Kentucky State Nature Preserves Commission.
 - 6~~11~~. Kentucky Environmental Quality Commission.
 - 7~~12~~. Kentucky ***Public Service***~~{Occupational Safety and Health Review}~~ Commission.

- (b) Department for Environmental Protection.
 - 1. Office of the Commissioner.
 - 2. Division ~~for~~ Air Quality.
 - 3. Division of Water.
 - 4. Division of Environmental **Program Support** ~~Services~~.
 - 5. Division of Waste Management.
 - 6. Division of Enforcement.
 - 7. Division of Compliance Assistance.
- (c) Department for Natural Resources.
 - 1. Office of the Commissioner.
 - 2. ~~Division~~ ~~Office~~ of Technical and Administrative Support.
 - 3. Division of Mine Permits.
 - 4. Division of Mine Reclamation and Enforcement.
 - 5. Division of Abandoned Mine Lands.
 - 6. Division of Oil and Gas ~~Conservation~~.
 - 7. Office of Mine Safety and Licensing.
 - 8. Division of Forestry.
 - 9. Division of Conservation.
- (d) **Department for Energy Development and Independence.**
 - 1. **Division of Efficiency and Conservation.**
 - 2. **Division of Renewable Energy.**
 - 3. **Division of Biofuels.**
 - 4. **Division of Energy Generation Transmission and Distribution.**
 - 5. **Division of Carbon Management.**
 - 6. **Division of Fossil Energy Development.**

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

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

~~2. Division of Administrative Services.~~

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

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

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

- (e)~~{6.}~~ Kentucky Boxing and Wrestling Authority.
- (f)~~{7.}~~ Kentucky Horse Racing *Commission*~~{Authority}~~.
1. *Division of Licensing.*
 2. *Division of Incentives and Development.*
 3. *Division of Veterinary Services.*
 4. *Division of Security and Enforcement.*
- ~~{8.} Kentucky Public Service Commission.~~
- (g)~~{9.}~~ *Department*~~{Office}~~ of Alcoholic Beverage Control.
1. *Division of Distilled Spirits.*
 2. *Division of Malt Beverages.*
 3. *Division of Enforcement.*
- (h)~~{10.}~~ *Department*~~{Office}~~ of Charitable Gaming.
1. *Division of Licensing and Compliance.*
 2. *Division of Enforcement.*
- (i)~~{11.}~~ *Department*~~{Office}~~ of Financial Institutions.
1. *Division of Depository Institutions.*
 2. *Division of Non-Depository Institutions.*
 3. *Division of Securities.*
- (j)~~{12.}~~ *Department*~~{Office}~~ of Housing, Buildings and Construction.
1. *Division of Fire Prevention.*
 2. *Division of Plumbing.*
 3. *Division of Heating, Ventilation, and Air Conditioning.*
 4. *Division of Building Code Enforcement.*
- (k)~~{13.}~~ *Department*~~{Office}~~ of Insurance.
1. *Property and Casualty Division.*
 2. *Health and Life Division.*
 3. *Division of Financial Standards and Examination.*
 4. *Division of Agent Licensing.*
 5. *Division of Insurance Fraud Investigation.*
 6. *Consumer Protection Division.*
 7. *Division of Kentucky Access.*
- (l) *Office of Occupations and Professions.*
5. ~~{e.}~~ ~~{Department of}~~ Labor *Cabinet*.
- (a)~~{1.}~~ Office of the *Secretary*~~{Commissioner}~~.
1. *Division of Management Services.*
 2. Office of *General Counsel*~~{Occupational Safety and Health}~~.
- (b)~~{3.}~~ Office of *General Administration and Program Support for Shared Services*~~{Labor Management Relations and Mediation}~~.

1. *Division of Human Resource Management.*

2. *Division of Fiscal Management.*

3. *Division of Budgets.*

4. *Division of Information Services.*

(c) *Office of Inspector General for Shared Services.*

(d)~~{4.} Department~~~~{Office}~~ of Workplace Standards.

1. *Division of Employment Standards, Apprenticeship, and Mediation.*

2. *Division of Occupational Safety and Health Compliance.*

3. *Division of Occupational Safety and Health Education and Training.*

4. *Division of Workers' Compensation Funds.*

(e)~~{5.} Department~~~~{Office}~~ of Workers' Claims.

1. *Office of General Counsel for Workers' Claims.*

2. *Office of Administrative Law Judges.*

3. *Division of Claims Processing.*

4. *Division of Security and Compliance.*

5. *Division of Information and Research.*

6. *Division of Ombudsman and Workers' Compensation Specialist Services.*

7. *Workers' Compensation Board.*

8. *Workers' Compensation Advisory Council.*

9. *Workers' Compensation Nominating Commission.*

(f)~~{6.} Workers' Compensation Funding Commission.~~

(g)~~{7.} Kentucky Labor-Management Advisory Council.~~

(h)~~{8.} Occupational Safety and Health Standards Board.~~

(i)~~{9.} Prevailing Wage Review Board.~~

~~{10.} Kentucky Employees Insurance Association.~~

(j)~~{11.} Apprenticeship and Training Council.~~

(k)~~{12.} State Labor Relations Board.~~

~~{13.} Workers' Compensation Advisory Council.~~

~~{14.} Workers' Compensation Nominating Commission.~~

(l)~~{15.} Employers' Mutual Insurance Authority.~~

(m) *Kentucky Occupational Safety and Health Review Commission.*

~~{16.} Division of Administrative Services.~~

6~~{4.}~~ Transportation Cabinet:

(a) Department of Highways.

1. Office of Project Development.

2. Office of Project Delivery and Preservation.

3. Office of Highway Safety.

4. Highway District Offices One through Twelve.

(b) Department of Vehicle Regulation.

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

- (l) Office of the Ombudsman.
 - (m) Department for Human Support Services.
 - (n) Kentucky Commission on Community Volunteerism and Service.
 - (o) Office of Fiscal Services.
 - (p) Office of Human Resource Management.
 - (q) Office of Technology.
 - (r) Office of Contract Oversight.
 - (s) Governor's Office of Wellness and Physical Activity.
 - (t) Department for Aging and Independent Living.
- ~~9[7].~~ Finance and Administration Cabinet:
- (a) Office of General Counsel.
 - (b) Office of the Controller.
 - (c) Office of Administrative Services.
 - (d) Office of Public Information.
 - (e) Office of Policy and Audit.
 - (f) Department for Facilities and Support Services.
 - (g) Department of Revenue.
 - (h) Commonwealth Office of Technology.
 - (i) State Property and Buildings Commission.
 - (j) Office of Equal Employment Opportunity and Contract Compliance.
 - (k) Kentucky Employees Retirement Systems.
 - (l) Commonwealth Credit Union.
 - (m) State Investment Commission.
 - (n) Kentucky Housing Corporation.
 - (o) Kentucky Local Correctional Facilities Construction Authority.
 - (p) Kentucky Turnpike Authority.
 - (q) Historic Properties Advisory Commission.
 - (r) Kentucky Tobacco Settlement Trust Corporation.
 - (s) Kentucky Higher Education Assistance Authority.
 - (t) Kentucky River Authority.
 - (u) Kentucky Teachers' Retirement System Board of Trustees.
 - (v) Executive Branch Ethics Commission.
- ~~10[8].~~ Tourism, Arts and Heritage Cabinet:
- (a) Kentucky Department of Travel.
 - (1) Division of Tourism Services.
 - (2) Division of Marketing and Administration.
 - (3) Division of Communications and Promotions.
 - (b) Kentucky Department of Parks.

- (1) Division of Information Technology.
 - (2) Division of Human Resources.
 - (3) Division of Financial Operations.
 - (4) Division of Facilities Management.
 - (5) Division of Facilities Maintenance.
 - (6) Division of Customer Services.
 - (7) Division of Recreation.
 - (8) Division of Golf Courses.
 - (9) Division of Food Services.
 - (10) Division of Rangers.
 - (11) Division of Resort Parks.
 - (12) Division of Recreational Parks and Historic Sites.
- (c) Department of Fish and Wildlife Resources.
- (1) Division of Law Enforcement.
 - (2) Division of Administrative Services.
 - (3) Division of Engineering.
 - (4) Division of Fisheries.
 - (5) Division of Information and Education.
 - (6) Division of Wildlife.
 - (7) Division of Public Affairs.
- (d) Kentucky Horse Park.
- (1) Division of Support Services.
 - (2) Division of Buildings and Grounds.
 - (3) Division of Operational Services.
- (e) Kentucky State Fair Board.
- (1) Office of Administrative and Information Technology Services.
 - (2) Office of Human Resources and Access Control.
 - (3) Division of Expositions.
 - (4) Division of Kentucky Exposition Center Operations.
 - (5) Division of Kentucky International Convention Center.
 - (6) Division of Public Relations and Media.
 - (7) Division of Venue Services.
 - (8) Division of Personnel Management and Staff Development.
 - (9) Division of Sales.
 - (10) Division of Security and Traffic Control.
 - (11) Division of Information Technology.
 - (12) Division of the Louisville Arena.
 - (13) Division of Fiscal and Contract Management.

- (14) Division of Access Control.
- (f) Office of the Secretary.
 - (1) Office of Finance.
 - (2) Office of Research and Administration.
 - (3) Office of Governmental Relations and Tourism Development.
 - (4) Office of the Sports Authority.
 - (5) Kentucky Sports Authority.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.
- (j) Office of Creative Services.
- (k) Office of Capital Plaza Operations.
- (l) Office of Arts and Cultural Heritage.
- (m) Kentucky African-American Heritage Commission.
- (n) Kentucky Foundation for the Arts.
- (o) Kentucky Humanities Council.
- (p) Kentucky Heritage Council.
- (q) Kentucky Arts Council.
- (r) Kentucky Historical Society.
 - (1) Division of Museums.
 - (2) Division of Oral History and Educational Outreach.
 - (3) Division of Research and Publications.
 - (4) Division of Administration.
- (s) Kentucky Center for the Arts.
 - (1) Division of Governor's School for the Arts.
- (t) Kentucky Artisans Center at Berea.
- (u) Northern Kentucky Convention Center.
- (v) Eastern Kentucky Exposition Center.

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

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

III. Other departments headed by appointed officers:

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

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

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

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

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

There are established within state government the following program cabinets:

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

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

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

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

- (1) The following agencies shall designate a liaison to the Office for Faith-Based and Community Nonprofit Social Services:
 - (a) The Cabinet for Health and Family Services;
 - (b) The Department of Workforce Investment;
 - (c) The Education and Workforce Development Cabinet;
 - (d) The Department of Agriculture;
 - (e) The Kentucky Housing Corporation;
 - (f) The *Labor*~~[Environmental and Public Protection]~~ Cabinet; and
 - (g) The Economic Development Cabinet.
- (2) Each agency identified in subsection (1) of this section shall, in cooperation and coordination with the Office for Faith-Based and Community Nonprofit Social Services:
 - (a) Review and evaluate existing policies that affect government funding opportunities for faith-based and nonprofit community organizations and report to the office, within ninety (90) days of June 20, 2005, actions necessary to implement KRS 12.510; and
 - (b) Amend existing policies and administrative regulations or implement new policies or administrative regulations in accordance with KRS Chapter 13A consistent with the principles established in KRS 12.500 to 12.520.

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

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:
 - (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
 - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
 - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
 - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
 - (e) Administrative hearings conducted by the legislative and judicial branches of state government;

- (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
 - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
 - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
 - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
 - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
 - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
- (a) Finance and Administration Cabinet
 - 1. Higher Education Assistance Authority
 - a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
 - b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
 - 2. Department of Revenue
 - a. Any licensing and bond revocation hearings conducted under the authority of KRS 138.210 to 138.448 and 234.310 to 234.440
 - b. Any license revocation hearings under KRS 131.630 and 138.130 to 138.205
 - (b) Cabinet for Health and Family Services
 - 1. Office of Health Policy
 - a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
 - b. Licensure revocation hearings conducted under authority of KRS Chapter 216B
 - 2. Department for Community Based Services
 - a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630
 - 3. Department for Disability Determination Services
 - a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404
 - (c) Justice and Public Safety Cabinet
 - 1. Department of Kentucky State Police
 - a. Kentucky State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
 - 2. Department of Corrections
 - a. Parole Board hearings conducted under authority of KRS Chapter 439
 - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
 - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197

3. Department of Juvenile Justice
 - a. Supervised placement revocation hearings conducted under KRS Chapter 635
- (d) ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet
 1. Department for Natural Resources
 - a. Surface mining hearings conducted under authority of KRS Chapter 350
 2. Department for Environmental Protection
 - a. Wild River hearings conducted under authority of KRS Chapter 146
 - b. Water resources hearings conducted under authority of KRS Chapter 151
 - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223
 - d. Environmental protection hearings conducted under authority of KRS Chapter 224
 - e. Petroleum Storage Tank Environmental Assurance Fund hearings under authority of KRS Chapter 224
 3. ***Public Service Commission***
 - a. ***Utility hearings conducted under authority of KRS Chapters 74, 278, and 279***
- (e) ***Labor Cabinet***
 1. ***Department***~~[Office]~~ of Workers' Claims
 - a. Workers' compensation hearings conducted under authority of KRS Chapter 342
 - 2~~[4]~~. Kentucky Occupational Safety and Health Review Commission
 - a. Occupational safety and health hearings conducted under authority of KRS Chapter 338
- (f)~~[5.]~~ ~~[Department of]~~ Public Protection ***Cabinet***
 - 1~~[a]~~. Board of Claims
 - a~~[1]~~. Liability hearings conducted under authority of KRS Chapter 44
 - ~~b.~~ ~~Public Service Commission~~
 - i. ~~Utility hearings conducted under authority of KRS Chapters 74, 278, and 279]~~
- (g)~~(e)~~ Education and Workforce Development Cabinet
 1. Unemployment Insurance hearings conducted under authority of KRS Chapter 341
- (h)~~(f)~~ Secretary of State
 1. Registry of Election Finance
 - a. Campaign finance hearings conducted under authority of KRS Chapter 121
- (i)~~(g)~~ State universities and colleges
 1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164
 2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164
 3. Campus residency hearings conducted under authority of KRS Chapter 164
 4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
 5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.

- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
- (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
 - (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or
 - (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.
- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.
- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

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

- (1) The Financial Integrity Enforcement Division is created in the Department of Law. The division shall:
- (a) Investigate illegal redemption of food stamp benefits in cooperation with the United States Department of Agriculture and the Cabinet for Health and Family Services;
 - (b) Verify eligibility of food stamp program applicants as to past criminal history;
 - (c) Investigate the illegal distribution of counterfeit merchandise; and
 - (d) Investigate the use of personal identification and financial information by persons for the purpose of theft, or fraud, or both theft and fraud, and other illegal or fraudulent activity which may involve electronic commerce.
- (2) The Office of the Attorney General shall coordinate with the ~~Department~~~~Office~~ of Financial Institutions, the United States Secret Service, the Federal Trade Commission, the Kentucky Bankers' Association, and any other agency or organization to prepare and disseminate information to prevent identity theft.

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

- (1) The Department of Law shall have the following powers, duties and functions:
- (a) To prevent or remedy damage to the environment caused by any person, group, partnership, association, body corporate or politic, or any agency, department, board, commission, division, or authority, whether state or federal, or by commencing or intervening in any suit or action in state or federal courts, whether civil or criminal, to enforce any statute, ordinance, bylaw, or regulation, or to secure any common-law right or remedy;
 - (b) To counsel state agencies and commissions given the responsibility over environmental concerns including but not limited to the ~~Energy and Environment~~~~Environmental and Public Protection~~ Cabinet and the Public Service Commission;
 - (c) To exercise the common-law powers of the Attorney General in protecting the environment;

- (d) To bring public nuisance and other actions in Circuit Courts in the name of the Commonwealth upon complaint by private citizens, when in the opinion of the Attorney General the activity or activities complained of may have a substantial impact upon the environment of the Commonwealth; and
 - (e) To develop guidelines related to the proper investigation of sexual misconduct by professionals which may be adopted by professional licensure boards.
- (2) Nothing in this section shall be interpreted to derogate from any existing common-law or statutory right or remedy against damage to the environment.

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

- (1) As used in this section, "consent order" means the consent order of December 21, 1998, agreed to in Commonwealth of Kentucky v. Philip Morris Inc. et al., Docket Number 98-CI-01579, Franklin Circuit Court.
- (2) There is created the Tobacco Master Settlement Agreement Compliance Advisory Board in the Department of Law. The board shall be composed of six (6) members as follows:
 - (a) The Attorney General, or the Attorney General's designee;
 - (b) The secretary of the Cabinet for Health and Family Services, or the secretary's designee;
 - (c) The Commissioner of Agriculture, or the Commissioner's designee;
 - (d) The secretary of the ~~Environmental and~~ Public Protection Cabinet, or the secretary's designee; and
 - (e) Two (2) citizens at large appointed by the Attorney General.
- (3) The citizen members of the board shall serve for terms of one (1) year and until their successors are appointed. The citizen members shall be eligible for successive terms on the board.
- (4) The board shall annually elect a member to serve as its chair and shall meet at least quarterly on a date set by the board. Board members shall be reimbursed for necessary expenses incurred in serving on the board.
- (5) The board may adopt rules governing the conduct of its meetings, the creation of meeting agendas, and other procedural matters it deems necessary. The board may adopt reporting forms, which shall be developed in consultation with participating agencies.
- (6) The Office of the Attorney General shall:
 - (a) Enter into a memorandum of agreement with the Department of Public Health of the Cabinet for Health and Family Services, the *Department*~~Office~~ of Alcoholic Beverage Control in the ~~Environmental and~~ Public Protection Cabinet, and the Department of Agriculture to identify and report possible violations of the consent order;
 - (b) Attempt to secure funding under the master settlement agreement to reimburse the agencies specified in paragraph (a) of this subsection for any compliance activity that they perform; and
 - (c) Provide necessary funding and staff for administrative expenses related to the operation of the board. The board may request assistance from other state agencies.
- (7) The Tobacco Master Settlement Agreement Compliance Advisory Board shall:
 - (a) Identify activities for which training is required for personnel of the state agencies specified in paragraph (a) of subsection (6) of this section that are responsible for identifying and reporting possible violations of the consent order;
 - (b) Determine eligible compliance training costs and seek reimbursement for the costs; and
 - (c) Notify the appropriate tobacco manufacturer, in writing, of any alleged violation of the consent order and request a response and, if applicable, a corrective action plan within thirty (30) days from the date of the notice. If the manufacturer fails to respond or to satisfactorily resolve the matter, the board shall review the matter at its next meeting and may refer the matter to the Office of the Attorney General for enforcement action, if warranted.

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

- (1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:

- (a) Department of Kentucky State Police officers, but for the commissioner of the Department of Kentucky State Police;
 - (b) City, county, and urban-county police officers;
 - (c) Court security officers and deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);
 - (d) State or public university safety and security officers appointed pursuant to KRS 164.950;
 - (e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;
 - (f) Airport safety and security officers appointed under KRS 183.880;
 - (g) ~~Department Office~~ of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090;
 - (h) Division of Insurance Fraud Investigation investigators appointed under KRS 304.47-040; and
 - (i) County detectives appointed in a county containing a consolidated local government with the power of arrest in the county and the right to execute process statewide in accordance with KRS 69.360.
- (2) The requirements of KRS 15.380 to 15.404 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Personnel Cabinet for job specifications.
- (3) Additional training in excess of the standards set forth in KRS 15.380 to 15.404 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.
- (4) The following officers may, upon request of the employing agency, be certified by the council:
- (a) Deputy coroners;
 - (b) Deputy constables;
 - (c) Deputy jailers;
 - (d) Deputy sheriffs under KRS 70.045 and 70.263(3);
 - (e) Officers appointed under KRS 61.360;
 - (f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;
 - (g) Private security officers;
 - (h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080; and
 - (i) Investigators employed by the ~~Department Office~~ of Charitable Gaming in accordance with KRS 238.510; and
 - (j) Commonwealth detectives employed under KRS 69.110 and county detectives employed under KRS 69.360.
- (5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:
- (a) Sheriffs;
 - (b) Coroners;
 - (c) Constables;
 - (d) Jailers;
 - (e) Kentucky Horse Racing ~~Commission Authority~~ security officers employed under KRS 230.240; and
 - (f) Commissioner of the State Police.

- (6) Federal peace officers cannot be certified under KRS 15.380 to 15.404.

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

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

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

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

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

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

- (1) No state law enforcement agency or official shall stop, detain, or search any person when such action is solely motivated by consideration of race, color, or ethnicity, and the action would constitute a violation of the civil rights of the person.
- (2) The secretary of the Justice and Public Safety Cabinet, in consultation with the Kentucky Law Enforcement Council, the Attorney General, the Department of Criminal Justice Training, the secretary of the Transportation Cabinet, the Department of Kentucky State Police, the secretary of the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet, and the *secretary*~~{commissioner}~~ of the ~~{Department of}~~ Public Protection *Cabinet*, shall design and implement a model policy to prohibit racial profiling by state law enforcement agencies and officials.
- (3) The Kentucky Law Enforcement Council shall disseminate the established model policy against racial profiling to all sheriffs and local law enforcement officials, including local police departments, city councils, and fiscal courts. All local law enforcement agencies and sheriffs' departments are urged to implement a written policy against racial profiling or adopt the model policy against racial profiling as established by the secretary of the Justice and Public Safety Cabinet within one hundred eighty (180) days of dissemination of the model policy. A copy of any implemented or adopted policy against racial profiling shall be filed with the Kentucky Law Enforcement Council and the Kentucky Law Enforcement Foundation Program Fund.
- (4) (a) Each local law enforcement agency that participates in the Kentucky Law Enforcement Foundation Program fund under KRS 15.420 in the Commonwealth shall implement a policy banning the practice of racial profiling that meets or exceeds the requirements of the model policy disseminated under subsection (3) of this section. The local law enforcement agency's policy shall be submitted by the local law enforcement agency to the secretary of the Justice and Public Safety Cabinet within one hundred eighty (180) days of dissemination of the model policy by the Kentucky Law Enforcement Council under subsection (3) of this section. If the local law enforcement agency fails to submit its policy within one hundred eighty (180) days of dissemination of the model policy, or the secretary rejects a policy submitted within the one hundred and eighty (180) days, that agency shall not receive Kentucky Law Enforcement Foundation Program funding until the secretary approves a policy submitted by the agency.

(b) If the secretary of the Justice and Public Safety Cabinet approves a local law enforcement agency's policy, the agency shall not change its policy without obtaining approval of the new policy from the secretary of the Justice and Public Safety Cabinet. If the agency changes its policy without obtaining the secretary's approval, the agency shall not receive Kentucky Law Enforcement Foundation Program funding until the secretary approves a policy submitted by the agency.

(5) Each local law enforcement agency shall adopt an administrative action for officers found not in compliance with the agency's policy. The administrative action shall be in accordance with other penalties enforced by the agency's administration for similar officer misconduct.

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

(1) As used in this section and KRS 15A.342 and 15A.344, "KY-ASAP" means the Kentucky Agency for Substance Abuse Policy.

(2) The Office of Drug Control Policy shall administer an endowment from interest generated through funds appropriated or gifts, donations, or funds received from any source. The Office of Drug Control Policy may expend endowment principal, if necessary in its discretion, to carry out the purposes of this section and KRS 15A.342 and 15A.344. These expenditures from the endowment principal are hereby appropriated for this purpose.

(3) (a) The Office of Drug Control Policy shall oversee the activities specified in this section and KRS 15A.342 and 15A.344 and provide administrative support to the seventeen (17) member KY-ASAP Board, which is created to oversee the activities of KY-ASAP. Membership of the board shall be appointed by the Governor and shall consist of the following:

1. One (1) member representing the Kentucky Family Resource Youth Services Coalition, or a designee;
2. One (1) member representing the Kentucky Health Department Association, or a designee;
3. The secretary of the Cabinet for Health and Family Services, or designee;
4. The secretary of the Justice and Public Safety Cabinet, or a designee;
5. One (1) member representing the Division of Mental Health and Substance Abuse Services within the Department for Mental Health and Mental Retardation Services, Cabinet for Health and Family Services, or a designee;
6. The commissioner of the Department for Public Health, Cabinet for Health and Family Services, or a designee;
7. The ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Alcoholic Beverage Control, or a designee;
8. The commissioner of the Department of Education;
9. The director of the Administrative Office of the Courts, or a designee;
10. One (1) member representing the Kentucky Association of Regional Programs, or a designee;
11. One (1) member representing the Kentucky Heart Association, or a designee;
12. One (1) member representing the Kentucky Lung Association, or a designee;
13. One (1) member representing the Kentucky Cancer Society, or a designee;
14. Two (2) members representing local tobacco addiction and substance abuse advisory and coordination boards; and
15. Two (2) members representing private community-based organizations, whether for-profit or nonprofit, with experience in programs involving smoking cessation or prevention or alcohol or substance abuse prevention and treatment.

(b) Members shall serve for a term of four (4) years, may be reappointed, and may serve no more than two (2) consecutive terms. Members shall not be compensated but shall receive reimbursement for expenses incurred while performing board business.

- (c) The board shall meet at least quarterly. A quorum of nine (9) members shall be required for the transaction of business. Meetings shall be held at the call of the chair, or upon the written request of two (2) members to the chair.
- (d) The board shall:
 - 1. Oversee deposits and expenditures from the endowment;
 - 2. Request, in its discretion, an audit relating to the expenditure of endowment funds;
 - 3. Receive quarterly reports from the *commissioner of the Department of Alcoholic Beverage Control*~~[executive director]~~ regarding KY-ASAP's activities;
 - 4. Progress toward development and implementation of the strategic plan;
 - 5. Recommend to KY-ASAP the most efficient means for using public funds to coordinate, supplement, and support high quality and ongoing programs of all public agencies and private service providers related to smoking cessation and prevention and alcohol and substance abuse prevention and treatment;
 - 6. Recommend matters for review and analysis by KY-ASAP; and
 - 7. Perform other duties as necessary for the oversight of KY-ASAP.
- (4) The Office of Drug Control Policy and KY-ASAP shall promote the implementation of research-based strategies that target Kentucky's youth and adult populations.
- (5) The Office of Drug Control Policy and KY-ASAP shall vigorously pursue the philosophy that tobacco in the hands of Kentucky's youth is a drug abuse problem because of the addictive qualities of nicotine, and because tobacco is the most prevalent gateway drug that leads to later and escalated drug and alcohol abuse.

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

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

- (1) Develop a strategic plan to reduce the prevalence of smoking and drug and alcohol abuse among both the youth and adult populations in Kentucky;
- (2) Monitor the data and issues related to youth alcohol and tobacco access, smoking cessation and prevention, and substance abuse policies, their impact on state and local programs, and their flexibility to adapt to the needs of local communities and service providers;
- (3) Make policy recommendations to be followed to the extent permitted by budgetary restrictions and federal law, by executive branch agencies that work with smoking cessation and prevention and alcohol and substance abuse issues to ensure the greatest efficiency in agencies and to ensure that a consistency in philosophy will be applied to all efforts undertaken by the administration in initiatives related to smoking cessation and prevention and alcohol and substance abuse;
- (4) Identify existing resources in each community that advocate or implement programs for smoking cessation or prevention, or drug and alcohol abuse prevention, education, or treatment;
- (5) Encourage coordination among public and private, state and local, agencies, organizations, and service providers, and monitor related programs;
- (6) Act as the referral source of information, utilizing existing information clearinghouse resources within the Department for Public Health and CHAMPIONS for a Drug Free Kentucky Office, relating to youth tobacco access, smoking cessation and prevention, and substance abuse prevention, cessation, and treatment programs. The Office of Drug Control Policy and KY-ASAP shall identify gaps in information referral sources;

- (7) Search for grant opportunities for existing programs within the Commonwealth;
- (8) Make recommendations to state and local agencies and local tobacco addiction and substance abuse advisory and coordination boards;
- (9) Observe programs from other states;
- (10) Coordinate services among local and state agencies, including but not limited to the Justice and Public Safety Cabinet, the Cabinet for Health and Family Services, the Department of Agriculture, the ~~Environmental and~~ Public Protection Cabinet, the Administrative Office of the Courts, and the Education and Workforce Development Cabinet;
- (11) Assure the availability of training, technical assistance, and consultation to local service providers for programs funded by the Commonwealth that provide services related to tobacco addiction, smoking cessation or prevention, or alcohol or substance abuse;
- (12) Review existing research on programs related to smoking cessation and prevention and substance abuse prevention and treatment;
- (13) Comply with any federal mandate regarding smoking cessation and prevention and substance abuse, to the extent authorized by state statute;
- (14) Establish a mechanism to coordinate the distribution of funds to support any local prevention, treatment, and education program based on the strategic plan developed in subsection (1) of this section that could encourage smoking cessation and prevention through efficient, effective, and research-based strategies;
- (15) Oversee a school-based initiative that links schools with community-based agencies and health departments to implement School Programs to Prevent Tobacco Use, based upon the model recommended by the Centers for Disease Control and Prevention. To the extent permitted by resources, the initiative shall involve input by and services from each of the family resource and youth services centers, regional prevention centers, and existing school-based antidrug programs;
- (16) Work with community-based organizations to encourage them to work together to establish comprehensive tobacco addiction and substance abuse prevention education programs and carry out the strategic plan developed in this section. These organizations shall be encouraged to partner with district and local health departments and community mental health centers to plan and implement interventions to reach youths before tobacco addiction and substance abuse become a problem in their lives;
- (17) Coordinate media campaigns designed to demonstrate the negative impact of smoking and the increased risk of tobacco addiction, substance abuse, and the development of other disease in children, young people, and adults. To accomplish this objective, KY-ASAP shall work with local media to reach all segments of the community quickly and efficiently;
- (18) Certify to the Governor, the secretary of the Justice and Public Safety Cabinet, and the General Assembly during the budget request process established under KRS Chapter 48 the extent to which each entity receiving state funds has cooperated with the Office of Drug Control Policy and KY-ASAP, coordinated with community resources, and vigorously pursued the philosophy of the Office of Drug Control Policy and KY-ASAP;
- (19) Promulgate, with the approval of the secretary of the Justice and Public Safety Cabinet, any administrative regulations necessary to implement this section and KRS 15A.340 and 15A.344; and
- (20) Report annually to the Legislative Research Commission and Governor regarding the proper organization of state government agencies that will provide the greatest coordination of services, and report semiannually to the Legislative Research Commission and Governor on the status of the Office of Drug Control Policy and KY-ASAP programs, services, and grants, and on other matters as requested by the Legislative Research Commission and Governor.

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

- (1) The Department of Kentucky State Police shall secure, or reimburse members of the State Police who purchase a rider on their personal motor vehicle insurance policy to secure, such automobile liability insurance and uninsured and underinsured motorist coverage as will reasonably protect the interest of members of the State Police when in the conduct of official business.

- (2) Policies authorized by this section shall be purchased only in accordance with regulations prescribed by the **commissioner**~~[executive director]~~ of insurance and the secretary of the Finance and Administration Cabinet.
- (3) The department shall determine the minimum coverage the member must purchase to be eligible for reimbursement under subsection (1) of this section and the maximum amount of reimbursement. The uninsured and underinsured motorist coverage shall be no less than the policy's liability limits for bodily injury or death.

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

- (1) Any officer of the department who shall be found guilty by the trial board of any charge as provided in KRS 16.140 shall have the right, within ten (10) days from the date of judgment of the trial board, to appeal to the Franklin Circuit Court, provided the punishment be a suspension of more than twenty (20) days or his pay be reduced more than ten percent (10%), or if he is reduced in grade, if his classification so warrants, or is removed or dismissed from the department; provided, however, the enforcement of the judgment of the trial board upon said charges shall not be suspended during said appeal.
- (2) To perfect said appeal within the time specified, such officer shall file in the office of the clerk of the Franklin Circuit Court a copy of the order, of all the evidence heard, and of all the steps taken by the trial board relative to such charges, but shall first post a bond to secure the cost of the action in a lump sum to be approved by the circuit clerk, with corporate surety approved by the **Department**~~[Office]~~ of Insurance as to solvency and responsibility and authorized to transact business in this state, or he may post a cash bond. The members of the trial board and the commissioner shall be necessary parties to such appeal. The circuit clerk shall docket the case as though it were a petition in equity and shall immediately issue a summons for the appellee. The summons shall be returnable in the same manner as in equity cases. Service of summons upon the commissioner or acting commissioner shall be deemed service upon the board.
- (3) Such action shall be set down for trial as soon as possible, and the hearing thereof shall be expedited in the same manner as a declaratory judgment suit.
- (4) No new or additional evidence shall be introduced in the Franklin Circuit Court, except as to fraud or misconduct of some party engaged in the administration of KRS 16.010 to 16.170, or one (1) who is a member of the trial board, but the court shall otherwise hear the case upon the record as attested by the board, and in all respects dispose of the appeal in a summary manner. Its review shall be limited to determining whether or not:
 - (a) The board acted without or in excess of its powers;
 - (b) The order appealed from was procured by fraud; or
 - (c) If questions of fact are in issue, whether or not any substantial evidence supports the order appealed from. After such a hearing, the court shall enter a judgment sustaining or setting aside the order of the trial board appealed from. The cost of the action shall follow the judgment of the court.
- (5) Any party aggrieved by a judgment of the Franklin Circuit Court may appeal to the Court of Appeals in the manner provided in the Rules of Civil Procedure, but such appeal shall be docketed within sixty (60) days from the entry of judgment, unless the time be extended by the Circuit Court, but in no event beyond one hundred twenty (120) days from the entry of judgment.

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

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

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

- (2) To perfect the appeal within the specified time, an officer shall file a copy of the order, all the evidence heard, and a full transcribed record relative to the charges with the Franklin County Circuit Clerk. The officer shall first post a bond to secure the cost of the action in a lump-sum amount to be approved by the circuit clerk, with corporate surety approved by the **Department**~~[Office]~~ of Insurance as to solvency and responsibility and

authority to transact business in this state, or the officer may post a cash bond. The members of the trial board and the commissioner shall be necessary parties to the appeal. The circuit clerk shall docket the case as though it were a petition in equity and shall immediately issue a summons for the appellee. The summons shall be returnable in the same manner as in equity cases. Service of summons upon the commissioner or acting commissioner shall be deemed service upon the board.

- (3) The appeal shall be scheduled for trial as soon as possible, and the hearing thereof shall be expedited in the same manner as a declaratory judgment suit.
- (4) No new or additional evidence shall be introduced in the Franklin Circuit Court, except as to fraud or misconduct of some party involved in the investigation of the charges or a member of the trial board. The court shall sit in appellate jurisdiction and shall not overturn the verdict of the trial board unless it finds:
 - (a) The board acted without or in excess of its powers;
 - (b) The order appealed from was procured by fraud; or
 - (c) If questions of fact are at issue, whether any substantial evidence exists to support the order issued by the trial board. The court shall enter a judgment sustaining or setting aside the order of the trial board. The cost of the action shall follow the judgment of the court.
- (5) Any party aggrieved by a judgment of the Franklin Circuit Court may appeal to the Court of Appeals in the manner provided in the Rules of Civil Procedure. The appeal shall be docketed within sixty (60) days from the entry of judgment, unless the time is extended by the Franklin Circuit Court, but in no event beyond one hundred twenty (120) days from the entry of judgment.

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

- (1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:
 - (a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;
 - (b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;
 - (c) Members of boards and commissions;
 - (d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the Secretary of the Governor's Cabinet, and the Office of Program Administration;
 - (e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television and the executive director and deputy executive director of the Education Professional Standards Board;
 - (f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;
 - (g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;
 - (h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the commissioner approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the commissioner;
 - (i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;
 - (j) Physicians employed as such;

- (k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;
 - (l) The judicial department, referees, receivers, jurors, and notaries public;
 - (m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;
 - (n) Patients or inmates employed in state institutions;
 - (o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;
 - (p) Interim employees;
 - (q) Officers and members of the state militia;
 - (r) Department of Kentucky State Police troopers;
 - (s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;
 - (t) Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2);
 - (u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;
 - (v) County and Commonwealth's attorneys and their respective appointees;
 - (w) Chief district engineers and the state highway engineer;
 - (x) Veterinarians employed as such by the Kentucky Horse Racing ~~Commission~~~~Authority~~;
 - (y) Employees of the Kentucky Peace Corps;
 - (z) Employees of the Council on Postsecondary Education;
 - (aa) Executive director of the Commonwealth Office of Technology;
 - (ab) Employees of the Kentucky Commission on Community Volunteerism and Service;
 - (ac) Persons employed in certified teaching positions at the Kentucky School for the Blind and the Kentucky School for the Deaf; and
 - (ad) Federally funded time-limited employees as defined in KRS 18A.005.
- (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.
 - (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.
 - (4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.
 - (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.

- (6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.
- (7) On August 15, 2000, all certified and equivalent personnel, all unclassified personnel, and all certified and equivalent and unclassified vacant positions in the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B personnel system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems under KRS Chapter 151B and KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No certified or equivalent employee in the Department for Adult Education and Literacy shall suffer any penalty in the transfer.
- (8) On August 15, 2000, secretaries and assistants attached to policymaking positions in the Department for Technical Education and the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. No employee shall suffer any penalty in the transfer.

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

- (1) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary, may procure from one (1) or more life insurance companies, authorized to do business in this state, a policy or policies of group life insurance insuring the lives of all or any class or classes of state employees. The policy or policies shall be approved by the *commissioner*~~executive director~~ of insurance and may contain such provisions as *the commissioner of insurance*~~he~~ approves whether or not otherwise permitted by the insurance laws. It is intended that life insurance may be made available for state employees, except that the procuring is permissive.
- (2) The term "state employee," for purposes of KRS 18A.205 to 18A.215, shall mean a person who is regularly employed by any department, board, agency, or branch of state government, and who is also a contributing member of any one (1) of the retirement systems administered by the state; provided, however, that any federally funded time-limited employee may receive insurance coverage.
- (3) The term "premiums," for the purposes of KRS 18A.205 to 18A.225, shall mean premiums to be paid on any type of insurance authorized under KRS 18A.205 to 18A.225.

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

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

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

- (1) (a) The term "employee" for purposes of this section means:
1. Any person, including an elected public official, who is regularly employed by any department, office, board, agency, or branch of state government; or by a public postsecondary educational institution; or by any city, urban-county, charter county, county, or consolidated local government, whose legislative body has opted to participate in the state-sponsored health insurance program pursuant to KRS 79.080; and who is either a contributing member to any one (1) of the retirement systems administered by the state, including but not limited to the Kentucky

Retirement Systems, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement Plan; or is receiving a contractual contribution from the state toward a retirement plan; or, in the case of a public postsecondary education institution, is an individual participating in an optional retirement plan authorized by KRS 161.567;

2. Any certified or classified employee of a local board of education;
 3. Any elected member of a local board of education;
 4. Any person who is a present or future recipient of a retirement allowance from the Kentucky Retirement Systems, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, the Judicial Retirement Plan, or the Kentucky Community and Technical College System's optional retirement plan authorized by KRS 161.567, except that a person who is receiving a retirement allowance and who is age sixty-five (65) or older shall not be included, with the exception of persons covered under KRS 61.702(4)(c), unless he or she is actively employed pursuant to subparagraph 1. of this paragraph; and
 5. Any eligible dependents and beneficiaries of participating employees and retirees who are entitled to participate in the state-sponsored health insurance program;
- (b) The term "health benefit plan" for the purposes of this section means a health benefit plan as defined in KRS 304.17A-005;
 - (c) The term "insurer" for the purposes of this section means an insurer as defined in KRS 304.17A-005; and
 - (d) The term "managed care plan" for the purposes of this section means a managed care plan as defined in KRS 304.17A-500.
- (2) (a) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more insurers authorized to do business in this state, a group health benefit plan that may include but not be limited to health maintenance organization (HMO), preferred provider organization (PPO), point of service (POS), and exclusive provider organization (EPO) benefit plans encompassing all or any class or classes of employees. With the exception of employers governed by the provisions of KRS Chapters 16, 18A, and 151B, all employers of any class of employees or former employees shall enter into a contract with the Personnel Cabinet prior to including that group in the state health insurance group. The contracts shall include but not be limited to designating the entity responsible for filing any federal forms, adoption of policies required for proper plan administration, acceptance of the contractual provisions with health insurance carriers or third-party administrators, and adoption of the payment and reimbursement methods necessary for efficient administration of the health insurance program. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994, and shall include a mail-order drug option as provided in subsection (13) of this section. All employees and other persons for whom the health care coverage is provided or made available shall annually be given an option to elect health care coverage through a self-funded plan offered by the Commonwealth or, if a self-funded plan is not available, from a list of coverage options determined by the competitive bid process under the provisions of KRS 45A.080, 45A.085, and 45A.090 and made available during annual open enrollment.
 - (b) The policy or policies shall be approved by the *commissioner*~~executive director~~ of insurance and may contain the provisions *the commissioner of insurance*~~he~~ approves, whether or not otherwise permitted by the insurance laws.
 - (c) Any carrier bidding to offer health care coverage to employees shall agree to provide coverage to all members of the state group, including active employees and retirees and their eligible covered dependents and beneficiaries, within the county or counties specified in its bid. Except as provided in subsection (18) of this section, any carrier bidding to offer health care coverage to employees shall also agree to rate all employees as a single entity, except for those retirees whose former employers insure their active employees outside the state-sponsored health insurance program.
 - (d) Any carrier bidding to offer health care coverage to employees shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with

the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and to be subject to penalties for noncompliance with data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual employee; however, confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.

- (e) The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth shall own the enrollment, claims, and utilization data provided by each carrier and shall develop methods to protect the confidentiality of the individual. The Personnel Cabinet shall include in the October annual report submitted pursuant to the provisions of KRS 18A.226 to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, an analysis of the financial stability of the program, which shall include but not be limited to loss ratios, methods of risk adjustment, measurements of carrier quality of service, prescription coverage and cost management, and statutorily required mandates. If state self-insurance was available as a carrier option, the report also shall provide a detailed financial analysis of the self-insurance fund including but not limited to loss ratios, reserves, and reinsurance agreements.
 - (f) If any agency participating in the state-sponsored employee health insurance program for its active employees terminates participation and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, then neither the agency nor the employees shall receive the state-funded contribution after termination from the state-sponsored employee health insurance program.
 - (g) Any funds in flexible spending accounts that remain after all reimbursements have been processed shall be transferred to the credit of the state-sponsored health insurance plan's appropriation account.
 - (h) Each entity participating in the state-sponsored health insurance program shall provide an amount at least equal to the state contribution rate for the employer portion of the health insurance premium. For any participating entity that used the state payroll system, the employer contribution amount shall be equal to but not greater than the state contribution rate.
- (3) The premiums may be paid by the policyholder:
- (a) Wholly from funds contributed by the employee, by payroll deduction or otherwise;
 - (b) Wholly from funds contributed by any department, board, agency, public postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government; or
 - (c) Partly from each, except that any premium due for health care coverage or dental coverage, if any, in excess of the premium amount contributed by any department, board, agency, postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government for any other health care coverage shall be paid by the employee.
- (4) If an employee moves his place of residence or employment out of the service area of an insurer offering a managed health care plan, under which he has elected coverage, into either the service area of another managed health care plan or into an area of the Commonwealth not within a managed health care plan service area, the employee shall be given an option, at the time of the move or transfer, to change his or her coverage to another health benefit plan.
- (5) No payment of premium by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall be considered a proper cost of administration.

- (6) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, and continuation of insurance or coverage after retirement.
- (7) Group rates under this section shall be made available to the disabled child of an employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (8) The health care contract or contracts for employees shall be entered into for a period of not less than one (1) year.
- (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of State Health Insurance Subscribers to advise the secretary or his designee regarding the state-sponsored health insurance program for employees. The secretary shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven (7) Supreme Court districts, members representing state government from each of the seven (7) Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, two (2) members representing the Kentucky Teachers' Retirement System, and three (3) members at large. The secretary shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees, two (2) members from a list of five (5) names submitted by the Kentucky Association of Counties, two (2) members from a list of five (5) names submitted by the Kentucky League of Cities, and two (2) members from a list of names consisting of five (5) names submitted by each state employee organization that has two thousand (2,000) or more members on state payroll deduction. The advisory committee shall be appointed in January of each year and shall meet quarterly.
- (10) Notwithstanding any other provision of law to the contrary, the policy or policies provided to employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of employees or their dependents.
- (11) Interruption of an established treatment regime with maintenance drugs shall be grounds for an insured to appeal a formulary change through the established appeal procedures approved by the ~~Department~~~~Office~~ of Insurance, if the physician supervising the treatment certifies that the change is not in the best interests of the patient.
- (12) Any employee who is eligible for and elects to participate in the state health insurance program as a retiree, or the spouse or beneficiary of a retiree, under any one (1) of the state-sponsored retirement systems shall not be eligible to receive the state health insurance contribution toward health care coverage as a result of any other employment for which there is a public employer contribution. This does not preclude a retiree and an active employee spouse from using both contributions to the extent needed for purchase of one (1) state sponsored health insurance policy for that plan year.
- (13)
 - (a) The policies of health insurance coverage procured under subsection (2) of this section shall include a mail-order drug option for maintenance drugs for state employees. Maintenance drugs may be dispensed by mail order in accordance with Kentucky law.
 - (b) A health insurer shall not discriminate against any retail pharmacy located within the geographic coverage area of the health benefit plan and that meets the terms and conditions for participation established by the insurer, including price, dispensing fee, and copay requirements of a mail-order option. The retail pharmacy shall not be required to dispense by mail.
 - (c) The mail-order option shall not permit the dispensing of a controlled substance classified in Schedule II.
- (14) The policy or policies provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining a hearing aid and acquiring hearing aid-related services for insured individuals under eighteen (18) years of age, subject to a cap of one thousand four hundred dollars (\$1,400) every thirty-six (36) months pursuant to KRS 304.17A-132.
- (15) If a state employee's residence and place of employment are in the same county, and if the hospital located within that county does not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee

may select a plan available in a contiguous county that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.

- (16) If a state employee's residence and place of employment are each located in counties in which the hospitals do not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a county contiguous to the county of residence that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.
- (17) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and in the best interests of the state group to allow any carrier bidding to offer health care coverage under this section to submit bids that may vary county by county or by larger geographic areas.
- (18) Notwithstanding any other provision of this section, the bid for proposals for health insurance coverage for calendar year 2004 shall include a bid scenario that reflects the statewide rating structure provided in calendar year 2003 and a bid scenario that allows for a regional rating structure that allows carriers to submit bids that may vary by region for a given product offering as described in this subsection:
 - (a) The regional rating bid scenario shall not include a request for bid on a statewide option;
 - (b) The Personnel Cabinet shall divide the state into geographical regions which shall be the same as the partnership regions designated by the Department for Medicaid Services for purposes of the Kentucky Health Care Partnership Program established pursuant to 907 KAR 1:705;
 - (c) The request for proposal shall require a carrier's bid to include every county within the region or regions for which the bid is submitted and include but not be restricted to a preferred provider organization (PPO) option;
 - (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the carrier all of the counties included in its bid within the region. If the Personnel Cabinet deems the bids submitted in accordance with this subsection to be in the best interests of state employees in a region, the cabinet may award the contract for that region to no more than two (2) carriers; and
 - (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including other requirements or criteria in the request for proposal.
- (19) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section which provides coverage for services rendered by a physician or osteopath duly licensed under KRS Chapter 311 that are within the scope of practice of an optometrist duly licensed under the provisions of KRS Chapter 320 shall provide the same payment of coverage to optometrists as allowed for those services rendered by physicians or osteopaths.
- (20) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section shall comply with the provisions of KRS 304.17A-270 and 304.17A-525.
- (21) Any full insured health benefit plan or self insured plan issued or renewed on or after July 12, 2006, to public employees shall comply with KRS 304.17A-600 to 304.17A-633 pertaining to utilization review, KRS 205.593 and 304.17A-700 to 304.17A-730 pertaining to payment of claims, KRS 304.14-135 pertaining to uniform health insurance claim forms, KRS 304.17A-580 and 304.17A-641 pertaining to emergency medical care, KRS 304.99-123, and any administrative regulations promulgated thereunder.

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

- (1) To provide quality, affordable health insurance coverage so that the Commonwealth can attract and retain able and dedicated public employees, and to facilitate the need for comprehensive and efficient planning, implementation, and administration of a state employee health insurance program in order to meet this goal, the Kentucky Group Health Insurance Board is created. The board shall be attached to the Personnel Cabinet for administrative purposes only. The board shall consist of thirteen (13) members as follows:
 - (a) The secretary of the Finance and Administration Cabinet;
 - (b) The secretary of the Personnel Cabinet;
 - (c) The state budget director;

- (d) The commissioner of education;
- (e) The chair of the Advisory Committee of State Health Insurance Subscribers;
- (f) The *commissioner*~~[executive director]~~ of insurance, ex officio;
- (g) The Auditor of Public Accounts, ex officio;
- (h) The Director of the Administrative Office of the Courts, or his designee;
- (i) One (1) retired state employee appointed by the Kentucky Retirement Systems, who shall serve an initial term of one (1) year;
- (j) One (1) retired teacher appointed by the Teachers' Retirement System, who shall serve an initial term of two (2) years;
- (k) One (1) active teacher appointed by the organization with the largest number of teacher members on payroll deduction, who shall serve an initial term of one (1) year;
- (l) One (1) active state employee appointed by the organization with the largest number of state employee members on payroll deduction, who shall serve an initial term of two (2) years; and
- (m) One (1) active classified education support employee appointed by the organization with the largest number of classified education support employee members on payroll deduction, who shall serve an initial term of one (1) year.

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

- (2) The members of the board shall elect from among its members a chair and a vice chair.
- (3) Regular meetings of the board shall be held at least once every month at a place, day, and time determined by the board. Special meetings of the board shall be held when needed as determined by the chair. If seven (7) or more members of the board request in writing that the chair call a special meeting, the chair shall call a special meeting. The meetings shall operate in accordance with the provisions of the Open Meetings Law under KRS 61.805 to 61.850.
- (4) Members of the board shall receive reimbursement for necessary expenses for attendance at official board meetings or public hearings.
- (5) The Kentucky Group Health Insurance Board shall:
 - (a) Engage in analyses and research to identify the factors and parameters that affect the state group health insurance program;
 - (b) Develop and transmit, by October 1 of each year beginning October 1, 2001, to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, policy recommendations regarding benefit options and management of the state group health insurance program; and
 - (c) Provide in the first report, due by October 1, 2001, the following:
 - 1. Analysis and discussion of methods used by all other states to provide health insurance benefits to their state group; and
 - 2. Analysis and discussion of the cost, enrollment, claims, and utilization data for calendar year 2000 on the Kentucky state group; and
 - 3. Recommendations including but not limited to appropriate structures for the state contribution rate which shall include recommendations on increasing the state contribution to provide support for dependent coverage, possible methods to mitigate adverse selection, competitive plan designs by type and benefit options, the feasibility of a state self-insurance plan, and strategies for evaluating third-party administrators and vendors.

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

- (1) Each local emergency management director shall establish and maintain a local disaster and emergency services organization in accordance with a city or county or city/county emergency operations plan required

pursuant to KRS Chapters 39A to 39F. The local disaster and emergency services organization shall be comprised of the following members and participants:

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

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

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

- (5) The presence of thirteen (13) members shall constitute a quorum and actions taken at these meetings shall be considered as actions of the full commission.
- (6) Members of the commission shall not receive a salary for serving on the commission, but travel and per diem may be paid if funds are appropriated or otherwise made available for these purposes.

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

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

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

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

1. Forty percent (40%) of the trust funds received by the cabinet in any fiscal year shall be allocated to the cabinet's program for weatherization of low-income households established pursuant to Part A of the Energy Conservation and Existing Buildings Act of 1976, 42 U.S.C. secs. 6861 et seq.; and
2. Sixty percent (60%) of the trust funds received by the cabinet in any fiscal year shall be allocated to the cabinet's program for energy crisis or prevention services for low-income households established pursuant to the Low-Income Home Energy Assistance Act of 1981, 42 U.S.C. secs. 8621 et seq.

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

- (1) The executive director shall establish and implement a statewide public safety interoperability plan. This plan shall include the development of required architecture and standards that will insure that new or upgraded Commonwealth public safety communications systems will interoperate. The Kentucky Wireless Interoperability Executive Committee shall be responsible for the evaluation and recommendation of all wireless communications architecture, standards, and strategies. The executive director shall provide direction, stewardship, leadership, and general oversight of information technology and information resources. The executive director shall report by September 15 annually to the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection and the Interim Joint Committee on State Government on progress and activity by agencies of the Commonwealth to comply with standards to achieve public safety communications interoperability.
- (2) The Kentucky Wireless Interoperability Executive Committee shall serve as the advisory body for all wireless communications strategies presented by agencies of the Commonwealth and local governments. All state agencies in the Commonwealth shall present all project plans for primary wireless public safety voice or data communications systems for review and recommendation by the committee, and the committee shall forward the plans to the executive director for final approval. Local government entities shall present project plans for primary wireless public safety voice or data communications systems for review and recommendation by the Kentucky Wireless Interoperability Executive Committee.
- (3) The committee shall develop funding and support plans that provide for the maintenance of and technological upgrades to the public safety shared infrastructure, and shall make recommendations to the executive director, the Governor's Office for Policy and Management, and the General Assembly.
- (4) The executive director shall examine the project plans for primary wireless public safety voice or data communications systems of state agencies as required by subsection (2) of this section, and shall determine whether they meet the required architecture and standards for primary wireless public safety voice or data communications systems.
- (5) The Kentucky Wireless Interoperability Executive Committee shall consist of twenty (20) members as follows:
 - (a) A person knowledgeable in the field of wireless communications appointed by the executive director who shall serve as chair;
 - (b) The executive director of the Office of Infrastructure Services, Commonwealth Office of Technology;
 - (c) The executive director of Kentucky Educational Television, or the executive director's designee;
 - (d) The chief information officer of the Transportation Cabinet;
 - (e) The chief information officer of the Justice and Public Safety Cabinet;
 - (f) The chief information officer of the Department of Kentucky State Police;
 - (g) The commissioner of the Department of Fish and Wildlife Resources, or the commissioner's designee;
 - (h) The chief information officer of the *Energy and Environment* ~~Environmental and Public Protection~~ Cabinet;
 - (i) The director of the Division of Emergency Management, Department of Military Affairs;
 - (j) The executive director of the Kentucky Office of Homeland Security;
 - (k) The chief information officer, Department for Public Health, Cabinet for Health and Family Services;

- (l) A representative from an institution of postsecondary education appointed by the Governor from a list of three (3) names submitted by the president of the Council on Postsecondary Education;
 - (m) The executive director of the Center for Rural Development, or the executive director's designee;
 - (n) A representative from a municipal government to be appointed by the Governor from a list of three (3) names submitted by the Kentucky League of Cities;
 - (o) A representative from a county government to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Counties;
 - (p) A representative from a municipal police department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Chiefs of Police;
 - (q) A representative from a local fire department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Fire Chiefs;
 - (r) A representative from a county sheriff's department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Sheriffs' Association;
 - (s) A representative from a local Emergency Medical Services agency to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Board of Emergency Medical Services; and
 - (t) A representative from a local 911 dispatch center to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Chapter of the National Emergency Number Association/Association of Public Safety Communications Officials.
- (6) Appointed members of the committee shall serve for a two (2) year term. Members who serve by virtue of an office shall serve on the committee while they hold that office.
 - (7) The committee shall meet quarterly, or as often as necessary for the conduct of its business. A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at committee meetings.
 - (8) The committee shall be attached to the Commonwealth Office of Technology for administrative purposes only. Members shall not be paid and shall not be reimbursed for travel expenses.
 - (9) The Public Safety Working Group is hereby created for the primary purpose of fostering cooperation, planning, and development of the public safety frequency spectrum as regulated by the Federal Communications Commission, including the 700 MHz public safety band. The group shall endeavor to bring about a seamless, coordinated, and integrated public safety communications network for the safe, effective, and efficient protection of life and property. The Public Safety Working Group membership and other working group memberships deemed necessary shall be appointed by the chair of the Kentucky Wireless Interoperability Executive Committee.
 - (10) The committee may establish additional working groups as determined by the committee.
- ➔Section 35. KRS 42.740 is amended to read as follows:
- (1) There is hereby established a Kentucky Geospatial Board, attached to the Commonwealth Office of Technology for administrative purposes, to advise the executive director of the Commonwealth Office of Technology on issues relating to geographic information and geographic information systems.
 - (2) The board shall recommend policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.
 - (3) The board shall closely coordinate with users of geographic information systems to recommend policies and procedures that ensure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.
 - (4) The Kentucky Geospatial Board shall consist of twenty-four (24) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
 - (a) The board shall consist of:

1. The secretary of the Transportation Cabinet or his designee;
 2. The secretary of the Cabinet for Health and Family Services or his or her designee;
 3. The director of the Kentucky Geological Survey or his designee;
 4. The secretary of the Finance and Administration Cabinet or his designee;
 5. The executive director of the Commonwealth Office of Technology or her or his designee, who shall serve as chair;
 6. The secretary of the Economic Development Cabinet or his designee;
 7. The commissioner of the Governor's Office for Local Development or his designee;
 8. The secretary of the Justice and Public Safety Cabinet or his designee;
 9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
 10. The adjutant general of the Department of Military Affairs or his designee;
 11. The commissioner of the Department of Education or his designee;
 12. The secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet or his designee;
 13. The Commissioner of the Department of Agriculture or his designee;
 14. The secretary of the Tourism, Arts and Heritage Cabinet or his designee;
 15. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
 16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
 17. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
 18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
 19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
 20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
 21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
 22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.
- (b) The board shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) The board may have committees and subcommittees as determined by the board or an executive committee, if an executive committee exists.
- (6) A member of the board shall not:
- (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that have, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
 - (b) Own, control, or have, directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;

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

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

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

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

- (2) The provisions of KRS 43.070 shall not apply to the separate and distinct duties imposed on the Auditor of Public Accounts pursuant to subsection (1) of this section. The audits specified in subsection (1) of this section shall be conducted prior to the audits mandated by KRS 43.070.
- (3) Immediately upon completion of each audit, the Auditor of Public Accounts shall prepare a report of his findings noting any indebtedness to the Commonwealth. He shall furnish one (1) copy to the county clerk, one (1) copy to the secretary of the Transportation Cabinet, one (1) copy to the secretary of the Finance and Administration Cabinet and one (1) copy to the secretary of the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet. If the county clerk objects to any findings of indebtedness in the Auditor's report, he shall file a written response with the Auditor within ten (10) days of his receipt of the report. The Auditor shall consider the written response and within thirty (30) days of its receipt issue a final report. If the county clerk wishes to object to any findings of indebtedness contained in the final report, he shall file a request within ten (10) days of his receipt of the final report for a hearing before a three (3) member panel composed of the secretary of transportation or his designee, the commissioner of the Department of Revenue or his designee, and the president of the Kentucky County Clerks Association or his designee. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B. The majority decision of this panel shall be determinative of any indebtedness to the Commonwealth. If the county clerk wishes to appeal the decision of this panel, he shall file the appeal in the Circuit Court for the county where he serves in accordance with KRS Chapter 13B.

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

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

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

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

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

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

- (1) "Subject of risk" means any or all property reasonably considered to be subject to loss or damage by any single occurrence of any event insured against.
- (2) "***Cabinet***~~{Office}~~" means the ***Finance and Administration Cabinet***~~{Office of Insurance}~~.

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

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

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

Before July 1 of each year, the ***cabinet***~~{Office of Insurance}~~ shall reconsider its appraisal and valuation of public buildings and personal property belonging to or under the control and use of the state or any state agency, and shall certify any changes in value to the agency that has the custody or control of the property. The appraisal and valuation

shall equal the amount that the ~~cabinet~~~~{Office of Insurance}~~ deems necessary to replace the property at the time of the appraisal, which may be less actual depreciation.

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

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

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

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

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

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

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

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

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

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

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

The ~~cabinet~~~~{Office of Insurance}~~ and the State Treasurer may employ such assistance and incur such expenses as are necessary to carry out the purposes of KRS 56.070 to 56.180~~, subject to approval in advance by the Finance and~~

~~Administration Cabinet~~. All such expenses may be debited against the state fire and tornado insurance fund, and paid on warrant of the ~~[Finance and Administration] cabinet~~, but the total of such expenses during any fiscal year shall not exceed ten percent (10%) of the total receipts of the fund during the same fiscal year. If such expenses are incurred at a time when there is not a sufficient amount in the fund to pay them, they shall constitute a prior claim to be paid out of the first receipts of the fund thereafter before any damages on account of insured losses are paid.

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

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

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

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

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

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

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

The cabinet may appoint qualified licensed engineers and qualified graduate engineers may be appointed for a period not to exceed one (1) year without obtaining a license, who shall perform duties delegated to them from time to time by the secretary of the Finance and Administration Cabinet. The cabinet shall prepare necessary plans and specifications, shall investigate and make studies of the comparative need and demand for acquiring lands, or for the construction or reconstruction or structural maintenance of buildings, or the purchase, installation or construction of equipment, facilities or furnishings incidental or pertaining thereto, and shall make the estimates of cost required in connection with or incidental to the development, purchase, acquisition or construction of the foregoing. The engineering staff shall give technical assistance and perform other duties the secretary of the Finance and Administration Cabinet requires. Review of construction plans for conformance with the Uniform State Building Code shall be conducted by the **Department**~~[Office]~~ of Housing, Buildings and Construction.

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

- (1) No state agency shall have power or authority to make plans and specifications, provide public notice of invitations for bids, let contracts, or incur any financing commitments, either in the way of a charge against public funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal or water supply system, requiring the expenditure of more than two hundred fifty thousand dollars (\$250,000) without first securing the approval of the Finance and Administration Cabinet.
- (2) The state agency seeking the approval shall submit to the Finance and Administration Cabinet a general description of the proposed project, with the detailed information the cabinet may require. Review of

construction plans for conformance with the Uniform State Building Code shall be conducted by the **Department**~~{Office}~~ of Housing, Buildings and Construction. The Finance and Administration Cabinet shall not approve any project requiring its approval in any instance if it finds that: the project is not needed; the proposed method of financing is not sound; the project will exceed the amount of the funds available therefor; the work contemplated will be insufficient to accomplish the purpose of the project; or after providing for the ordinary recurring expenses of government and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the State Treasury to promptly pay for the work during the biennium, or except as provided in subsection (5) of this section, that the work is to be done by employees of the agency.

- (3) The finding of the Finance and Administration Cabinet shall be final, except in cases where the issuance and sale of bonds is proposed, in which cases the cabinet shall submit its findings to the commission for final approval, modification, or disapproval.
- (4) Any capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will exceed two hundred fifty thousand dollars (\$250,000), shall be contracted for on a competitive bid basis, and the execution of the contracts shall be approved and authorized by the cabinet. When a capital construction project has been approved as provided in this section, in whole or in part, the cabinet shall prepare the plans and specifications, provide public notice of invitations for bids, award the contracts, supervise the construction, and handle the financial negotiations on behalf of the requesting state agency; or with prior written approval, the cabinet may authorize a state agency to do so with delegated authority of the cabinet.
- (5) A capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will not exceed two hundred fifty thousand dollars (\$250,000), may be performed by the employees of the requesting agency or by individuals hired specifically for the project who shall be exempt from the requirements of KRS Chapter 18A, if the project is approved and authorized by the cabinet. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the cabinet as defined in KRS Chapter 45A.
- (6) This section shall not apply to capital outlays to the Department of Highways for roads and bridges.
- (7) This section shall not apply to capital outlays by the Justice and Public Safety Cabinet for repair, maintenance, improvement, or expansion of present correctional facilities on which projects inmates are used. Any capital construction project to be performed by the Justice and Public Safety Cabinet shall be approved and authorized by the Finance and Administration Cabinet.
- (8) This section shall not apply to surveys capable of being performed by employees of the Department of Fish and Wildlife Resources. Boundary surveys or surveys involving property lines shall be performed by or under the supervision of an employee possessing a professional land surveyor license.

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

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

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

- (1) A High-Performance Buildings Advisory Committee is hereby created and shall be administratively staffed by the cabinet.
- (2) The committee shall consist of fifteen (15) members and shall include:
 - (a) A representative of the cabinet designated by the secretary;
 - (b) A representative of the Tourism, Arts and Heritage Cabinet designated by the secretary;
 - (c) A representative of the Department of Education designated by the commissioner;
 - (d) A representative of the Council on Postsecondary Education designated by the president;
 - (e) A representative of the **Department for Energy Development and Independence**~~{Governor's Office of Energy Policy}~~ designated by the **commissioner**~~{executive director}~~; and

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

by the United States Environmental Protection Agency and in effect at the time the building is designed or, in the case of leased buildings, at the time the lease is entered into on or after July 1, 2018.

- (8) In developing the criteria for the high-performance building standards, the cabinet shall consider and encourage the use of:
- (a) Locally grown lumber from forest lands implementing sustainable practices established by the American Tree Farm System's Sustainable Forest Initiative or the Kentucky Forest Stewardship Program established under KRS 149.330 to 149.355;
 - (b) Building materials manufactured with recycled content within the Commonwealth; and
 - (c) Renewable energy sources.

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

- (1) (a) "Hazardous position" for employees participating in the Kentucky Employees Retirement System, and for employees who begin participating in the County Employees Retirement System before September 1, 2008, means:
1. Any position whose principal duties involve active law enforcement, including the positions of probation and parole officer and Commonwealth detective, active fire suppression or prevention, or other positions, including, but not limited to, pilots of the Transportation Cabinet and paramedics and emergency medical technicians, with duties that require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning; and
 2. Positions in the Department of Corrections in state correctional institutions and the Kentucky Correctional Psychiatric Center with duties that regularly and routinely require face-to-face contact with inmates.
- (b) "Hazardous position" for employees who begin participating in the County Employees Retirement System on or after September 1, 2008, means police officers and firefighters as defined in KRS 61.315(1), paramedics, correctional officers with duties that routinely and regularly require face-to-face contact with inmates, and emergency medical technicians if:
1. The employee's duties require frequent exposure to a high degree of danger or peril and a high degree of physical conditioning; and
 2. The employee's duties are not primarily clerical or administrative.
- (c) The effective date of participation under hazardous duty coverage for positions in the ~~Department~~~~Office~~ of Alcoholic Beverage Control shall be April 1, 1998. The employer and employee contributions shall be paid by the employer and forwarded to the retirement system for the period not previously reported.
- (2) (a) Each employer may request of the board hazardous duty coverage for those positions as defined in subsection (1) of this section. Upon request, each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1) of this section for which coverage is requested. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as provided by subsection (1) of this section.
- (b) Each employer desiring to provide hazardous duty coverage to employees who begin participating in the County Employees Retirement System on or after September 1, 2008, may request that the board approve hazardous duty coverage for those positions that meet the criteria set forth in subsection (1)(b) of this section. Each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1)(b) of this section for which coverage is requested and a job description for each position or employee. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. Each employer shall also certify, under penalty of perjury in accordance with KRS Chapter 523, that each employee's actual job duties are accurately reflected in the

job description provided to the system. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as defined in subsection (1)(b) of this section. The board shall have the authority to remove any employee from hazardous duty coverage if the board determines the employee is not working in a hazardous duty position or if the employee is classified in a hazardous duty position but has individual job duties that do not meet the definition of a hazardous duty position or are not accurately reflected in the job descriptions filed by the employer with the system.

- (3) (a) An employee participating in the Kentucky Employees Retirement System who is determined by the system to be working in a hazardous position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation. An employee participating in the County Employees Retirement System who is determined by the system to be working in a hazardous duty position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation.
- (b) Each employer shall pay employer contributions based on the creditable compensation of the employees determined by the system to be working in a hazardous position at the employer contribution rate as determined by the board. The rate shall be determined by actuarial methods consistent with the provisions of KRS 61.565.
- (c) If the employer participated in the system prior to electing hazardous duty coverage, the employer may pay to the system the cost of converting the nonhazardous service to hazardous service from the date of participation to the date the payment is made, or the employer may establish a payment schedule for payment of the cost of the hazardous service above that which would be funded within the existing employer contribution rate. The employer may extend the payment schedule to a maximum of thirty (30) years. Payments made by the employer under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members. If the employer elects not to make the additional payment, the employee may make the lump-sum payment in his own behalf or may pay by increments. Payments made by the employee under this subsection shall not be picked up, as described in KRS 61.560(4), by the employer. If neither the employer nor employee makes the payment, the service prior to hazardous coverage shall remain nonhazardous.
- (4) The normal retirement age, retirement allowance, other benefits, eligibility requirements, rights, and responsibilities of a member in a hazardous position, as prescribed by subsections (1), (2), and (3) of this section, and the responsibilities, rights, and requirements of his employer shall be as prescribed for a member and employer participating in the State Police Retirement System as provided for by KRS 16.505 to 16.652.
- (5) Any person employed in a hazardous position after July 1, 1972, shall be required to undergo a thorough medical examination by a licensed physician, and a copy of the medical report of the physician shall be retained on file by the employee's department or county and made available to the system upon request.
- (6) If doubt exists regarding the benefits payable to a hazardous position employee under this section, the board shall determine the benefits payable under KRS 61.510 to 61.705, or 78.510 to 78.852, or 16.505 to 16.652.

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

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

Secretary of State	\$10,000
Attorney General	10,000

ACTS OF THE GENERAL ASSEMBLY

State Treasurer	300,000
Secretary for economic development	10,000
Commissioner of Agriculture	10,000
Secretary for education	10,000
Auditor of Public Accounts	25,000
Adjutant general	10,000
Secretary of finance and administration	100,000
Commissioner of revenue	50,000
Secretary of transportation	50,000
Commissioner of highways	50,000
Secretary of justice and public safety	50,000
Secretary of corrections	25,000
Commissioner for public health services	10,000
Secretary Commissioner of labor	5,000
Commissioner for natural resources	50,000
State librarian	5,000
Commissioner Executive director of alcoholic beverage control	10,000
Commissioner Executive director of financial institutions	25,000
Secretary for <i>energy and environment</i>	
environmental and public protection	50,000 10,000
Commissioner Executive director of insurance	50,000
Commissioner of vehicle regulation	10,000
Commissioner of fish and wildlife resources	5,000
Secretary for health and family services	20,000
Commissioner of environmental protection	10,000
Secretary Commissioner of public protection and regulation	10,000
Secretary of tourism, arts and heritage	25,000
Commissioner for community based services	20,000
Member of the Public Service Commission	10,000
Member of State Fair Board	10,000
Member of Fish and Wildlife Resources Commission	1,000
Member of Kentucky Board of Tax Appeals	10,000
Associate member of Alcoholic Beverage Control Board	5,000
Commissioner of local government	100,000

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

- (1) The secretary of the Finance and Administration Cabinet shall secure, except for state officers required by KRS 62.160 to file bond, blanket bonds, with or without cosureties, written on a blanket position form, to cover all other officers, employees, or deputies of the Commonwealth of Kentucky, including all judges, clerks, and employees of the Court of Justice, including all other members of boards or commissions or employees of those boards or commissions, and including all superintendents, receivers, or employees of penal or

eleemosynary institutions managed or directed by the Justice and Public Safety Cabinet, the Cabinet for Health and Family Services, or any other department or agency of the Commonwealth of Kentucky. Nothing in this subsection shall be deemed to prohibit the securing of any such blanket position bond on a departmental, board, commission, agency, or institutional basis.

- (2) The secretary of the Finance and Administration Cabinet may secure one (1) or more excess blanket bonds, with or without cosureties, to cover selected groups of persons covered by the bond or bonds required in the preceding paragraph to provide additional coverage which he or she may deem necessary by the exposures indicated in accordance with the duties and responsibilities indicated by the personnel classification schedules of the Personnel Cabinet and, for Court of Justice officers and personnel, by the Administrative Office of the Courts and in accordance with the amounts of money and property handled by the respective officers and employees.
- (3) Such bond or bonds shall be written by and participated in only by insurance companies licensed by the ~~Department~~~~Office~~ of Insurance to do business in this state and shall be countersigned by a duly authorized licensed resident agent of the company. The bonds may be written with or without cosureties. Further, the bonds are to be a percentage of the total risks, the ~~Department~~~~Office~~ of Insurance to approve the amount of the risk written by any one (1) company.
- (4) The penal amount of the bond secured pursuant to this section shall be fixed by the secretary of the Finance and Administration Cabinet in accordance with the duties and responsibilities indicated by the personnel classification schedules of the Personnel Cabinet and, for Court of Justice officers and personnel, by the Administrative Office of the Courts, and in accordance with the amounts of money and property handled by the respective officers and employees.

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

As used in KRS 65.7041 to 65.7083:

- (1) "Activation date" means the date established any time within a two (2) year period after the commencement date. The activation date is the date on which the time period for the pledge of incremental revenues shall commence. The governing body may extend the two (2) year period to no more than four (4) years upon written application by the agency requesting the extension. To implement the activation date, the agency that is a party to the local participation agreement or the local development area agreement shall notify the governing body that created the development area or local development area;
- (2) "Agency" means:
 - (a) An urban renewal and community development agency established under KRS Chapter 99;
 - (b) A development authority established under KRS Chapter 99;
 - (c) A nonprofit corporation;
 - (d) A housing authority established under KRS Chapter 80;
 - (e) An air board established under KRS 183.132 to 183.160;
 - (f) A local industrial development authority established under KRS 154.50-301 to 154.50-346;
 - (g) A riverport authority established under KRS 65.510 to 65.650; or
 - (h) A designated department, division, or office of a city or county;
- (3) "Arena" means a facility which serves primarily as a venue for athletic events, live entertainment, and other performances, and which has a permanent seating capacity of at least five thousand (5,000);
- (4) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (5) "Brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant;
- (6) "Capital investment" means:
 - (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of a project;

- (b) The cost of acquiring land or rights in land within the development area on the footprint of the project, and any cost incident thereto, including recording fees;
 - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of a project which is not paid by the contractor or contractors or otherwise provided;
 - (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of a project;
 - (e) All costs that are required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of a project; and
 - (f) All other costs of a nature comparable to those described in this subsection;
- (7) "City" means any city, consolidated local government, or urban-county government;
 - (8) "Commencement date" means:
 - (a) The date on which a local development area agreement is executed; or
 - (b) The date on which a local participation agreement is executed;
 - (9) "Commonwealth" means the Commonwealth of Kentucky;
 - (10) "County" means any county, consolidated local government, charter county, unified local government, or urban-county government;
 - (11) "Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on increment bonds as the payments come due and are payable and any charges related to the payment of the foregoing;
 - (12) "Development area" means an area established under KRS 65.7049, 65.7051, and 65.7053;
 - (13) "Economic development projects" means projects which are approved for tax credits under Subchapter 20, 22, 23, 24, 25, 26, 27, 28, 34, or 48 of KRS Chapter 154;
 - (14) "Establishment date" means the date on which a development area or a local development area is created. If the development area, local development area, development area plan, or local development area plan is modified or amended subsequent to the original establishment date, the modifications or amendments shall not extend the existence of the development area or local development area beyond what would be permitted under KRS 65.7041 to 65.7083 from the original establishment date;
 - (15) "Governing body" means the body possessing legislative authority in a city or county;
 - (16) "Increment bonds" means bonds and notes issued for the purpose of paying the costs of one (1) or more projects, or grant or loan programs as described in subsection (29)(c) of this section, in a development area or a local development area;
 - (17) "Incremental revenues" means the amount of revenues received by a taxing district, as determined by subtracting old revenues from new revenues in a calendar year with respect to a development area, a project within a development area, or a local development area;
 - (18) "Issuer" means a city, county, or agency issuing increment bonds;
 - (19) "Local development area" means a development area established under KRS 65.7047;
 - (20) "Local development area agreement" means an agreement entered into under KRS 65.7047;
 - (21) "Local participation agreement" means the agreement entered into under KRS 65.7063;
 - (22) "Local tax revenues" means:
 - (a) Revenues derived by a city or county from one (1) or more of the following sources:
 - 1. Real property ad valorem taxes;

2. Occupational license taxes, excluding occupational license taxes that have already been pledged to support an economic development project within the development area; and
 3. The occupational license fee permitted by KRS 65.7056; and
- (b) Revenues derived by any taxing district other than school districts or fire districts from real property ad valorem taxes;
- (23) "Low-income household" means a household in which gross income is no more than two hundred percent (200%) of the poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. sec. 9902(2);
- (24) "New revenues" means the amount of local tax revenues received by a taxing district with respect to a development area or a local development area in any calendar year beginning with the year in which the activation date occurred;
- (25) "Old revenues" means the amount of local tax revenues received by a taxing district with respect to a development area or a local development area during the last calendar year prior to the commencement date. If the governing body determines that the amount of local tax revenues received during the last calendar year prior to the commencement date does not represent a true and accurate depiction of revenues, the governing body may consider revenues for a period of no longer than three (3) calendar years prior to the commencement date, so as to determine a fair representation of local tax revenues;
- (26) "Outstanding" means increment bonds that have been issued, delivered, and paid for by the purchaser, except any of the following:
- (a) Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;
 - (b) Increment bonds in replacement of which or in exchange for which other increment bonds have been issued; or
 - (c) Increment bonds for the payment, redemption, or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;
- (27) "Planning unit" means a planning commission established pursuant to KRS Chapter 100;
- (28) "Project" means any property, asset, or improvement located in a development area or a local development area and certified by the governing body as:
- (a) Being for a public purpose; and
 - (b) Being for the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, including the development, rehabilitation, renovation, installation, improvement, enlargement, or extension of real estate and buildings; and
 - (c) Contributing to economic development or tourism;
- (29) "Redevelopment assistance," as utilized within a development area, includes the following:
- (a) Technical assistance programs to provide information and guidance to existing, new, and potential businesses and residences;
 - (b) Programs to market and promote the development area and attract new businesses and residents;
 - (c) Grant and loan programs to encourage the construction or rehabilitation of residential, commercial, and industrial buildings; improve the appearance of building facades and signage; and stimulate business start-ups and expansions;
 - (d) Programs to obtain a reduced interest rate, down payment, or other improved terms for loans made by private, for-profit, or nonprofit lenders to encourage the construction or rehabilitation of residential,

- commercial, and industrial buildings; improve the appearance of building facades and signage; and stimulate business start-ups and expansions;
- (e) Local capital improvements, including but not limited to the installation, construction, or reconstruction of streets, lighting, pedestrian amenities, public utilities, public transportation facilities, public parking, parks, playgrounds, recreational facilities, and public buildings and facilities;
 - (f) Improved or increased provision of public services, including but not limited to police or security patrols, solid waste management, and street cleaning;
 - (g) Provision of technical, financial, or other assistance in connection with:
 - 1. Applications to the ***Energy and Environment*** ~~(Environmental and Public Protection)~~ Cabinet for a brownfields assessment or a No Further Remediation Letter issued pursuant to KRS 224.01-450; or
 - 2. Site remediation by means of the Voluntary Environmental Remediation Program to remove environmental contamination in the development area, or lots or parcels within it, pursuant to KRS 224.01-510 to 224.01-532; and
 - (h) Direct development by a city, county, or agency of real property acquired by the city, county, or agency. Direct development may include one (1) or more of the following:
 - 1. Assembly and replatting of lots or parcels;
 - 2. Rehabilitation of existing structures and improvements;
 - 3. Demolition of structures and improvements and construction of new structures and improvements;
 - 4. Programs of temporary or permanent relocation assistance for businesses and residents;
 - 5. The sale, lease, donation, or other permanent or temporary transfer of real property to public agencies, persons, and entities both for profit and nonprofit; and
 - 6. The acquisition and construction of projects;
- (30) "Service payment agreement" means an agreement between a city, county, or issuer of increment bonds or other obligations and any person, whereby the person agrees to guarantee the receipt of incremental revenues, or the payment of debt charges, or any portion thereof, on increment bonds or other obligations issued by the city, county, or issuer;
- (31) "Special fund" means a special fund created under KRS 65.7061 in which all incremental revenues shall be deposited;
- (32) "Taxing district" means any city, county, or special taxing district other than school districts and fire districts;
- (33) "Tax incentive agreement" means an agreement entered into under KRS 154.30-070; and
- (34) "Termination date" means:
- (a) For a development area, a date established by the ordinance creating the development area that is no more than twenty (20) years from the establishment date. If a tax incentive agreement for a project within a development area or a local participation agreement relating to the development area has a termination date that is later than the termination date established in the ordinance, the termination date for the development area shall be extended to the termination date of the tax incentive agreement, or local participation agreement. However, the termination date for the development area shall in no event be more than forty (40) years from the establishment date;
 - (b) For a local development area, a date established by the ordinance creating the local development area that is no more than twenty (20) years from the establishment date, provided that if a local development area agreement relating to the local development area has a termination date that is later than the termination date established in the ordinance, the termination date for the local development area shall be extended to the termination date of the local development area agreement;
 - (c) For a local participation agreement, a date that is no more than twenty (20) years from the activation date. However, the termination date for a local participation agreement shall in no event be more than

forty (40) years from the establishment date of the development area to which the local participation agreement relates; and

- (d) For a local development area agreement, a date that is no more than twenty (20) years from the activation date. However, the termination date for a local development area agreement shall in no event be more than forty (40) years from the establishment date of the local development area to which the development area agreement relates.

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

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

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

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

- (1) Police officers, firefighter personnel, firefighters, and corrections personnel of an urban-county government shall have, and shall be protected in the exercise of, the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, and other conditions of employment free from interference, restraint, or coercion.
- (2) Labor organizations designated by the *cabinet*~~[department]~~ as the representative of the majority of police officers, firefighter personnel, firefighters, or corrections personnel in an appropriate unit or recognized by an urban-county government as the representative of the majority of employees in an appropriate unit shall be the exclusive representative for the employees of that unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.
- (3) Labor organizations recognized by an urban-county government as the exclusive representative or so designated in accordance with the provisions of this section shall be responsible for representing the interests of all police officers, firefighter personnel, firefighters, or corrections personnel in the unit without discrimination.

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

- (1) Whenever, in accordance with administrative regulations that may be promulgated by the *cabinet*~~[department]~~, a petition has been filed:
 - (a) By a police officer, group of police officers, firefighter personnel, a firefighter, group of firefighters, a corrections officer, group of corrections personnel, or any labor organization acting on behalf of thirty

percent (30%) of the employees who have signed labor organization affiliation cards and the labor organization showing proof of representation:

1. Alleging that they wish to be represented for collective bargaining by a labor organization as exclusive representative; or
 2. Asserting that the labor organization which has been certified or is currently being recognized by the urban-county government as bargaining representative is no longer the representative of the majority of employees in the unit; or
- (b) By an urban-county government alleging that one (1) or more labor organizations has presented to it a claim to be recognized as the representative of the majority of police officers, firefighter personnel, firefighters, or corrections personnel in an appropriate unit;

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

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

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

Violations of the provisions of KRS 67A.6904 shall be deemed to be unfair labor practices remedial by the ~~cabinet~~{department} in the following manner.

- (1) Whenever it is charged by an urban-county government or a labor organization that any person has engaged in or is engaging in any unfair labor practices, the ~~cabinet~~{department} or any hearing officer designated by the ~~cabinet~~{department} shall conduct an administrative hearing in accordance with KRS Chapter 13B.
- (2) If, upon the preponderance of the evidence presented, the ~~cabinet~~{department} is of the opinion that any person named in the charge has engaged in or is engaging in an unfair labor practice, then it shall issue a final order requiring the person to cease and desist from the unfair labor practice, and to take any affirmative action including reinstatement of police officers, firefighter personnel, firefighters, or corrections personnel with or without back pay, as will effectuate the policies of this section. The final order may further require the person to make reports from time to time showing the extent to which he or she has complied with the order. If, upon the preponderance of the evidence presented, the ~~cabinet~~{department} is not of the opinion that the person named in the charge has engaged in or is engaging in the unfair labor practice, then the ~~cabinet~~{department} shall issue a final order dismissing the complaint. No final order shall issue based upon any unfair labor practice occurring more than six (6) months prior to the filing of the charge with the ~~cabinet~~{department},

unless the person aggrieved thereby was prevented from filing the charge by reason of service in the Armed Forces, in which event, the six (6) month period shall be computed from the day of his or her discharge. No final order of the *cabinet*~~{department}~~ shall require the reinstatement of any individual as a police officer, firefighter personnel, firefighter, or corrections personnel who has been suspended or discharged, or the payment to the individual of any back pay, if the individual was suspended or discharged for cause.

- (3) Until a final order has been appealed, the *cabinet*~~{department}~~ at any time, upon reasonable notice and in the manner that it deems proper, may modify or set aside, in whole or in part, any final order made or issued by it.
- (4) The *cabinet*~~{department}~~ or the charging party may petition for the enforcement of the final order and for appropriate temporary relief or restraining order in the Circuit Court for the county in which the violation occurred.
- (5) Any person aggrieved by a final order of the *cabinet*~~{department}~~ may obtain a review of the final order by filing a petition in the Circuit Court assigned jurisdiction under subsection (4) of this section in accordance with KRS Chapter 13B.

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

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

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

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

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

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

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

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

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

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

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

shall bar an election upon the petition of persons not parties thereto where more than four (4) years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

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

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

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

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

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

organization (parties) and these shall be released to the public. Expenses incurred by the three (3) member panel in this section shall be paid by the parties involved in the labor dispute.

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

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

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

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

- (1)
 - (a) After the creation of a construction subdistrict under the provisions of KRS 76.241 to 76.246, the board may, if it deems it advisable, use the authority and procedures granted to sanitation districts by KRS 220.535 to 220.537 to annex territory to a subdistrict, the words "board of directors" being read as "metropolitan sewer district board."
 - (b) Language in KRS 220.535 limiting the powers of annexation to a sanitation district in a county not containing a city of the first class shall not be applicable to a metropolitan sewer district which might use this method of annexation to a construction subdistrict even if it is located in a county containing a city of the first class, and the secretary of the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet shall function in regard to annexation by it in the same manner and under the same procedures, as set out in KRS 220.535 to 220.537, as he would in his capacity as commissioner of sanitation districts for any sanitation district.
- (2) After the creation of a construction subdistrict under the provisions of KRS 76.241 to 76.246, the board may annex any area, contiguous or noncontiguous, subject to the limitations of KRS 76.242, to the construction subdistrict by making a preliminary order describing the area to be annexed and causing said order to be published pursuant to KRS Chapter 424. The notice so published shall state that objections in writing to the proposed annexation may be filed with the district within thirty (30) days of the date of said notice. The district shall examine and hear all such complaints. It may modify or amend the areas proposed to be annexed; and it shall make a final order, within sixty (60) days of the date of publication of said notice, describing the areas to be annexed and shall cause the same to be published, pursuant to KRS Chapter 424. A freeholder of land within the area proposed to be annexed may appeal such final order in the manner described in KRS 76.247. In referring to KRS 76.247, this section is not intended to provide for de novo trial.
- (3) In the event the owner or owners of all the property or properties proposed to be annexed to a construction subdistrict shall tender to the district their written request or requests that the district proceed immediately with the annexation of said property or properties, and shall unqualifiedly waive all formalities and substantive rights contained in subsection (2) of this section, the district may thereupon make and publish a final order annexing said property or properties to the construction subdistrict. Said order shall contain a recitation of the receiving of waivers from the owners of all properties to be annexed thereunder. Provided, however, that in all such instances the written request or requests of the owner or owners of all properties proposed to be annexed to a construction subdistrict shall be in recordable form and shall be recorded in the office of the county clerk of the county wherein the property is located; and said clerk is authorized to record such instruments as in the case of mortgages and may charge and receive fees therefor as in the case of mortgages.

- (4) The provisions of subsections (1), (2) and (3) of this section shall not repeal or reduce any existing rights or duties of metropolitan sewer districts, but shall constitute merely a procedure for annexation to construction subdistricts by a metropolitan sewer district.

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

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

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

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

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

- (1) If there is reason to believe that a violation of this chapter or of a regulation promulgated under this chapter has occurred within an air pollution control district, the district shall issue and mail to or serve upon the person complained against a written notice of the provision of this chapter or the regulation allegedly violated. The district may schedule a settlement conference before the air pollution control officer or a designee at which the person complained against may appear to answer the charges set out in the notice. The conference shall be scheduled at a time not less than thirty (30) days after the date of notice unless the person complained against waives in writing the thirty (30) day period. Alleged violations that remain unresolved may be scheduled for a hearing under subsection (3) of this section at a time not less than thirty (30) days after a determination that the violation is unresolved unless the person complained against waives in writing the thirty (30) day period. The scheduling of a settlement conference or hearing shall not prevent the negotiation of a settlement of a violation prior to the conference or hearing. At any time, the air pollution control board may determine that a violation shall be resolved as a civil or criminal action in an appropriate court or referred for action to either the United States Environmental Protection Agency or the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet instead of being resolved as a district action.
- (2) When permittees or persons not previously heard in connection with the issuance of an order or the making of a determination including, but not limited to, the issuance, denial, modification, or revocation of a permit, consider themselves aggrieved, they may file with the district a petition for a hearing. The petition shall allege that the order or determination is contrary to law or fact and is injurious to the petitioner, stating the grounds and reasons, and demanding a hearing. Unless the board considers the petition frivolous, the air pollution control officer shall serve written notice of the petition on each person named therein and shall schedule a hearing not less than sixty (60) days after the date of the petition unless the person complained against waives in writing the sixty (60) day period. The right to demand a hearing under this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice, or could reasonably have had notice, of the order or determination complained of. Prior to the hearing, the air pollution control officer may require the parties to meet for settlement purposes.
- (3) Hearings of unresolved violations or petitions for a hearing on orders or determinations shall be held before a qualified hearing officer who, in the discretion of the district, may serve by contract, be paid on a per diem basis, or be a full-time employee of the county not assigned to the district. The district shall provide written notice of the hearing to the person alleged to be in violation or to the petitioner. After the conclusion of the hearing, the hearing officer shall, within thirty (30) days, make a report and recommended order, which shall contain findings of fact and conclusions of law, to the secretary-treasurer. If the secretary-treasurer finds upon written request of the hearing officer that additional time is needed, the secretary-treasurer may grant an extension. The hearing officer shall serve a copy of the report and recommended order upon all parties of record to the proceedings, and the parties shall be granted the right to file exceptions within fourteen (14) days of receipt. The secretary-treasurer shall schedule a time for the air pollution control board to consider the report, exceptions, and recommended order and to decide the case. The decision shall be served by mail upon all parties and shall be a final order of the board. No order of the board on a Title V permit shall become final

for appeal purposes until it is approved by the United States Environmental Protection Agency under the Federal Clean Air Act of 1963 as amended by the Clean Air Act Amendments of 1990.

- (4) The hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practices. A party to a hearing under this section may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The record of the hearing shall be open to public inspection, and copies thereof shall be made available to a person upon payment of the actual cost of reproducing the original, except as otherwise provided in district regulations.

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

- (1) The term "health maintenance organization" for the purposes of this section, means a health maintenance organization as defined in KRS 304.38-030, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and issued a certificate of authority by the ~~Department~~~~(Office)~~ of Insurance as a health maintenance organization and which is qualified under the requirements of the United States Department of Health, Education and Welfare, except as provided in subsection (4) of this section.
- (2) Cities of all classes, counties, and urban-county governments and the agencies of cities, counties, charter county, and urban-county governments are authorized to establish and operate plans for the payment of retirement, disability, health maintenance organization coverage, or hospitalization benefits to their employees and elected officers, and health maintenance organization coverage or hospitalization benefits to the immediate families of their employees and elected officers. The plan may require employees to pay a percentage of their salaries into a fund from which coverage or benefits are paid, or the city, county, charter county, urban-county government, or agency may pay out of its own funds the entire cost of the coverage or benefits. A plan may include a combination of contributions by employees and elected officers and by the city, county, charter county, urban-county government, or agency into a fund from which coverage or benefits are paid, or it may take any form desired by the city, county, charter county, urban-county government, or agency. Each city, county, charter county, urban-county government, or agency may make rules and regulations and do all other things necessary in the establishment and operation of the plan.
- (3) Cities of all classes, counties, charter counties, urban-county governments, the agencies of cities, counties, charter counties, and urban-county governments, and all other political subdivisions of the state may provide disability, hospitalization, or other health or medical care coverage to their officers and employees, including their elected officers, through independent or cooperative self-insurance programs and may cooperatively purchase the coverages.
- (4) Any city, county, charter county, or urban-county government which is a contributing member to any one (1) of the retirement systems administered by the state may participate in the state health insurance coverage program for state employees as defined in KRS 18A.225 to 18A.229. Should any city, county, charter county, or urban-county government opt at any time to participate in the state health insurance coverage program, it shall do so for a minimum of three (3) consecutive years. If after the three (3) year participation period, the city, county, charter county, or urban-county government chooses to terminate participation in the state health insurance coverage program, it will be excluded from further participation for a period of three (3) consecutive years. If a city, county, charter county, or urban-county government, or one (1) of its agencies, terminates participation of its active employees in the state health insurance coverage program and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, neither the unit of government, or its agency, nor the employees shall receive the state-funded contribution after termination from the state employee health insurance program. The three (3) year participation and exclusion cycles shall take effect each time a city, county, charter county, or urban-county government changes its participation status.
- (5) Any city, county, charter county, urban-county government, or other political subdivision of the state which employs more than twenty-five (25) persons and which provides hospitalization benefits or health maintenance organization coverage to its employees and elected officers, shall annually give its employees an option to elect either standard hospitalization benefits or membership in a qualified health maintenance organization which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside; except that if any city, county, charter county, urban-county government, or agencies of any city, county, charter county, urban-county government, or any other political subdivision of the state which does not have a qualified health maintenance organization engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside, the

city, county, charter county, urban-county government, or agencies of the city, county, charter county, urban-county government, or any other political subdivision of the state may annually give its employees an option to elect either standard hospitalization benefits or membership in a health maintenance organization which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and issued a certificate of authority by the *Department*~~(Office)~~ of Insurance as a health maintenance organization and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside. Any premium due for health maintenance organization coverage over the amount contributed by the city, county, charter county, urban-county government, or other political subdivision of the state which employs more than twenty-five (25) persons for any other hospitalization benefit shall be paid by the employee.

- (6) If an employee moves his place of residence or employment out of the service area of a health maintenance organization, under which he has elected coverage, into either the service area of another health maintenance organization or into an area of the state not within a health maintenance organization service area, the employee shall be given an option, at the time of the move or transfer, to elect coverage either by the health maintenance organization into which service area he moves or is transferred or to elect standard hospitalization coverage offered by the employer.
- (7) Any plan adopted shall provide that any officer or member of a paid fire or police department who has completed five (5) years or more as a member of the department, but who is unable to perform his duties by reason of heart disease or any disease of the lungs or respiratory tract, is presumed to have contracted his disease while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases, and shall be retired by the pension board under terms of the pension system of which he is a member, if the member passed an entrance physical examination and was found to be in good health as required.
- (8) The term "agency" as used herein shall include boards appointed to operate waterworks, electric plants, hospitals, airports, housing projects, golf courses, parks, health departments, or any other public project.
- (9) After August 1, 1988, except as permitted by KRS 65.156, no new retirement plan shall be created pursuant to this section, and cities which were covered by this section on or prior to August 1, 1988, shall participate in the County Employees Retirement System effective August 1, 1988. Any city, county, charter county, urban-county, or agency thereof which provided a retirement plan for its employees, pursuant to this section, on or prior to August 1, 1988, shall place employees hired after August 1, 1988, in the County Employees Retirement System. The city, county, charter county, urban-county, or agency thereof shall offer employees hired on or prior to August 1, 1988, membership in the County Employees Retirement System under the alternate participation plan as described in KRS 78.530(3), but such employees may elect to retain coverage under this section.

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

- (1) The legislative body of each local government which elects to impose and collect license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance may enact or change its license fee or rate of tax to be effective July 1 of each year on a prospective basis only and shall file with the *commissioner*~~(executive director)~~ of insurance at least one hundred (100) days prior to the effective date, a copy of all ordinances and amendments which impose a license fee or tax. No less than eighty-five (85) days prior to the effective date, the *commissioner*~~(executive director)~~ of insurance shall promptly notify each insurance company engaged in the business of insurance in the Commonwealth of those local governments which have elected to impose the license fees or taxes and the current amount of the license fee or rate of tax.
- (2) Any license fee or tax imposed by a local government upon an insurance company with respect to life insurance policies~~;~~ may be based upon the first year's premiums, and, if so based, shall be applied to the amount of the premiums actually collected within each calendar quarter upon the lives of persons residing within the corporate limits of the local government.
- (3) Any license fee or tax imposed by a local government upon any insurance company with respect to any policy which is not a life insurance policy shall be based upon the premiums actually collected by the insurance company within each calendar quarter on risks located within the corporate limits of the local government on those classes of business which the insurance company is authorized to transact, less all premiums returned to policyholders. In determining the amount of license fee or tax to be collected and to be paid to the local government, the insurance company shall use the tax rate effective on the first day of the policy term. When an insurance company collects a premium as a result of a change in the policy during the policy term, the tax rate

used shall be the rate in effect on the effective date of the policy change. With respect to premiums returned to policyholders, the license fee or tax shall be returned by the insurance company to the policyholder pro rata on the unexpired amount of the premium at the same rate at which it was collected and shall be taken as a credit by the insurance company on its next quarterly report to the local government.

- (4) The **Department**~~{Office}~~ of Insurance shall, by administrative regulation, provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the tax, except that the collection fee shall not be more than fifteen percent (15%) of the fee or tax collected and remitted to the local government or two percent (2%) of the premiums subject to the tax, whichever is less. To facilitate computation, collection, and remittance of the fee or tax and collection fee provided in this section, the fees or taxes set out in subsection (1), (2), or (3) of this section, together with the collection fee in this section, may be rounded off to the nearest dollar amount.
- (5) Pursuant to KRS 304.3-270, if any other state retaliates against any Kentucky domiciliary insurer because of the requirements of this section, the **commissioner**~~{executive director}~~ of insurance shall impose an equal tax upon the premiums written in this state by insurers domiciled in the other state.
- (6) Accounting and reporting procedures for collection and reporting of the fees or taxes and the collection fee herein provided shall be determined by administrative regulations promulgated by the **Department**~~{Office}~~ of Insurance.
- (7)
 - (a) Upon written request of the legislative body of any local government, at the expense of the requesting local government, which shall be paid in advance by the local government to the **Department**~~{Office}~~ of Insurance, the **Department**~~{Office}~~ of Insurance shall audit, or cause to be audited by contract with qualified auditors, the books or records of the insurance companies or agents subject to the fee or tax to determine whether the fee or tax is being properly collected and remitted, and the findings of the audit shall be reported to the local government and the insurance company subject to the audit. An insurance company may appeal the findings of the audit conducted under this subsection and any assessment issued pursuant to the audit findings in accordance with the provisions of KRS 91A.0804(4).
 - (b) Willful failure to properly collect and remit the fee or tax imposed by a local government pursuant to the authority granted by this section shall constitute grounds for the revocation of the license issued to an insurance company or agent under the provisions of KRS Chapter 304.
 - (c) If the **Department**~~{Office}~~ of Insurance finds that an insurance company has willfully engaged in a pattern of business conduct that fails to properly collect and remit the fee or tax imposed by a local government pursuant to the authority granted by this section, the **Department**~~{Office}~~ of Insurance may assess the responsible insurance company an appropriate penalty fee no greater than ten percent (10%) of the additional license fees or taxes determined to be owed to the local government. The penalty fee shall be paid to the local government owed the license fee or tax less any administrative costs of the **Department**~~{Office}~~ of Insurance in enforcing this section. Any insurance company or agent held responsible for a penalty fee may request a hearing with the **Department**~~{Office}~~ of Insurance to be conducted pursuant to KRS 304.2-310 to 304.2-370 regarding the finding of a willful violation and the subsequent penalty fee.
- (8) The license fees or taxes provided for by subsections (2) and (3) of this section shall be due thirty (30) days after the end of each calendar quarter. Annually, by March 31, each insurance company shall furnish each local government to which the tax or fee is remitted with a breakdown of all collections in the preceding calendar year for the following categories of insurance:
 - (a) Casualty;
 - (b) Automobile;
 - (c) Inland marine;
 - (d) Fire and allied perils;
 - (e) Health; and
 - (f) Life.
- (9) Any license fee or tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until paid. Such interest payable to the local government is separate of

penalties provided for in subsection (7) of this section. In addition, the local government may assess a ten percent (10%) penalty for a tax or fee not paid within thirty (30) days after the due date.

- (10) No license fee or tax imposed under this section shall apply to premiums received on:
- (a) Policies of group health insurance provided for state employees under KRS 18A.225;
 - (b) Policies insuring employers against liability for personal injuries to their employees or the death of their employees caused thereby, under the provisions of KRS Chapter 342;
 - (c) Health insurance policies issued to individuals;
 - (d) Policies issued through Kentucky Access created in Subtitle 17B of KRS Chapter 304; or
 - (e) Policies for high deductible health plans as defined in 26 U.S.C. sec. 223(c)(2).
- (11) No county may impose the tax authorized by this section upon the premiums received on policies issued to public service companies which pay ad valorem taxes.
- (12) Insurance companies which pay license fees or taxes pursuant to this section shall credit city license fees or taxes against the same license fees or taxes levied by the county, when the license fees or taxes are levied by the county on or after July 13, 1990. For purposes of this subsection, a consolidated local government, urban-county government, charter county government, or unified local government shall be considered a county.
- (13) No license fee or tax imposed under this section shall apply to premiums paid to insurers of municipal bonds, leases, or other debt instruments issued by or on behalf of a city, county, charter county government, urban-county government, consolidated local government, special district, nonprofit corporation, or other political subdivision of the Commonwealth. However, this exemption shall not apply if the bonds, leases, or other debt instruments are issued for profit or on behalf of for-profit or private organizations.
- (14) A county may impose a license fee or tax covering the entire county or may limit the application of the fee or tax to the unincorporated portions of the county.

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

As used in this chapter:

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

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

- (1) The provisions of this section shall provide the sole and exclusive method for the filing of amended returns and requests or assessments by any insurance company, local government, or policyholder for nonpayment, underpayment, or overpayment of any license fees or taxes imposed pursuant to KRS 91A.080 and the appeals from the denial or refusal thereof. For tax periods beginning after December 31, 2008, all amended returns, requests for refunds or credits, and assessments shall be made within two (2) years of the due date of the annual reconciliation provided for in KRS 91A.080(8) for the tax period during which the error was made, except that in the case of fraudulent failure to file a return or the filing of a fraudulent return, the underpayment may be assessed at any time. The provisions of this subsection shall not apply to any refund or credit to an insurance company or policyholder or assessment by a local government that is affected by litigation pending on July 15, 2008.
- (2)
 - (a) Any insurance company that has paid a license fee or tax imposed by a local government pursuant to KRS 91A.080 may request a refund or credit for any overpayment of a license fee or tax or any payment when no tax was due within the time provided in subsection (1) of this section.
 - (b) A request for a refund or credit by an insurance company shall be made by mailing an amended return and supporting documentation to the local government to which the fee or tax was paid. A complete refund request shall include the amended return and supporting documentation showing the total amount

of overpayment of license fee or tax that the insurance company believes was erroneously paid and a breakdown of information for each policy upon which a refund or credit is requested, including the location of the risk by street address or, if a street address is unavailable, another appropriate identifier of the physical location, the amount of the erroneous payment, the premium charged, the amount of tax or fee actually collected, the type or types of risk insured, and the period the policy was in force during the taxable year or years.

- (c) For refund and credit requests submitted for payments made during tax periods after December 31, 2009, the insurance company shall produce proof that it employed risk location systems or programs meeting the requirements of KRS 91A.0806 during the time for which the refund or credit is requested or a copy of a **Department**~~{an Office}~~ of Insurance order issued pursuant to the administrative regulation promulgated under KRS 91A.0806(3). If the insurance company fails or is unable to produce such proof or a copy of the **Department**~~{Office}~~ of Insurance order, the local government shall be entitled to keep a penalty in the amount of ten percent (10%) of the refund or credit that would have otherwise been due the insurance company. Any dispute regarding the imposition of a penalty shall be resolved under paragraph (d) of this subsection.
 - (d) If a local government fails to accept the completed amended return or refuses to issue the requested refund or credit within ninety (90) days of its receipt, the insurance company may make application to the **Department**~~{Office}~~ of Insurance to review the claim. The application shall be filed with the **Department**~~{Office}~~ of Insurance within thirty (30) days of receipt of the response from the local government or, in the case of a local government's failure to respond, within thirty (30) days of the end of the ninety (90) day period provided in this paragraph. The **Department**~~{Office}~~ of Insurance shall, within sixty (60) days of the receipt of the complete application, issue an order of final agency action that the request for refund or credit is or is not warranted in whole or in part. The **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance may grant one (1) extension of thirty (30) days for the issuance of the order. As provided in KRS 304.2-310, either party may file an administrative appeal from the order of the **Department**~~{Office}~~ of Insurance within sixty (60) days of the issuance of the order.
 - (e) No insurance company shall apply a credit to taxes or fees imposed by KRS 91A.080 without written agreement from the local government, without an order of final agency action from the **Department**~~{Office}~~ of Insurance order that the refund is due, or without an administrative ruling from the **Department**~~{Office}~~ of Insurance order that a refund is due. Each violation of this paragraph shall be punishable as provided in KRS 91A.080(7)(b) and (c).
- (3) (a) Any policyholder who has paid to an insurance company a license fee or tax imposed by a local government pursuant to KRS 91A.080 may request a refund or credit for an overpayment of a license fee or tax or any payment when no tax was due within the time provided in subsection (1) of this section.
- (b) A request for a refund or credit by a policyholder shall be made by mailing the request to the insurance company to which the fee or tax was paid. The request shall include the name of the policyholder, the address of the location of the risk insured, the amount of overpayment of license fee or tax that was erroneously paid, the dates of coverage, the amount of the fee or tax that was paid, and the type of risk insured.
- (c) If an insurance company fails to make payment or to grant credit to a policyholder as requested within ninety (90) days of its receipt, the policyholder may make application to the **Department**~~{Office}~~ of Insurance to review the request. The application shall be filed with the **Department**~~{Office}~~ of Insurance within thirty (30) days of receipt of the response from the insurance company or, in the case of an insurance company's failure to respond, within thirty (30) days of the end of the ninety (90) day period provided in this paragraph. The **Department**~~{Office}~~ of Insurance shall, within sixty (60) days of the receipt of the complete application, issue an order of final agency action that the request for refund or credit is or is not warranted in whole or in part. The **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance may grant one (1) extension of thirty (30) days for the issuance of the order. As provided in KRS 304.2-310, either party may file an administrative appeal from the order of the **Department**~~{Office}~~ of Insurance within sixty (60) days of the issuance of the order.
- (4) (a) If a local government has a reasonable basis to believe that a license fee or tax imposed by it in accordance with KRS 91A.080 has not been paid or has been underpaid, the local government shall

- request the **Department**{Office} of Insurance to conduct an audit pursuant to the provisions of KRS 91A.080(7) within the time provided in subsection (1) of this section.
- (b) If the findings of the audit show that an insurance company did not pay or underpaid the local government, the local government may send an assessment by mail to the insurance company. The notice of assessment shall state the total amount of payment due from the insurance company based upon the findings of the audit conducted pursuant to KRS 91A.080(7), the geographic area affected, and the applicable license fee or tax rate.
 - (c) The insurance company may respond to the assessment by either paying the assessment in full within ninety (90) days of its receipt or by filing an appeal of the findings of the audit and the assessment with the **Department**{Office} of Insurance within ninety (90) days of the receipt of the assessment. An insurance company appealing the audit findings and assessment shall make application to the **Department**{Office} of Insurance and provide notice of the challenge to the local government by certified mail. The **Department**{Office} of Insurance shall, within sixty (60) days of the receipt of the completed application, issue an order of final agency action upon the findings of the audit and a determination that the assessment is or is not warranted in whole or in part. The ~~commissioner~~{executive director} of the **Department**{Office} of Insurance may grant one (1) extension of thirty (30) days for the issuance of the order. As provided in KRS 304.2-310, either party may file an administrative appeal from the order of the **Department**{Office} of Insurance within sixty (60) days of the issuance of the order.
 - (d) If the insurance company fails to make the full payment as requested by the local government or fails to file an application of appeal with the **Department**{Office} of Insurance within ninety (90) days of receipt of the assessment, the findings of the audit and the assessment shall be deemed final, and the local government may provide notification to the **Department**{Office} of Insurance to impose a penalty in accordance with KRS 91A.080(7)(c). Any penalty imposed because of an insurance company's failure to timely pay the assessment shall be in addition to any penalties imposed as a result of the audit. The notification shall be filed with the **Department**{Office} of Insurance within thirty (30) days of the end of the ninety (90) day period provided in paragraph (c) of this subsection. The **Department**{Office} of Insurance shall issue an order to the insurance company to pay the assessment and any additional penalties imposed within thirty (30) days of the order, or the **Department**{Office} of Insurance may revoke the license of the insurance company under the provisions of KRS 91A.080(7) and KRS Chapter 304.
 - (e) The **Department**{Office} of Insurance may determine the scope of any audit requested under this subsection and KRS 91A.080. Nothing in this chapter shall preclude the **Department**{Office} of Insurance from exercising its discretion to conduct an audit or examination of any insurance company under its authority as otherwise provided in KRS Chapter 304.
- (5) An administrative hearing held pursuant to this section shall be conducted pursuant to KRS Chapter 13B. The hearing officer may compel any information necessary to make a determination. Information concerning rates, the names and addresses as of policyholders, and the expiration date of policies shall be proprietary and confidential, shall not be divulged to any person or organization not a party to the hearing, shall not be subject to disclosure or to the provisions of KRS 61.870 to 61.884, and the record shall be sealed at the conclusion of the hearing.
 - (6) If a refund or credit is received by an insurance company that passed the fee or tax on to the policyholder, and the amount refunded or credited is not owed to another local government, the insurance company shall pass the full amount of the refund or credit, including any collection fee that has been retained by the insurance company pursuant to KRS 91A.080(4), on to the policyholder from whom the fee or tax was collected within ninety (90) days of receipt of the refund or credit. For a refund or credit received by an insurance company for tax periods after December 31, 2009, that is not owed to another local government, the insurance company shall pay a penalty fee of ten percent (10%) of the total amount of the refund or credit due to the policyholder if the insurance company is unable to produce proof of the use of a risk location system as required under subsection (2)(c) of this section.
 - (7) No legal action shall be filed by any party prior to the exhaustion of all administrative remedies provided under this section.

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

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

- (1) Before January 1, 2009, the **Department**~~{Office}~~ of Insurance shall by administrative regulation establish criteria for the verification of risk location systems and programs. The criteria for verification shall include but not be limited to a requirement that the municipal and county boundary information of a risk location system or program uses the municipal and county boundary data available from the Commonwealth Office of Technology that is based upon municipal and other filings with the Secretary of State.
- (2) Upon application of a vendor or insurance company for verification and payment of a two thousand five hundred dollar (\$2,500) application fee to the **Department**~~{Office}~~ of Insurance, the **department**~~{office}~~ shall test the risk location system or program to determine whether the program shall be verified as meeting the criteria promulgated in the administrative regulation required by subsection (1) of this section. The **Department**~~{Office}~~ of Insurance shall maintain a list of verified risk location systems or programs and shall make the list available to insurance companies and the public. The verification of a risk location system or program shall remain valid for a period of three (3) years unless revoked by the **Department**~~{Office}~~ of Insurance.
- (3) The **Department**~~{Office}~~ of Insurance shall, by administrative regulation, provide an option for an insurance company to apply for a written order by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance that the insurance company has a limited number of risk locations, not exceeding two hundred (200), in the Commonwealth that may be located by other means with an equivalent level of accuracy. Such an order shall remain valid for a period of three (3) years and as long as the insured risk of the insurance company does not exceed two hundred (200) in any calendar year.
- (4) An insurance company shall be deemed to perform due diligence in the location of risks if the insurance company employs a verified risk location system or program in its collection of a tax or fee imposed pursuant to KRS 91A.080 and:

- (a) Expends reasonable resources to accurately and reliably implement such method to collect and to remit the proper tax or fee due to the local government that has imposed a tax or fee pursuant to KRS 91A.080;
 - (b) Maintains adequate internal controls to correctly include in its database of policyholders the location of the risk insured, in the proper address format, so that matching with the database is accurate;
 - (c) Corrects errors in the assignment of addresses to local taxing jurisdictions within the next renewal period after the insurance company discovers the errors, and, if applicable, reports such errors to the provider of the risk location system or program; and
 - (d) In the case of insurance companies that issue policies covering multiple locations, maintains adequate internal controls and employs an accurate and consistent methodology to correctly prorate multilocation policies to assign risks to appropriate addresses or, if a street address is unavailable, through another appropriate identifier of physical location, and tax jurisdictions.
- (5) Upon the presentation of proof that an insurance company has complied with the provisions of subsection (4) of this section or has received an order of the *Department*~~{Office}~~ of Insurance under the administrative regulation promulgated pursuant to subsection (3) of this section, the insurance company:
- (a) Shall not be subject to penalties for failure to comply with KRS 91A.080 that may otherwise be imposed pursuant to KRS Chapter 304 or KRS 91A.080(7) for failure of a risk location system to properly locate risks;
 - (b) Shall be held harmless from any liability including but not limited to liability for penalties, except for the tax that is due and interest on the tax that an insurance company has failed to timely remit, that would otherwise be due solely as a result of a failure to properly collect and remit the tax or fee levied pursuant to KRS 91A.080 because of the failure of a risk location system to properly locate risks; and
 - (c) Shall not be subject to penalties under KRS 91A.0804(2)(c).
- (6) On and after January 1, 2010, an insurance company shall use a verified risk location system or program during the calendar year if the total policies issued and renewed by the insurance company in Kentucky in the preceding calendar year is more than two thousand (2,000).

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

- (1) (a) The *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance shall appoint a local premium tax advisory council to provide advice and expertise on the imposition, administration, and collection of taxes and fees imposed pursuant to KRS 91A.080. The council shall be chaired by the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance and shall be composed of eight (8) members which shall include two (2) city government representatives nominated by the Kentucky League of Cities, two (2) county government representatives nominated by the Kentucky Association of Counties, one (1) independent insurance agent, one (1) representative of a domestic insurance company, one (1) representative of a foreign insurance company, and one (1) representative of an insurance trade association. Members shall serve four (4) year terms, except for the initial members whose appointments shall be staggered.
- (b) The chair shall preside over meetings of the advisory council but shall have no vote except that he or she may cast a vote in order to break a tie.
 - (c) The *Department*~~{Office}~~ of Insurance shall staff and assist the council which shall meet at least two (2) times per year at meetings called by the chair or a majority of the members.
- (2) The council may identify ways to make the system more effective and efficient for all parties by making recommendations on needed legislative changes and providing comments on needed regulatory reforms. In addition, the council may provide information and assistance to insurance companies and local governments regarding procedures and practices related to compliance with provisions of this chapter related to the imposition, administration, and collection of taxes and fees imposed pursuant to KRS 91A.080. At least once each year, the council shall review the criteria for verification of risk location systems or programs established by the *Department*~~{Office}~~ of Insurance under KRS 91A.0806 and make recommendations for updating and improving the verification criteria.

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

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

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

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

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

- (1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for Health and Family Services, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky against hepatitis B. The program shall be funded from revenues allocated to the Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.
- (2) Except as provided in subsection (3) of this section, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer fire department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273. The commission shall allot eight thousand dollars (\$8,000) annually to each qualifying department, and beginning on July 1, 2001, the commission shall allot eight thousand two hundred fifty dollars (\$8,250) annually to each qualifying department. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars (\$500) of its allotment. If two (2) or more qualified volunteer fire departments, as defined in KRS 95A.500 to 95A.560, merge after January 1, 2000, then the allotment shall be in accordance with the provisions of KRS 95A.500 to 95A.560. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one-half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of

the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion of the funds provided for above may be used to purchase group or blanket health insurance and shall be used to purchase workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.

- (3) There shall be allotted two hundred thousand dollars (\$200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars (\$200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.
- (4) Applications for funding low-interest loans and firefighters' training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.
- (5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.
- (6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.
- (7) The amount of reimbursement for any given year for costs incurred by the Kentucky Community and Technical College System for administering these funds, including but not limited to the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.
- (8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.
- (9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:
 - (a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;
 - (b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;
 - (c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;
 - (d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;
 - (e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;
 - (f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and

- (g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.
- (10) If a volunteer fire department has met all of the requirements of subsection (9) of this section, the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars (\$10,000) or the actual amount of the loss, whichever is less.
- (11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.
- (12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.
- (13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.
- (14) There shall be allotted each year of the 1992-93 biennium one million dollars (\$1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars (\$1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund, which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.
- (15) For fiscal year 2004-2005 and each fiscal year thereafter, there is allotted one million dollars (\$1,000,000) from the fund established in KRS 95A.220 to be used by the commission to conduct training-related activities.
- (16) If funding is available from the fund established in KRS 95A.220, the Commission on Fire Protection Personnel Standards and Education may implement the following:
 - (a) A program to prepare emergency service personnel for handling potential man-made and non-man-made threats. The commission shall work in conjunction with the *state fire marshal*~~(marshal's office)~~ and other appropriate agencies and associations to identify and make maps of gas transmission and hazardous liquids pipelines in the state;
 - (b) A program to provide and maintain a mobile test facility in each training region established by the Commission on Fire Protection Personnel Standards and Education with equipment to administer Comprehensive Physical Aptitude Tests (CPAT) to ascertain a firefighter's ability to perform the physical requirements necessary to be an effective and safe firefighter;
 - (c) A program to provide defensive driving training tactics to firefighters. The commission shall purchase, instruct in the use of, and maintain mobile equipment in each of the training regions, and fund expenses related to equipment replacement;
 - (d) A program to annually evaluate equipment adequacy and to provide for annual physical examinations for instructors, adequate protective clothing and personal equipment to meet NFPA guidelines, and to establish procedures for replacing this equipment as needed;
 - (e) A program to establish a rotational expansion and replacement program for mobile fleet equipment currently used for training and recertification of fire departments;
 - (f) A program to expand and update current EMS, first responder, EMT, and paramedic training and certification instruction; and

- (g) A program to purchase thermal vision devices to comply with the provisions of KRS 95A.400 to 95A.440.

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

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

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

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

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

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

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

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

- (1) Prior to or concurrent with the establishment of a neighborhood redevelopment zone, the legislative body of the local government shall adopt by ordinance the BOCA Basic Property Maintenance Code as drafted by the Building Officials and Codes Administrators International, Inc., and the Kentucky Building Code which shall be applicable to all residential buildings within the neighborhood redevelopment zone. The local government

shall delegate responsibility for enforcement to the local agency responsible for local enforcement of the state building code, or such other agency deemed best qualified to carry out the responsibilities under this chapter.

- (2) Variances from provisions of the Kentucky Building Code may be granted in specific cases pursuant to the provisions of this subsection.
- (a) If a submitted plan for rehabilitation of a residential building is disapproved by the local enforcement agency for nonconformity with the building code, the owner or his agent may, in writing, apply to the **Department**~~{Office}~~ of Housing, Buildings and Construction for a variance from the building code with respect to such plans. In making the determination to approve or disapprove the application for variance, the **department**~~{office}~~ shall consider:
1. The architectural and historical significance of the structure;
 2. The health, safety, and welfare of the public;
 3. The costs of complying with the standards;
 4. The ability of the applicant to proceed with the project if the variance is not granted; and
 5. The significance to the neighborhood of the project.

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

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

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

- (1) The **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance shall approve the issuance of special endorsements on policies of mortgage guaranty insurance by an insurer pursuant to this section. The **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance within ten (10) days of approval shall notify the executive director of the Kentucky Housing Corporation of the name of the insurer.
- (2) No insurer shall be authorized to issue special endorsements except upon submission of an application to and approval of such application by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance. In granting such applications the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance shall consider:
- (a) The financial condition of the insurer;
 - (b) The percentage of defaulted loans insured by the insurer within the past five (5) years; and
 - (c) Such other standards as prescribed by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance.
- (3) Upon approval by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance, the insurer may issue special endorsements on policies of mortgage guaranty insurance covering that portion of a mortgage or rehabilitation loan which exceeds ninety percent (90%) but is less than one hundred and twenty-five percent (125%) of the appraised value of the residential building and the property on which it is located after completion of the rehabilitation.

- (4) An insurer shall issue a special endorsement only upon certification by the mortgagee that:
 - (a) The residential property subject to the mortgage or rehabilitation loan is located within the boundaries of a neighborhood development zone established pursuant to KRS 99A.020;
 - (b) The mortgagor is unable to secure the necessary funds for rehabilitation upon reasonable terms and conditions without the guaranty provided by the special endorsement;
 - (c) The loan is an acceptable risk, taking into consideration the need for the rehabilitation, the security for the loan or loans, and the ability of the mortgagor to repay the mortgage or rehabilitation loan; and
 - (d) The mortgage or rehabilitation loan transaction complies with such other terms, conditions and restrictions as may be prescribed by the executive director of the Kentucky Housing Corporation.
- (5) Each mortgagee who holds a mortgage covered by a policy of mortgage guaranty insurance with a special endorsement pursuant to this section shall submit a quarterly report to the executive director of the Kentucky Housing Corporation listing each mortgage or rehabilitation loan covered by such special endorsement and the status of such mortgage or rehabilitation loan.
- (6) The *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance in his discretion or when requested by the executive director of the Kentucky Housing Corporation as needed to protect the mortgage guaranty fund may withdraw the approval to an insurer to issue special endorsements on policies of mortgage guaranty insurance.
- (7) Any insurer subject to approval by the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance may charge a premium for the special endorsement issued pursuant to this section, of which sixty-six percent (66%) shall be remitted to the executive director of the Kentucky Housing Corporation to be used pursuant to KRS 99A.080.

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

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

- (1) "Secretary" means the secretary of the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet of the Commonwealth of Kentucky.
- (2) "Flood control work" means all land, pumping equipment, buildings, motor vehicles, mowing machines, or any other fixtures, tools or equipment a part of or used in connection with a floodwall or other construction designed to protect an area from being flooded.
- (3) "District" means a flood control district organized and created under the terms of KRS 104.450 to 104.680.
- (4) "Board" or "directors" means the board of directors of a flood control district organized and created under the terms of KRS 104.450 to 104.680.
- (5) "Director" means a person appointed as a member of the board of directors as provided in KRS 104.450 to 104.680.
- (6) "Person" means any person, firm, copartnership, association or corporation other than a public corporation.
- (7) "Public corporation" means any county, city, school district, water district or drainage district, and any other governmental agency or political subdivision clothed with the power of levying general or special taxes or issuing bonds payable from special funds.
- (8) "Land" or "property" means real property.

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

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

- (1) That an ever-increasing volume of solid waste both within and outside the Commonwealth is being generated as a result of increasing economic and commercial activity, continuing technological progress, and changes in methods of manufacturing, packaging, and marketing of consumer products, which results in additional solid wastes discarded by the users of these products;
- (2) That the continued economic and population growth of the Commonwealth has required increased industrial and commercial expansion and has made necessary the demolition of obsolete structures, the construction of

new structures, the provision of highways and other avenues of transportation, and the construction and installation of public works which, together with pre-existing commercial, industrial, and agricultural operations, have resulted in the generation of further volumes of solid waste;

- (3) That the handling of solid wastes has been primarily carried out through the dumping of wastes on open soil and in landfills, which in some cases are inimical to the public health, safety, and welfare;
- (4) That by the enactment by the Congress of the United States of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580), as amended, the collection, sanitary disposal, and recovery of solid waste has been determined to be a matter of nationwide importance, recognizing that the management of solid waste should continue to be primarily the function of state, regional, and local agencies; and that pursuant to this federal law, the Commonwealth has taken and will take certain actions in respect to the planning and implementation of solid waste plans within the guidelines of time requirements set forth in this federal law;
- (5) That as a result of the conditions described in the foregoing findings, problems of solid waste collection, management, and treatment, and resource recovery activities in connection therewith have become a matter of statewide concern necessitating action by the General Assembly to:
 - (a) Enable responsible planning and management agencies to be created to define solid waste management requirements, with all of the foregoing subject to regulation by the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet;
 - (b) Assist those units of government primarily responsible for the management of solid waste and the acquisition, financing and operation of facilities to dispose of solid waste to fulfill their functions in a responsible and proper manner with primary emphasis on the regionalization of these functions; and
 - (c) Reduce the amount of solid waste generated and disposed in Kentucky;
- (6) That it is the intent of the General Assembly of the Commonwealth of Kentucky that the primary responsibility for adequate solid waste collection, management, treatment, disposal, and resource recovery shall rest with combinations of counties and waste management districts, subject to standards set by administrative regulations adopted by the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet. In those cities currently operating solid waste management systems, the city and county may assume joint responsibility of preparing a solid waste management plan. If it is in the best public interest to do so and with the mutual agreement of both the county and city, a county may delegate responsibility for adequate collection, management, treatment, disposal, or materials recovery to a city. This delegation of responsibility is contingent upon the approval of a solid waste management plan by the cabinet. The purpose of delegating responsibilities shall be to effectuate the safe and sanitary management, use, and handling of solid waste, the protection of the health, welfare, and safety of the citizens and inhabitants of the Commonwealth, and for making the most efficient use of all resources for the benefit of the citizens and inhabitants of the Commonwealth;
- (7) That the General Assembly recognizes the generation of solid waste is inevitable, but much of it is unnecessary and should be discouraged. However, where solid waste does exist, it should be considered to the extent possible as a valuable resource, and be made use of wherever and whenever desirable and economically justifiable. Therefore, it shall be the policy of the Commonwealth to, above all things, encourage resource conservation and preservation of our natural resources before waste contributes in a needless fashion to the volumes of solid waste and litter produced by our society; but in dealing with existing solid waste, materials recovery from the solid waste stream is deemed to be the most environmentally sound alternative for handling waste;
- (8) It is not the intent of this chapter to prohibit or discourage the participation of the private sector in any aspect of solid waste management. Moreover, it is preferable for solid waste management functions to be performed by the private sector when it is in the best interests of the public and conforms with the policies and provisions in this chapter;
- (9) It is the intent of the General Assembly that counties and waste management districts cooperate to develop and implement the solid waste management plans mandated by KRS Chapter 224 and the administrative regulations adopted by the cabinet with the goal of regionalizing the management of solid waste;
- (10) It is the intent of the General Assembly that waste requiring disposal in municipal solid waste disposal facilities be reduced and that solid waste be managed in an environmentally protective manner;
- (11) Notwithstanding any provision of KRS Chapters 82, 83, and 94, it is the intent of the General Assembly that this chapter and KRS 67.083(3)(o) provide counties with authority to develop a solid waste management

system for solid waste generated within the geographical boundaries of the county, consistent with the provisions of this chapter and KRS Chapter 224. It is further the intent of the General Assembly that cities be authorized to finance, own, and operate solid waste management systems with the consent of the county or by contract with the county, except that in the event a county fails to submit a solid waste management plan pursuant to KRS Chapter 224 cities may proceed to develop solid waste management systems consistent with administrative regulations adopted by the cabinet pursuant to KRS Chapter 224. Cities that develop solid waste management facilities pursuant to this section shall have all the powers and restrictions set forth for counties in KRS 109.041, 109.056, and 109.059; and

- (12) It is the intent of the General Assembly that waste management districts which are formed and operated under this chapter shall comply with the standards set by administrative regulations adopted by the cabinet pursuant to KRS Chapter 224.

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

As used in this chapter unless the context requires otherwise:

- (1) "Board of directors" or "board" means the governing body of a solid waste management district.
- (2) "City" means an existing city of any class.
- (3) "County" means the governing body of a county, including urban-county governments.
- (4) "Cabinet" means the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet.
- (5) "Long-term contract" means a contract of sufficient duration to assure the viability of a resource recovery facility to the extent that such viability depends upon solid waste supply.
- (6) "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing, but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis.
- (7) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste management facility if solid waste generated by a recovered material processing facility is managed pursuant to KRS Chapter 224 and administrative regulations adopted by the cabinet.
- (8) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body.
- (9) "Solid waste" means any garbage, refuse, sludge, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining waste, coal mining by-products, refuse and overburden), agricultural operations, and from community activities, but does not include those materials including, but not limited to, sand, soil, rock, gravel, or bridge debris extracted as part of a public road construction project funded wholly or in part with state funds, recovered material, special wastes as designated by KRS 224.50-760, solid or dissolved material in domestic sewage, manure, crops, crop residue, or a combination thereof which are placed on the soil for return to the soil as fertilizers or soil conditions, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).
 - (a) "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunk houses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and camp grounds;

- (b) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding household and industrial solid waste;
- (c) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste or a special waste as designated by KRS 224.50-760, including, but not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment; and
- (d) "Municipal solid waste" means household solid waste and commercial solid waste.
- (10) "Solid waste management" means the administration of solid waste activities: collection, storage, transportation, transfer, processing, treatment and disposal, which shall be in accordance with a cabinet approved county or multicounty solid waste management plan of the cabinet.
- (11) "Solid waste management area" or "area" means any geographical area established or, designated by the cabinet in accordance with the provisions of KRS Chapter 224.
- (12) "Solid waste management facility" means any facility for collection, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether such facility is associated with facilities generating such wastes or otherwise, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility which is subject to regulation pursuant to the chapter for control of environmental impacts and to prevent any public nuisance.
- (13) "Waste management district" means any county or group of counties electing to form under the provisions of KRS 109.115 and operate in conformance with the provisions of this chapter and with Section 4006 of the Resource Conservation and Recovery Act of 1976, as amended (P.L. 94-580).

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

- (1) Whenever it is determined that a taxpayer, who holds a license under KRS Chapter 243, is a delinquent taxpayer as defined in subsection (2) of this section, the department may, after giving notice as provided in subsection (3) of this section, submit the name of the taxpayer to the **Department**~~{Office}~~ of Alcoholic Beverage Control for revocation of any license issued under KRS Chapter 243.
- (2) Any of the following situations shall be sufficient to cause a taxpayer to be classified as a "delinquent taxpayer" for purposes of this section:
 - (a) When a taxpayer has an overdue state tax liability arising directly or indirectly from the manufacture, sale, transportation, or distribution of alcoholic beverages, for which all protest and appeal rights granted by law have expired, and the taxpayer has been contacted by the department concerning the overdue tax liability. This does not include a taxpayer who is making current timely installment payments on the overdue tax liability under agreement with the department.
 - (b) When a taxpayer has not filed a required tax return as of ninety (90) days after the due date or after the extended due date, and the taxpayer has been contacted by the department concerning the delinquent return.
 - (c) When an owner, partner, or corporate officer of a proprietorship, partnership, or corporation holding a license under KRS Chapter 243 held a similar position in a business whose license was revoked as a "delinquent taxpayer," and the tax liability remains unpaid as of ninety (90) days after the due date.
- (3) At least twenty (20) days before submitting a taxpayer's name to the **Department**~~{Office}~~ of Alcoholic Beverage Control as provided in subsection (1) of this section, the department shall notify the taxpayer by certified mail that the action is to be taken. The notice shall state the reason for the action and shall set out the amount of any tax liability including any applicable penalties and interest and any other area of noncompliance that must be satisfied in order to prevent the submission of his name to the **Department**~~{Office}~~ of Alcoholic Beverage Control as a delinquent taxpayer.

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

- (1) No present or former commissioner or employee of the Department of Revenue, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws, nor does it extend to any matter properly entered upon any assessment record, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or his properly authorized agent with information respecting his own return. Further, this prohibition does not preclude the commissioner or any employee of the Department of Revenue from testifying in any court, or from introducing as evidence returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws. The commissioner or the commissioner's designee may provide an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820(1), or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820(2), that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer.
- (2) The commissioner shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the department shall receive similar or useful information in return.
- (3) Statistics of tax-paid gasoline gallonage reported monthly to the Department of Revenue under the gasoline excise tax law may be made public by the department.
- (4) Access to and inspection of information received from the Internal Revenue Service is for Department of Revenue use only, and is restricted to tax administration purposes. Notwithstanding the provisions of this section to the contrary, information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the Department of Revenue, or any other person.
- (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Department of Revenue under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the department by release to the **Energy and Environment** ~~Environmental and Public Protection~~ Cabinet, Department for Natural Resources.
- (6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.
- (7) Notwithstanding any other provision of the Kentucky Revised Statutes, the department may divulge to the applicable school districts on a confidential basis any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617.

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

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

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

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

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

- (1) Any person who fails or refuses to obey a subpoena or order of the Kentucky Board of Tax Appeals made pursuant to KRS Chapter 13B shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).
- (2)
 - (a) Any person who violates the intentional unauthorized inspection provisions of KRS 131.190(1) shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
 - (b) Any person who violates the provisions of KRS 131.190(1) by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
 - (c) Any person who violates the intentional unauthorized inspection provisions of KRS 131.190(4) shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
 - (d) Any person who violates the provisions of KRS 131.190(4) by divulging confidential taxpayer information shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than five (5) years, or both.
 - (e) Any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the Department of Revenue, member of a county board of assessment appeals, property valuation administrator or employee, or any other person, who violates the provisions of KRS 131.190(1) or (4) may, in addition to the penalties imposed under this subsection, be disqualified and removed from office or employment.
- (3) Any person who willfully fails to comply with the rules and regulations promulgated by the Department of Revenue for the administration of delinquent tax collections shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000).
- (4) Any person who fails to do any act required or does any act forbidden by KRS 131.210 shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (5) Any person who fails to comply with the provisions of KRS 131.155 shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty of one-half of one percent (0.5%) of the amount that should have been remitted under the provisions of KRS 131.155 for each failure to comply.
- (6)
 - (a) Any person or financial institution that fails to comply with the provisions of KRS 131.672 and 131.674 within ninety (90) days after notification by the Department of Revenue shall, unless the failure is due to reasonable cause as defined in KRS 131.010, be fined not less than one thousand dollars (\$1,000) and no more than five thousand dollars (\$5,000) for each full month of noncompliance. The fine shall begin on the first day of the month beginning after the expiration of the ninety (90) days.
 - (b) Any financial institution that fails or refuses to comply with the provisions of KRS 131.672 and 131.674 within one hundred twenty (120) days after the notification by the Department of Revenue shall, unless the failure is due to reasonable cause as defined in KRS 131.010, forfeit its right to do business within the Commonwealth, unless and until the financial institution is in compliance. Upon notification by the Department of Revenue, the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Financial Institutions shall, as applicable, revoke the authority of the financial institution or its agents to do business in the Commonwealth.

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

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

- (1) "Department" means the Department of Revenue.
- (2) "Taxpayer" means any person made liable by law to file a return or pay a tax.

- (3) "Real property" includes all lands within this state and improvements thereon.
- (4) "Personal property" includes every species and character of property, tangible and intangible, other than real property.
- (5) "Resident" means any person who has taken up a place of abode within this state with the intention of continuing to abide in this state; any person who has had his actual or habitual place of abode in this state for the larger portion of the twelve (12) months next preceding the date as of which an assessment is due to be made shall be deemed to have intended to become a resident of this state.
- (6) "Compensating tax rate" means that rate which, rounded to the next higher one-tenth of one cent (\$0.001) per one hundred dollars (\$100) of assessed value and applied to the current year's assessment of the property subject to taxation by a taxing district, excluding new property and personal property, produces an amount of revenue approximately equal to that produced in the preceding year from real property. However, in no event shall the compensating tax rate be a rate which, when applied to the total current year assessment of all classes of taxable property, produces an amount of revenue less than was produced in the preceding year from all classes of taxable property. For purposes of this subsection, "property subject to taxation" means the total fair cash value of all property subject to full local rates, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution and the difference between the fair cash value and agricultural or horticultural value of agricultural or horticultural land.
- (7) "Net assessment growth" means the difference between:
- (a) The total valuation of property subject to taxation by the county, city, school district, or special district in the preceding year, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution in the current year over that exempted in the preceding year, and
 - (b) The total valuation of property subject to taxation by the county, city, school district, or special district for the current year.
- (8) "New property" means the net difference in taxable value between real property additions and deletions to the property tax roll for the current year. "Real property additions" shall mean:
- (a) Property annexed or incorporated by a municipal corporation, or any other taxing jurisdiction; however, this definition shall not apply to property acquired through the merger or consolidation of school districts, or the transfer of property from one (1) school district to another;
 - (b) Property, the ownership of which has been transferred from a tax-exempt entity to a nontax-exempt entity;
 - (c) The value of improvements to existing nonresidential property;
 - (d) The value of new residential improvements to property;
 - (e) The value of improvements to existing residential property when the improvement increases the assessed value of the property by fifty percent (50%) or more;
 - (f) Property created by the subdivision of unimproved property, provided, that when such property is reclassified from farm to subdivision by the property valuation administrator, the value of such property as a farm shall be a deletion from that category;
 - (g) Property exempt from taxation, as an inducement for industrial or business use, at the expiration of its tax exempt status;
 - (h) Property, the tax rate of which will change, according to the provisions of KRS 82.085, to reflect additional urban services to be provided by the taxing jurisdiction, provided, however, that such property shall be considered "real property additions" only in proportion to the additional urban services to be provided to the property over the urban services previously provided; and
 - (i) The value of improvements to real property previously under assessment moratorium.
- "Real property deletions" shall be limited to the value of real property removed from, or reduced over the preceding year on, the property tax roll for the current year.
- (9) "Agricultural land" means:

- (a) Any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber;
 - (b) Any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for aquaculture; or
 - (c) Any tract of land devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government.
- (10) "Horticultural land" means any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants.
- (11) "Agricultural or horticultural value" means the use value of "agricultural or horticultural land" based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value, if any, considering the following factors as they affect a taxable unit:
- (a) Relative percentages of tillable land, pasture land, and woodland;
 - (b) Degree of productivity of the soil;
 - (c) Risk of flooding;
 - (d) Improvements to and on the land that relate to the production of income;
 - (e) Row crop capability including allotted crops other than tobacco;
 - (f) Accessibility to all-weather roads and markets; and
 - (g) Factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials and supplies, labor, or any economic factor which would affect net farm income.
- (12) "Deferred tax" means the difference in the tax based on agricultural or horticultural value and the tax based on fair cash value.
- (13) "Homestead" means real property maintained as the permanent residence of the owner with all land and improvements adjoining and contiguous thereto including, but not limited to, lawns, drives, flower or vegetable gardens, outbuildings, and all other land connected thereto.
- (14) "Residential unit" means all or that part of real property occupied as the permanent residence of the owner.
- (15) "Special benefits" are those which are provided by public works not financed through the general tax levy but through special assessments against the benefited property.
- (16) "Mobile home" means a structure, transportable in one (1) or more sections, which when erected on site measures eight (8) body feet or more in width and thirty-two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure.
- (17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home.
- (a) Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units or fixtures) and bath and toilet rooms.

- (b) Camping trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use.
 - (c) Truck camper: A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck.
 - (d) Motor home: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.
- (18) "Hazardous substances" shall have the meaning provided in KRS 224.01-400.
- (19) "Pollutant or contaminant" shall have the meaning provided in KRS 224.01-400.
- (20) "Release" shall have the meaning as provided in either or both KRS 224.01-400 and KRS 224.60-115.
- (21) "Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.01-400 and 224.01-405, or 224.60-135 where the **Energy and Environment** ~~Environmental and Public Protection~~ Cabinet has made a determination that:
- (a) All releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products at the property occurred prior to the property owner's acquisition of the property;
 - (b) The property owner *has* made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices prior to the acquisition of the property;
 - (c) The property owner or a responsible party has provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;
 - (d) The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;
 - (e) The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and
 - (f) The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, through:
 - 1. Direct or indirect familial relationship;
 - 2. Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or
 - 3. Reorganization of a business entity that was potentially liable.
- (22) "Intangible personal property" means stocks, mutual funds, money market funds, bonds, loans, notes, mortgages, accounts receivable, land contracts, cash, credits, patents, trademarks, copyrights, tobacco base, allotments, annuities, deferred compensation, retirement plans, and any other type of personal property that is not tangible personal property.

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

- (1) The owner or person assessed shall pay an annual ad valorem tax for state purposes at the rate of:
 - (a) Thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100) of value of all real property directed to be assessed for taxation;
 - (b) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, upon the prior approval of the Kentucky Economic Development Finance Authority, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;

- (c) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all qualifying voluntary environmental remediation property, provided the property owner has corrected the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, and provided the cleanup was not financed through a public grant or the petroleum storage tank environmental assurance fund. This rate shall apply for a period of three (3) years following the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet's issuance of a No Further Action Letter or its equivalent, after which the regular tax rate shall apply;
- (d) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all tobacco directed to be assessed for taxation;
- (e) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of unmanufactured agricultural products;
- (f) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations;
- (g) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all livestock and domestic fowl;
- (h) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
- (i) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all machinery actually engaged in manufacturing;
- (j) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna;
- (k) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (l) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390;
- (m) Twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043;
- (n) Five cents (\$0.05) upon each one hundred dollars (\$100) of value of goods held for sale in the regular course of business, which includes machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement; and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business;
- (o) Ten cents (\$0.10) per one hundred dollars (\$100) of assessed value on the operating property of railroads or railway companies that operate solely within the Commonwealth;
- (p) One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value on aircraft not used in the business of transporting persons or property for compensation or hire;
- (q) One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value on federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes; and
- (r) Forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed, except as provided in KRS 132.030, 132.200, 136.300, and 136.320, providing a different tax rate for particular property.

- (2) Notwithstanding subsection (1)(a) of this section, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%), excluding:
- (a) The assessment of new property as defined in KRS 132.010(8);
 - (b) The assessment from property which is subject to tax increment financing pursuant to KRS Chapter 65; and
 - (c) The assessment from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents (\$0.015) pursuant to subsection (1)(b) of this section. In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.
- (3) By July 1 each year, the department shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (2) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the department shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the department, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the department, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.
- (4) If the tax rate set by the department as provided in subsection (2) of this section produces more than a four percent (4%) increase in real property tax revenues, excluding:
- (a) The revenue resulting from new property as defined in KRS 132.010(8);
 - (b) The revenue from property which is subject to tax increment financing pursuant to KRS Chapter 65; and
 - (c) The revenue from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents (\$0.015) pursuant to subsection (1) of this section;

the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.

- (5) The provisions of subsection (2) of this section notwithstanding, the assessed value of unmined coal certified by the department after July 1, 1994, shall not be included with the assessed value of other real property in determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (2) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS 146.550 to 146.570, except that four hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to the State Treasury and credited to the **Department for Energy Development and Independence** ~~Office of Energy Policy~~ for the purpose of public education of coal-related issues.

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

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

- (1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery actually engaged in manufacturing, products in the course of manufacture, and raw material actually on hand at the plant for the purpose of manufacture. The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be manufacturing;

- (5)
 - (a) Commercial radio, television, and telephonic equipment used to receive, capture, produce, edit, enhance, modify, process, store, convey, or transmit audio or video content or electronic signals which are broadcast over the air;
 - (b) Equipment directly used or associated with the equipment identified in paragraph (a) of this subsection, including radio and television towers used to transmit or facilitate the transmission of the signal broadcast, but excluding telephone and cellular communications towers; and
 - (c) Equipment used to gather or transmit weather information;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$0.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$0.045) on each one hundred dollars (\$100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;
- (7) All privately owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (8) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (9) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (10) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (11) Tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
- (12) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;
- (13) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (14) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230, and all motor vehicles with a salvage title held by an insurance company;
- (15) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.010;
- (16) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 139.010;
- (17) New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220;
- (18) Aircraft not used in the business of transporting persons or property for compensation or hire if an exemption is approved by the county, city, school, or other taxing district in which the aircraft has its taxable situs;
- (19) Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes, if an exemption is approved by the county, city, school, or other taxing district in which the federally documented vessel has its taxable situs;
- (20) Any nonferrous metal that conforms to the quality, shape, and weight specifications set by the New York Mercantile Exchange's special contract rules for metals, and which is located or stored in a commodity

warehouse and held on warrant, or for which a written request has been made to a commodity warehouse to place it on warrant, according to the rules and regulations of a trading facility. In this subsection:

- (a) "Commodity warehouse" means a warehouse, shipping plant, depository, or other facility that has been designated or approved by a trading facility as a regular delivery point for a commodity on contracts of sale for future delivery; and
 - (b) "Trading facility" means a facility that is designated by or registered with the federal Commodity Futures Trading Commission under 7 U.S.C. secs. 1 et seq. "Trading facility" includes the Board of Trade of the City of Chicago, the Chicago Mercantile Exchange, and the New York Mercantile Exchange;
- (21) Qualifying voluntary environmental remediation property for a period of three (3) years following the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet's issuance of a No Further Action Letter or its equivalent, pursuant to the correction of the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, and provided the cleanup was not financed through a public grant program of the petroleum storage tank environmental assurance fund;
- (22) Biotechnology products held in a warehouse for distribution by the manufacturer or by an affiliate of the manufacturer. For the purposes of this section:
- (a) "Biotechnology products" means those products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. Biotechnology products does not include pharmaceutical products which are produced from chemical compounds;
 - (b) "Warehouse" includes any establishment that is designed to house or store biotechnology products, but does not include blood banks, plasma centers, or other similar establishments; and
 - (c) "Affiliate" means an individual, partnership, or corporation that directly or indirectly owns or controls, or is owned or controlled by, or is under common ownership or control with, another individual, partnership, or corporation.

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

- (1) The assessment of all motorboats as defined in KRS 235.010 shall be administered in the same manner and according to the same procedures provided for motor vehicles in KRS 132.487.
- (2) The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall provide access to all records of motorboat registrations as necessary to prepare and maintain a complete tax roll of motorboats throughout each year.

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

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

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

- (1) (a) Every domestic, foreign, or alien insurer, other than life and health insurers, which is either subject to or exempted from Kentucky premium taxes as levied pursuant to the provisions of either KRS 136.340, 136.350, 136.370, or 136.390, shall charge and collect a surcharge of one dollar and fifty cents (\$1.50) upon each one hundred dollars (\$100) of premium, assessments, or other charges, except for those municipal premium taxes, made by it for insurance coverage provided to its policyholders, on risk located in this state, whether the charges are designated as premiums, assessments, or otherwise. The

premium surcharge shall be collected by the insurer from its policyholders at the same time and in the same manner that its premium or other charge for the insurance coverage is collected. The premium surcharge shall be disclosed to policyholders pursuant to administrative regulations promulgated by the **commissioner**~~executive director~~ of insurance. However, no insurer or its agent shall be entitled to any portion of any premium surcharge as a fee or commission for its collection. On or before the twentieth day of each month, each insurer shall report and remit to the Department of Revenue, on forms as it may require, all premium surcharge moneys collected by it during its preceding monthly accounting period less any moneys returned to policyholders as applicable to the unearned portion of the premium on policies terminated by either the insured or the insurer. Insurers with an annual liability of less than one thousand dollars (\$1,000) for each of the previous two (2) calendar years may report and remit to the Department of Revenue all premium surcharge moneys collected on a calendar year basis on or before the twentieth day of January of the following calendar year. The funds derived from the premium surcharge shall be deposited in the State Treasury, and shall constitute a fund allocated for the uses and purposes of the Firefighters Foundation Program fund, KRS 95A.220 and 95A.262, and the Law Enforcement Foundation Program fund, KRS 15.430.

- (b) Effective July 1, 1992, the surcharge rate in paragraph (a) of this subsection shall be adjusted by the commissioner of revenue to a rate calculated to provide sufficient funds for the uses and purposes of the Firefighters Foundation Program fund as prescribed by KRS 95A.220 and 95A.262 and the Law Enforcement Foundation Program fund as prescribed by KRS 15.430 for each fiscal year. The rate shall be calculated using as its base the number of local government units eligible for participation in the funds under applicable statutes as of January 1, 1994. To allow the commissioner of revenue to calculate an appropriate rate, the secretary of the ~~Environmental and~~ Public Protection Cabinet and the secretary for the Justice and Public Safety Cabinet shall certify to the commissioner of revenue, no later than January 1 of each year, the estimated budgets for the respective funds specified above, including any surplus moneys in the funds, which shall be incorporated into the consideration of the adjusted rate for the next biennium. As soon as practical, the commissioner of revenue shall advise the **commissioner**~~executive director~~ of insurance of the new rate and the **commissioner**~~executive director~~ shall inform the affected insurers. The rate adjustment process shall continue on a biennial basis.
- (2) Within five (5) days after the end of each month, all insurance premium surcharge proceeds deposited in the State Treasury as set forth in this section shall be paid by the State Treasurer into the Firefighters Foundation Program fund trust and agency account and the Law Enforcement Foundation Program fund trust and agency account. The amount paid into each account shall be proportionate to each fund's respective share of the total deposits, pursuant to KRS 42.190. Moneys deposited to the Law Enforcement Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 15.410 to 15.500, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse. On and after July 1, 1999, moneys in this account shall not lapse. Money deposited to the Firefighters Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 95A.200 to 95A.300, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. On and after July 1, 1999, moneys in this account shall not lapse.
- (3) Insurance premium surcharge funds collected from the policyholders of any domestic mutual company, cooperative, or assessment fire insurance company shall be deposited in the State Treasury, and shall be paid monthly by the State Treasurer into the Firefighters Foundation Program fund trust and agency account as provided in KRS 95A.220 to 95A.262. However, insurance premium surcharge funds collected from policyholders of any mutual company, cooperative, or assessment fire insurance company which transfers its corporate domicile to this state from another state after July 15, 1994, shall continue to be paid into the Firefighters Foundation Program fund and the Law Enforcement Foundation Program fund as prescribed.
- (4) No later than July 1 of each year, the **Department**~~Office~~ of Insurance shall provide the Department of Revenue with a list of all Kentucky-licensed property and casualty insurers and the amount of premium volume collected by the insurer for the preceding calendar year as set forth on the annual statement of the insurer. No later than September 1 of each year, the Department of Revenue shall calculate an estimate of the premium surcharge due from each insurer subject to the insurance premium surcharge imposed pursuant to this section,

based upon the surcharge rate imposed pursuant to this section and the amount of the premium volume for each insurer as reported by the ~~Department~~~~Office~~ of Insurance. The Department of Revenue shall compare the results of this estimate with the premium surcharge paid by each insurer during the preceding year and shall provide the Legislative Research Commission, the Commission on Fire Protection Personnel Standards and Education, the Kentucky Law Enforcement Council, and the ~~Department~~~~Office~~ of Insurance with a report detailing its findings on a cumulative basis. In accordance with KRS 131.190, the Department of Revenue shall not identify or divulge the confidential tax information of any individual insurer in this report.

- (5) The insurance premiums surcharge provided in this section shall not apply to premiums collected from the following:
- (a) The federal government;
 - (b) Resident educational and charitable institutions qualifying under Section 501(c)(3) of the Internal Revenue Code;
 - (c) Resident nonprofit religious institutions for real, tangible, and intangible property coverage only;
 - (d) State government for coverage of real property; or
 - (e) Local governments for coverage of real property.

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

- (1) Any corporation that fails to pay its taxes, penalty, and interest as provided in subsection (2) of KRS 136.050, after becoming delinquent, shall be fined fifty dollars (\$50) for each day the same remains unpaid, to be recovered by indictment or civil action, of which the Franklin Circuit Court shall have jurisdiction.
- (2) Any public service corporation, or officer thereof, that willfully fails or refuses to make reports as required by KRS 136.130 and 136.140 shall be fined one thousand dollars (\$1,000), and fifty dollars (\$50) for each day the reports are not made after April 30 of each year.
- (3) Any superintendent of schools or county clerk who fails to report as required by KRS 136.190, or who makes a false report, shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for each offense.
- (4) Any company or association that fails or refuses to return the statement or pay the taxes required by KRS 136.330 or 136.340 shall be fined one thousand dollars (\$1,000) for each offense.
- (5) Any insurance company that fails or refuses for thirty (30) days to return the statement required by KRS 136.330 or 136.340 and to pay the tax required by KRS 136.330 or 136.340, shall forfeit one hundred dollars (\$100) for each offense. The ~~commissioner~~~~executive director~~ of insurance shall revoke the authority of the company or its agents to do business in this state, and shall publish the revocation pursuant to KRS Chapter 424.
- (6) Any person who violates subsection (3) of KRS 136.390 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.
- (7) Where no other penalty is mentioned for failing to do an act required, or for doing an act forbidden by this chapter, the penalty shall be not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (8) The Franklin Circuit Court shall have jurisdiction of all prosecutions under subsections (4) to (6) of this section.
- (9) Any person who violates any of the provisions of KRS 136.073 or KRS 136.090 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180.
- (10) If the tax imposed by KRS 136.070 or KRS 136.073, whether assessed by the department or the taxpayer, or any installment or portion of the tax, is not paid on or before the date prescribed for its payment, interest shall be collected upon the nonpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date prescribed for its payment until payment is actually made to the department.
- (11) Any provider who violates the provisions of KRS 136.616(3) shall be subject to a penalty of twenty-five dollars (\$25) per purchaser offense, not to exceed ten thousand dollars (\$10,000) per month.

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

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

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

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

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

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

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

Except for the conduct of harness racing at a county fair, each person entering the grounds or enclosure of any race track at which a live race meeting is being conducted under the jurisdiction of the Kentucky Horse Racing **Commission**~~[Authority]~~, for the purpose of attending the races or for any other purpose connected therewith, shall pay a tax of fifteen cents (\$0.15) to the state, except as otherwise provided in this section. If tickets good for more than one (1) day are issued, the sum of fifteen cents (\$0.15) shall be paid by each person using such ticket on each day that it is used. No admission tax shall be collected from any of the employees of the race track, or any of the owners or trainers of horses, or jockeys, or their employees. The admission tax provided for in this section shall be collected by the race track from each person on entering the race track or enclosure on a paid or free admission. The race track shall account to and pay to the state the money so collected.

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

- (1) (a) Except as provided in paragraphs (b) and (d) of this subsection, an excise tax is imposed on all tracks conducting pari-mutuel wagering on live racing under the jurisdiction of the **commission**~~[authority]~~.
1. For each track with a daily average live handle of one million two hundred thousand dollars (\$1,200,000) or above, the tax shall be in the amount of three and one-half percent (3.5%) of all money wagered on live races at the track during the fiscal year.
 2. For each track with a daily average live handle under one million two hundred thousand dollars (\$1,200,000), the tax shall be one and one-half percent (1.5%) of all money wagered on live races at the track during the fiscal year.
- (b) 1. If:

- a. A track located in this state is the host track for a live one (1) or two (2) day international horse racing event in 2010 that distributes in excess of a total of fifteen million dollars (\$15,000,000) in purses during the international horse racing event; and
- b. The organization responsible for selecting the location of the same international horse racing event in subsequent years contractually agrees to conduct the international horse racing event at a host track in this state in calendar year 2011 or 2012 or calendar years 2011 and 2012;

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

2. Beginning January 1, 2013, if the requirements of subparagraph 1. of this paragraph are satisfied, the tax exemption established by subparagraph 1. of this paragraph shall remain in effect for any succeeding one (1) or two (2) day international horse racing event if the event returns within three (3) years of a previously-held international horse racing event.
 3. A minimum of five hundred thousand dollars (\$500,000) of the amount that would have been paid to the Commonwealth but for the exemption provided by this paragraph shall be used by the host track to fund undercard races during each international horse racing event.
- (c) Money shall be deducted from the tax paid under paragraph (a) of this subsection and deposited as follows:
1. An amount equal to three-quarters of one percent (0.75%) of all money wagered on live races at the track for thoroughbred racing shall be deposited in the thoroughbred development fund established in KRS 230.400;
 2. An amount equal to one percent (1%) of all money wagered on live races at the track for harness racing shall be deposited in the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund established in KRS 230.770;
 3. An amount equal to two-tenths of one percent (0.2%) of all money wagered on live races at the track shall be deposited in the equine industry program trust and revolving fund established by KRS 230.550 to support the Equine Industry Program at the University of Louisville;
 4.
 - a. An amount equal to one-tenth of one percent (0.1%) of all money wagered on live races at the track shall be deposited in a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities.
 - b. These funds shall not be used for salaries or for operating funds for teaching, research, or administration. Funds allocated under this subparagraph shall not replace other funds for capital purposes or operation of equine programs at state universities.
 - c. The Kentucky Council on Postsecondary Education shall serve as the administrative agent and shall establish an advisory committee of interested parties, including all universities with established equine programs, to evaluate proposals and make recommendations for the awarding of funds.
 - d. The Kentucky Council on Postsecondary Education may promulgate administrative regulations to establish procedures for administering the program and criteria for evaluating and awarding grants; and
 5. An amount equal to one-tenth of one percent (0.1%) of all money wagered on live races shall be distributed to the ~~commission~~^{authority} to support equine drug testing as provided in KRS 230.265(3).
- (d) The excise tax imposed by paragraph (a) of this subsection shall not apply to pari-mutuel wagering on live harness racing at a county fair.
- (2) (a) Except as provided in paragraphs (c) and (d) of this subsection, an excise tax is imposed on:
1. All tracks conducting telephone account wagering;

2. All tracks participating as receiving tracks in intertrack wagering under the jurisdiction of the **commission**~~[authority]~~; and
 3. All tracks participating as receiving tracks displaying simulcasts and conducting interstate wagering thereon.
- (b) The tax shall be three percent (3%) of all money wagered on races as provided in paragraph (a) of this subsection during the fiscal year.
- (c) A noncontiguous track facility approved by the **commission**~~[authority]~~ on or after January 1, 1999, shall be exempt from the tax imposed under this subsection, if the facility is established and operated by a licensed track which has a total annual handle on live racing of two hundred fifty thousand dollars (\$250,000) or less. The amount of money exempted under this paragraph shall be retained by the noncontiguous track facility, KRS 230.3771 and 230.378 notwithstanding.
- (d) A track located in this state shall be exempt from the excise tax imposed by paragraph (b) of this subsection on wagers placed on all races conducted at a one (1) or two (2) day international horse racing event if:
1. The international horse racing event is conducted at a host track in this state; and
 2. The host track is exempt from the excise tax during the international horse racing event under subsection (1)(b) of this section.
- (e) Money shall be deducted from the tax paid under paragraphs (a) and (b) of this subsection as follows:
1. An amount equal to two percent (2%) of the amount wagered shall be deposited as follows:
 - a. In the thoroughbred development fund established in KRS 230.400 if the host track is conducting a thoroughbred race meeting or the interstate wagering is conducted on a thoroughbred race meeting; or
 - b. In the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund established in KRS 230.770, if the host track is conducting a harness race meeting or the interstate wagering is conducted on a harness race meeting;
 2. An amount equal to one-twentieth of one percent (0.05%) of the amount wagered shall be allocated to the equine industry program trust and revolving fund established by KRS 230.550 to be used to support the Equine Industry Program at the University of Louisville;
 3. An amount equal to one-tenth of one percent (0.1%) of the amount wagered shall be deposited in a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities, as detailed in subsection (1)(c)4. of this section; and
 4. An amount equal to one-tenth of one percent (0.1%) of the amount wagered shall be distributed to the **commission**~~[authority]~~ to support equine drug testing as provided in KRS 230.265(3).
- (3) The taxes imposed by this section shall be paid, collected, and administered as provided in KRS 138.530.

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

As used in KRS 138.510 to 138.550:

- (1) "**Commission**~~[Authority]~~" means the Kentucky Horse Racing **Commission**~~[Authority]~~;
- (2) "Association" has the same meaning as in KRS 230.210;
- (3) "Daily average live handle" means the total amount wagered at a track on live racing and does not include money wagered:
 - (a) At a receiving track;
 - (b) At a simulcast facility;
 - (c) On telephone account wagering;
 - (d) Through advance deposit account wagering; or

- (e) At a track participating as a receiving track or simulcast facility displaying simulcasts and conducting interstate wagering as permitted by KRS 230.3771 and 230.3773;
- (4) "Department" means the Department of Revenue;
- (5) "Fiscal year" means a time frame beginning 12:01 a.m. July 1, and ending 12 midnight June 30;
- (6) "Host track" has the same meaning as in KRS 230.210;
- (7) "Interstate wagering" has the same meaning as in KRS 230.210;
- (8) "Intertrack wagering" has the same meaning as in KRS 230.210;
- (9) "Receiving track" has the same meaning as in KRS 230.210;
- (10) "Simulcast facility" has the same meaning as in KRS 230.210;
- (11) "Telephone account wagering" has the same meaning as in KRS 230.210; and
- (12) "Track" has the same meaning as in KRS 230.210.

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

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

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

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

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

- (1) The *Department*~~[Office]~~ of Insurance, on the application of the Department of Revenue, shall determine, and certify in duplicate to the department, the value of any future or contingent estate, income or interest therein, limited, contingent, dependent or determinable upon the lives of persons in being, upon the facts contained in the application or other facts submitted by the department. No fee shall be charged by the *Department of Insurance*~~[division]~~ for this service. The certificate shall be competent evidence that the method of computation therein is correct.
- (2) The value of every future, contingent or limited estate, income or interest for the purpose of this chapter shall be determined by the rules, methods and standards of mortality and of value prescribed by the appropriate

United States life mortality tables for ascertaining the value of life estates, annuities and remainder interests except that the rate of interest assessed in computing the present value of all future interests and contingencies shall be four percent (4%) per annum.

- (3) When an annuity or a life estate is terminated by the death of the annuitant or life tenant, and the tax upon such interest has not been fixed and determined, the value of the interest for the purpose of taxation shall be that amount of the annuity or income actually paid or payable to the annuitant or life tenant during the period for which the annuitant or life tenant was entitled to the annuity or was in possession of the life estate. The tax on such annuities and life interests shall be payable out of the corpus of the estate, unless otherwise provided under the terms of the will.
- (4) Notwithstanding anything in this chapter to the contrary, the value of a surviving spouse's interest in a trust or life estate which was exempt from Kentucky inheritance tax in the first spouse's estate pursuant to an election made under KRS 140.080(1)(a) shall be deemed to be equal to the entire value of the property held in the trust or life estate, at the surviving spouse's death, for Kentucky inheritance tax purposes in the surviving spouse's estate.

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

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

by the taxpayers, or by a parent company if the taxpayer is a wholly owned subsidiary.
- (2) The amount of the allowable credit shall be two dollars (\$2) per each incentive ton of coal purchased that is subject to tax under KRS 143.020 and that is used to generate electric power or used as feedstock for an alternative fuel facility as defined in KRS 154.27-010 or a gasification facility as defined in KRS 154.27-010.
- (3)
 - (a) Incentive tons are calculated as the tons of coal purchased in the current year for which coal severance tax was paid minus the tons of coal purchased and used during the base year.
 - (b) For an existing electric power company subject to tax under KRS 136.120 that expands operations to include an alternative fuel facility as defined in KRS 154.27-010 or a gasification facility as defined in KRS 154.27-010, the incentive tons for the expanded operation calculated in paragraph (a) of this subsection shall not include any coal subject to the incentives provided under KRS 143.024 and 154.27-060.
- (4) The base year amount shall be equal to:
 - (a) For entities existing on July 14, 2000, that meet the eligibility requirements imposed under subsection (1) of this section, the tons of coal purchased and used to generate electricity during the twelve (12) calendar months ending in December 31, 1999, that were subject to the tax imposed by KRS 143.020; or
 - (b) For entities that come into existence after July 14, 2000, that meet the eligibility requirements imposed under subsection (1) of this section, the base year amount shall be equal to zero (0). However, no company qualifying for the credit as of July 14, 2000, with a base year calculation as provided under subsection (4)(a) of this section may create an affiliate, subsidiary, or corporation that would qualify for a base year of zero (0).

- (5) On or before March 15 of each year, a company eligible for the credit provided under subsection (2) of this section shall file a coal incentive credit claim on forms prescribed by the department. At the time of filing for the credit, the taxpayer shall submit verification of the tons of coal purchased in the base year and the tons of coal purchased in the year for which the credit is being claimed. The department shall determine the amount of the eligible credit and issue a credit certificate to the taxpayer.
- (6) The taxpayer shall be eligible to apply, subject to the conditions imposed under subsection (7) of this section, the amount identified on the credit certificate issued by the department under subsection (5) of this section, against the taxpayer's liability for the taxes, in consecutive order as follows:
- (a) The credit shall first be applied against both the taxes imposed by KRS 141.020 or 141.040 and the tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205;
 - (b) The credit shall next be applied to the taxes imposed by KRS 136.070; and
 - (c) Any remaining credit shall be applied against the taxes imposed by KRS 136.120.
- (7) The credit shall meet the entirety of the taxpayer's liability under the first tax listed in consecutive order under subsection (6) of this section before applying the remaining credit to the next tax listed in consecutive order. The taxpayer's total liability under each preceding tax must be fully met before the remaining credit can be applied to the subsequent tax listed in consecutive order.
- (8) The taxpayer shall maintain records required in subsection (5) of this section for a period of five (5) years.
- (9) Acceptable verification of coal purchased during the base year shall include invoices that indicate the tons of coal purchased from a Kentucky supplier of coal and proof of remittance for that purchase.
- (10) The department shall develop the forms required under subsection (5) of this section, specifying the procedure for claiming the credit, and applying the credit against the taxpayer's liability in the order provided under subsections (6) and (7) of this section.
- (11) The *Department for Energy Development and Independence* ~~[Governor's Office of Energy Policy established by KRS 152.712]~~ shall:
- (a) 1. Certify that an alternative fuel facility for which a credit is being requested meets the definition as provided in KRS 154.27-010; or
 2. Certify that a gasification facility for which a credit is being requested meets the definition as provided in KRS 154.27-010; and
 - (b) Notify the department of the certification.
- (12) To assist in determining the amount of coal purchased and used that is eligible for the credit, the department shall obtain from the University of Kentucky Center for Applied Energy Research a reasonable and typical estimate of the tons of coal needed to produce a given output of coal-derived alternative transportation fuels, coal-derived synthetic natural gas, coal-derived liquid fuels, or other coal-derived chemicals or chemical feedstocks, considering:
- (a) The type of coal to be used;
 - (b) Equipment to be employed;
 - (c) Size and output of the facility;
 - (d) Slate of products produced; and
 - (e) Other characteristics of the alternative fuel facility or gasification facility.

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

- (1) As used in this section:
- (a) "Hazardous substances" shall have the meaning provided in KRS 224.01-400;
 - (b) "Pollutant or contaminant" shall have the meaning provided in KRS 224.01-400;
 - (c) "Petroleum" and "petroleum products" shall have the meaning provided in KRS 224.60-115;

- (d) "Release" shall have the meaning as provided in either or both KRS 224.01-400 and KRS 224.60-115;
- (e) "Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.01-400, KRS 224.01-405, or 224.60-135 where the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet has made a determination that:
1. All releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property occurred prior to the property owner's acquisition of the property;
 2. The property owner made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices;
 3. The property owner or a responsible party has provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;
 4. The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;
 5. The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and
 6. The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, through:
 - a. Direct or indirect familial relationship;
 - b. Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or
 - c. Reorganization of a business entity that was potentially liable;
- (f) "Expenditures" means payment for work to characterize the extent of contamination and to remediate the contamination at a qualifying voluntary environmental remediation property; and
- (g) "Taxpayer" means an individual subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040.
- (2) (a) There shall be allowed a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040 for taxable years beginning after December 31, 2004, and against the tax imposed by KRS 141.0401 for taxable years beginning after December 31, 2006, for taxpayer expenditures made at a qualifying voluntary environmental remediation property in order to correct the effect of a release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224. 01-400, 224.01-405, or 224.60-135, consistent with a corrective action plan approved by the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, and provided the cleanup was not financed through a public grant program or the petroleum storage tank environmental assurance fund.
- (b) The credit allowed under paragraph (a) of this subsection shall be applied both to the income tax imposed under KRS 141.020 or 141.040 and to the limited liability entity tax imposed under KRS 141.0401, with the ordering of the credits as provided in KRS 141.0205.
- (3) The maximum total credit for each taxpayer shall not exceed one hundred fifty thousand dollars (\$150,000). For purposes of this section, an affiliated group of taxpayers required to file a consolidated return under KRS 141.200 shall be treated as one (1) taxpayer.
- (4) A taxpayer claiming a credit under this section shall submit receipts to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet in proof of the expenditures claimed. The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall verify the receipts. After the receipts are verified, the Finance and Administration Cabinet shall notify the taxpayer of eligibility for the credit.
- (5) The credit may be first claimed on the income tax return of the taxpayer filed in the taxable year during which the credit was certified. The amount of the allowable credit for any taxable year shall be twenty-five percent (25%) of the maximum credit approved. The credit may be carried forward for ten (10) successive taxable years.

- (6) If the taxpayer is a pass-through entity, the taxpayer shall apply the credit against the limited liability entity tax imposed by KRS 141.0401, and shall also pass the credit through to its members, partners, or shareholders in the same proportion as the distributive share of income or loss is passed through.

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

- (1) As used in this section:
- (a) "Clean coal facility" means an electric generation facility beginning commercial operation on or after January 1, 2005, at a cost greater than one hundred fifty million dollars (\$150,000,000) that is located in the Commonwealth of Kentucky and is certified by the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet as reducing emissions of pollutants released during generation of electricity through the use of clean coal equipment and technologies;
 - (b) "Clean coal equipment" means equipment purchased and installed for commercial use in a clean coal facility to aid in reducing the level of pollutants released during the generation of electricity from eligible coal;
 - (c) "Clean coal technologies" means technologies incorporated for use within a clean coal facility to lower emissions of pollutants released during the generation of electricity from eligible coal;
 - (d) "Eligible coal" means coal that is subject to the tax imposed under KRS 143.020;
 - (e) "Ton" means a unit of weight equivalent to two thousand (2,000) pounds; and
 - (f) "Taxpayer" means taxpayer as defined in KRS 131.010(4).
- (2) Effective for tax years ending on or after December 31, 2006, a nonrefundable, nontransferable credit shall be allowed for:
- (a) Any electric power company subject to tax under KRS 136.120 and certified as a clean coal facility or any taxpayer that owns or operates a clean coal facility and purchases eligible coal that is used by the taxpayer in a certified clean coal facility; or
 - (b) A parent company of an entity identified in paragraph (a) of this subsection if the subsidiary is wholly owned.
- (3) (a) The credit may be taken against the taxes imposed by:
- 1. KRS 136.070;
 - 2. KRS 136.120; or
 - 3. KRS 141.020 or 141.040, and 141.0401.
- (b) The credit shall not be carried forward and must be used on the tax return filed for the period during which the eligible coal was purchased. The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet must approve and certify use of the clean coal equipment and technologies within a clean coal facility before any taxpayer may claim the credit.
- (c) The credit allowed under paragraph (a) of this subsection shall be applied both to the income tax imposed under KRS 141.020 or 141.040 and to the limited liability entity tax imposed under KRS 141.0401, with the ordering of credits as provided in KRS 141.0205.
- (4) The amount of the allowable credit shall be two dollars (\$2) per ton of eligible coal purchased that is used to generate electric power at a certified clean coal facility, except that no credit shall be allowed if the eligible coal has been used to generate a credit under KRS 141.0405 for the taxpayer, a parent, or a subsidiary.
- (5) Each taxpayer eligible for the credit provided under subsection (2) of this section shall file a clean coal incentive credit claim on forms prescribed by the Department of Revenue. At the time of filing for the credit, the taxpayer shall submit an electronic report verifying the tons of coal subject to the tax imposed by KRS 143.020 purchased for each year in which the credit is claimed. The Department of Revenue shall determine the amount of the approved credit and issue a credit certificate to the taxpayer.

(6) Corporations and pass-through entities subject to the tax imposed under KRS 141.040 or 141.0401 shall be eligible to apply, subject to the conditions imposed under this section, the approved credit against its liability for the taxes, in consecutive order as follows:

- (a) The credit shall first be applied against both the tax imposed by KRS 141.0401 and the tax imposed by KRS 141.020 or 141.040, with the ordering of credits as provided in KRS 141.0205;
- (b) The credit shall then be applied to the tax imposed by KRS 136.120.

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

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

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

- (1) (a) For taxable periods beginning after December 31, 2008, and beginning before January 1, 2016, there is hereby created a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040, and KRS 141.0401, with the ordering of credits as provided in KRS 141.0205. The credit shall apply if one (1) or more of the items listed in paragraph (b) of this subsection is installed during the taxable year in a dwelling unit located in the Commonwealth that is owned by the taxpayer and used by the taxpayer as:
 1. The taxpayer's principal place of residence; or
 2. A single-family or multifamily residential rental unit.
- (b) The tax credit shall equal thirty percent (30%) of the installed costs of:
 1. Upgraded insulation, not to exceed one hundred dollars (\$100);
 2. Energy-efficient windows and storm doors, not to exceed two hundred fifty dollars (\$250); or
 3. Qualified energy property, not to exceed two hundred fifty dollars (\$250).
- (c) In no case shall the total credits provided under this subsection exceed five hundred dollars (\$500) per taxpayer.
- (2) (a) For taxable years beginning after December 31, 2008, and beginning before January 1, 2016, there is hereby created a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040, and KRS 141.0401, with the ordering of credits as provided in KRS 141.0205, if one (1) or more of the items listed in paragraph (b) of this subsection is installed during the taxable year on a dwelling unit located in the Commonwealth, or on property located in the Commonwealth that is owned and used by the taxpayer as commercial property.
- (b) The tax credit shall equal:

1. Thirty percent (30%) of the installed costs of:
 - a. An active solar space-heating system;
 - b. A passive solar space-heating system;
 - c. A combined active solar space-heating and water-heating system;
 - d. A solar water-heating system; and
 - e. A wind turbine or wind machine; or
 2. Three dollars (\$3) per watt direct current (DC) of rated capacity of a solar photovoltaic system.
- (c) In no case shall the total tax credits provided in this subsection exceed:
1. Five hundred dollars (\$500) per taxpayer if installed on a dwelling unit located in the Commonwealth that is owned by the taxpayer and used by the taxpayer as:
 - a. The taxpayer's principal place of residence; or
 - b. A single-family residential rental unit; or
 2. One thousand dollars (\$1,000) per taxpayer if installed on property located in the Commonwealth that is owned and used by the taxpayer as:
 - a. A multifamily residential rental unit; or
 - b. Commercial property;
- (3) (a) For taxable years beginning after December 31, 2008, and beginning before January 1, 2016, there is hereby created a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040, and KRS 141.0401, with the ordering of credits as provided in KRS 141.0205, if one (1) or more of the following is installed during the taxable year on property located in the Commonwealth that is owned and used by the taxpayer as commercial property:
1. An energy-efficient interior lighting system; and
 2. An energy-efficient heating, cooling, ventilation, or hot water system.
- (b) The tax credit shall equal thirty percent (30%) of the installed costs of:
1. An energy-efficient interior lighting system, not to exceed five hundred dollars (\$500) per taxpayer; and
 2. An energy-efficient heating, cooling, ventilation, or hot water system, not to exceed five hundred dollars (\$500) per taxpayer.
- (c) In no case shall the total tax credits provided in this subsection exceed one thousand dollars (\$1,000) per taxpayer.
- (d) For purposes of the tax credit provided by this subsection, "commercial property" shall not include single-family or multifamily residential units.
- (4) The tax credits provided under this section shall apply in the tax year in which the installation is completed. If the credit cannot be taken in full in the year in which the installation is completed, the tax credit may be carried forward one (1) year.
- (5) The department may request copies of invoices, purchase receipts, installation contracts, proof of installer's NABCEP certification, and any other information that the department determines necessary to verify credits taken.
- (6) If the taxpayer has taken the ENERGY STAR home or the ENERGY STAR manufactured home tax credit provided under KRS 141.437, the tax credits provided under this section shall not apply.
- (7) The department shall establish, by administrative regulation, the guidelines and technical requirements for items that are eligible for the tax credits provided under subsection (2) of this section, including but not limited to requirements for capacity, siting, plumbing, collector mountings, and pressurization. The department shall enlist the assistance, cooperation, and recommendations of the *Department for Energy Development and*

Independence~~{Governor's Office of Energy Policy}~~ and the Kentucky Pollution Prevention Center at the University of Louisville in determining those guidelines and technical requirements and may enlist their assistance in evaluating the eligibility of credits taken under this section.

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

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

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

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

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

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

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

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

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

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

- (1) The secretary for ***energy and environment***~~{environmental and public protection}~~, with the approval of the Soil and Water Conservation Commission shall appoint a director of the Division of Conservation who shall be a graduate of a recognized agricultural college, with at least five (5) years practical experience in professional agricultural activities and who shall serve as executive officer for the commission. The director shall serve at the will of, and receive such compensation as may be determined by the secretary for ***energy and environment***~~{environmental and public protection}~~ with the approval of the Soil and Water Conservation Commission. Before entering upon his duties, the director shall take the constitutional oath. The director shall hold no other public office or employment. In addition to any other duties assigned to him by the secretary for ***energy and environment***~~{environmental and public protection}~~, the director shall exercise, subject to the approval of the secretary, general administrative supervision over all activities, employees and property of the commission;
- (2) The secretary for ***energy and environment***~~{environmental and public protection}~~ may employ such other officers, employees, and agents, who shall serve at his will as he deems necessary, with the approval of the Soil and Water Conservation Commission, and shall provide for surety bonds for members, the director, officers, employees or agents if entrusted with funds or property.

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

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

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

(1) The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet may assess a fee for the use of any lock on a navigable waterway operated by the Commonwealth and formerly under jurisdiction of the United States Army Corps of Engineers and pursuant to completion of negotiations authorized by KRS 151.580.

(2) The fee shall not exceed five dollars (\$5) each time the lock gates are used regardless of the number of craft passing through said lock.

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

(1) No person shall attempt to utilize any lock on a navigable waterway operated by the Commonwealth without payment of the fee prescribed by KRS 146.180(2). At the time any person attempts to utilize the lock, the fee must be paid to the lockmaster or the employee who provides the service of opening the lock.

(2) The months, days and hours of lock operation shall be prescribed by the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet.

(3) Each Monday following a period of lock operation, those individuals responsible for collection of fees shall remit all moneys collected to the cabinet in a manner prescribed by the cabinet.

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

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

(1) "Stream or watercourse" shall mean a flowing body of water or a section or portion thereof, including rivers, streams, and creeks.

(2) "Free flowing" shall mean existing or flowing in a natural condition without impoundment, diversion, straightening, riprapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any stream is proposed for inclusion in the Wild Rivers System shall not automatically bar its consideration for such inclusion; provided, that this shall not be construed to authorize or to be intended to encourage future construction of such structures within components of the Wild Rivers System.

(3) "Road" shall mean a highway, a hard-surfaced road, or an improved or unimproved dirt road. The existence, however, of unimproved roads at the time any stream is proposed for inclusion in the Wild Rivers System shall not automatically bar its consideration for such inclusion; provided, that this shall not be construed to authorize or to be intended to encourage future construction of such roads where this would be contrary to the provisions of KRS 146.200 to 146.360.

(4) "Wilderness type recreation" shall mean activities such as fishing, hunting, canoeing, camping, hiking, horseback riding, exploring, archaeological and scientific investigation, and scenic and aesthetic enjoyment, which utilizes and protects to the highest degree the primitive and natural values of the area.

(5) "Visual horizon" shall mean the normal distance to which land and vegetative features can be unobstructedly viewed from the center of the stream.

(6) "Access point" shall mean an area along the stream under public ownership, or under easement acquired by agreement with a private landowner. This area would be available for public recreational use including, but not limited to, the launching of boats, picnicking, and camping.

(7) "Secretary" shall mean the secretary for ***energy and environment***~~(environmental and public protection)~~ or the successor to that office.

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

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

Streams or sections of streams that are essentially free-flowing, with shorelines and scenic vistas essentially primitive and unchanged, free from evidence of the works of man, and pleasing to the eye. The waters shall not be polluted beyond feasible correction and shall be kept unpolluted once corrected according to standards established by the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet. The area may provide a high quality fish and wildlife habitat, containing one or more unique or rare species for sport or observation. It may provide opportunities for scientific study or appreciation of essentially undisturbed ecological, geologic, or archaeological

conditions. It shall provide wilderness type recreation such as canoeing and hiking, or specialized uses without disturbing the primitive character of the area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As used in KRS 146.410 to 146.530:

- (1) "Natural area" means any area of land or water, or of both land and water, in public or private ownership, which either retains, or has reestablished to some degree in the judgment of the commission its natural character, though it need not be completely natural and undisturbed, or which has natural flora, fauna, biological, ecological, geological, scenic or archaeological features of scientific, aesthetic, cultural or educational interest;
- (2) "Natural preserve" means a natural area, and land necessary for its protection, any estate, interest or right in which has been formally dedicated under the provisions of KRS 146.410 to 146.530 to be maintained as nearly as possible in its natural condition and to be used in a manner and under limitations consistent with its continued preservation, without impairment, disturbance or artificial development, for the public purposes of present and future scientific research, education, aesthetic enjoyment and habitat for plant and animal species and other natural objects;
- (3) "Articles of dedication" means the writing by which any estate, interest or right in a natural area is formally dedicated, as provided in KRS 146.410 to 146.530;
- (4) "Commission" means the Kentucky State Nature Preserves Commission;
- (5) "System" means the state system of nature preserves established under KRS 146.410 to 146.530;
- (6) "Cabinet" means the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet;
- (7) "Director" means the director of the Kentucky State Nature Preserves Commission.

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

- (1) There is hereby established a Kentucky Heritage Land Conservation Fund Board, referred to hereafter as "the board", which shall administer the Kentucky Heritage Land Conservation Fund established in KRS 146.570 and shall review and approve all grants payable from the fund. The board shall consist of the following members:

- (a) The commissioner of the Department of Parks or a designee;
- (b) The director of the Kentucky Nature Preserves Commission or a designee;
- (c) The commissioner of the Department for Natural Resources or a designee;
- (d) The commissioner of the Department of Fish and Wildlife Resources or a designee;
- (e) The chairperson of the Kentucky Environmental Education Council or a designee;
- (f) One (1) person appointed by the Governor, from two (2) persons nominated by the Kentucky Chapter of the Nature Conservancy;
- (g) One (1) person appointed by the Governor, from two (2) persons nominated by the League of Kentucky Sportsmen;
- (h) Two (2) persons appointed by the Governor, from four (4) persons recognized for their expertise in natural resource issues and nominated by the Kentucky Academy of Sciences;
- (i) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Farm Bureau, one (1) by the Commissioner of the Department of Agriculture, and one (1) by the Kentucky Association of Conservation Districts;
- (j) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Audubon Council, one (1) by the Cumberland Chapter of the Sierra Club, and one (1) by the Kentucky Conservation Committee; and
- (k) One (1) person appointed by the Governor with at least five (5) years of experience in natural resources land acquisition.

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

- (2) The board shall promulgate in accordance with the provisions of KRS Chapter 13A administrative regulations as are deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. Grants shall be made in amounts, for purposes, and to the agencies identified in KRS 146.570 as meet the priorities for acquisition which are:
 - (a) Natural areas that possess unique features such as habitat for rare and endangered species;
 - (b) Areas important to migratory birds;
 - (c) Areas that perform important natural functions that are subject to alteration or loss; or
 - (d) Areas to be preserved in their natural state for public use, outdoor recreation and education.

The board shall promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A on acquisition based on these priorities and property costs seeking to maximize the greatest public benefit by taking advantage of those priority areas available below fair market value and where public or private funds are available on a matching basis. The board shall expend the whole or any part of the principal and interest as needed. KRS 146.550 to 146.570 shall not allow the use of condemnation powers and shall only allow acquisition of land from willing sellers.

➔Section 135. KRS 146.570 is amended to read as follows:

- (1) There is hereby established in the State Treasury a fund entitled "Kentucky Heritage Land Conservation Fund." The fund shall primarily receive state appropriations, gifts, grants, federal funds, and tax receipts. The fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Moneys in the fund not expended at the end of a fiscal year shall be carried forward to the next fiscal year, and the fund shall not lapse. Moneys in the fund shall be invested in accordance with administrative

regulations developed by the State Investment Commission in accordance with KRS 42.525. Interest earnings shall accrue to the fund.

- (2) The fund shall be attached for administrative, budgeting, and capital planning and reporting purposes to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet. Land acquisitions shall be authorized by the General Assembly and reported to the Capital Projects and Bond Oversight Committee in accordance with KRS 45.750 to 45.800. Allocation of moneys as approved by the board for management of the lands shall be appropriated to each separate agency as part of its operating budget.
- (3) Moneys in the fund shall be used exclusively for the purposes of acquisition and management of lands as defined in KRS 146.560. Each recipient of moneys shall develop and implement a resource management plan for each tract acquired, except a resource management plan for properties adjacent to a state park shall be developed and managed by the Department of Parks, and shall allocate at least ten percent (10%) of moneys received for management of lands acquired. Lands acquired shall be maintained in perpetuity for the purposes set out in KRS 146.560.
- (4) Moneys in the fund shall be allocated as follows:
 - (a) The Department of Parks shall receive ten percent (10%);
 - (b) The Department of Fish and Wildlife Resources shall receive ten percent (10%);
 - (c) The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet, Division of Forestry, shall receive ten percent (10%);
 - (d) Ten percent (10%) shall be allocated for wild rivers corridors established by the Kentucky Wild Rivers Act, KRS 146.200 to 146.360, and any administrative regulations promulgated pursuant thereto;
 - (e) The Nature Preserves Commission shall receive ten percent (10%); and
 - (f) The board shall receive the remaining fifty percent (50%), for allocation to state agencies, local governments, and state colleges and universities.

➔Section 136. KRS 147A.031 is amended to read as follows:

- (1) The Governor's Office for Local Development, in cooperation with cities, counties, waste management districts, waste industries, the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet, and the Environmental Quality Commission, shall develop procedures designed to resolve conflicts resulting from municipal solid waste management facility siting and operation. The procedures shall address:
 - (a) Resolution of conflicts associated with multijurisdictional municipal solid waste management facilities, including the use of such techniques as negotiation, mediation, or arbitration to address issues, including but not limited to host community compensation and collection and disposal fees; and
 - (b) Resolution of issues, except those relating to permit conditions imposed by the cabinet, resulting from municipal solid waste management facility siting and operation, including the use of such techniques as negotiation, mediation, or arbitration to address concerns of those persons and landowners who are directly affected by the facility's location and operation. Issues which may be addressed include but are not limited to the following:
 1. Operational issues, such as hours of operation;
 2. Recycling and composting efforts that may be implemented;
 3. Protection of property values;
 4. Traffic routing and road maintenance; and
 5. Establishment of local advisory committees.
- (2) The Governor's Office for Local Development shall adopt administrative regulations to implement the provisions of subsection (1) of this section.
- (3) Nothing in this section shall be construed to abridge any rights or remedies provided by KRS Chapters 109 and 224, or at common law.

➔Section 137. KRS 147A.200 is amended to read as follows:

- (1) The Governor's Office for Local Development is authorized and directed to apply for and receive federal funds to be placed in a state account called the gas system restoration and development project account, and to provide staff to administer said funds. The funds in this account may be used in any gas system restoration or development project approved by the Gas System Restoration and Development Project Account Review Board.
- (2) A Gas System Restoration and Development Project Account Review Board is established and shall consist of eight (8) members appointed by the Governor. The board shall be chaired by the commissioner of the Governor's Office for Local Development and shall include representatives of the Public Service Commission, state fire ~~marshal~~ ~~Marshal's Office~~, Governor's Office for Local Development, Kentucky Infrastructure Authority, banking and finance industry, commercial or industrial consumers, Kentucky Gas Association, and low-income or minority group consumers. Members shall be reimbursed for necessary expenses in attending meetings.
- (3) The review board shall meet as necessary and shall establish rules for conducting its business. The review board shall consider applications for loans from the account and approve or disapprove loan applications. No loan shall be considered unless the applicant has complied with all construction and securities requirements of the Public Service Commission. In reviewing loan applications, the review board may request the testimony of the county judge/executive of an affected county and any other witnesses deemed appropriate.

➔Section 138. KRS 148.590 is amended to read as follows:

- (1) There is created the Kentucky Sports Authority, which shall be attached to the Tourism, Arts and Heritage Cabinet, Office of the Secretary, for administrative purposes.
- (2) The authority shall consist of fifteen (15) members, including the Lieutenant Governor, the secretary of the Tourism, Arts and Heritage Cabinet, the secretary of the ~~Environmental and~~ Public Protection Cabinet, and twelve (12) members appointed by the Governor. The members appointed by the Governor shall include representatives of the Kentucky *Horse* Racing *Commission* ~~Authority~~, the fish and wildlife community, and the Kentucky Boxing and Wrestling Authority.
- (3) The Lieutenant Governor shall serve as chairperson of the authority. Members shall elect other officers as they deem necessary. Of the members initially appointed by the Governor, one-third (1/3) shall serve a term of four (4) years, one-third (1/3) shall serve a term of three (3) years, and one-third (1/3) shall serve a term of two (2) years. All succeeding terms shall be for four (4) years.
- (4) The secretary of the Tourism, Arts and Heritage Cabinet shall appoint an executive director, with the prior written approval of the Governor, to head the authority. The cabinet shall provide additional administrative support to the authority from the cabinet's existing staff as necessary.
- (5) The authority shall meet monthly and at other times as necessary, upon the call of the chairperson. Members shall be reimbursed for expenses incurred in performing the authority's duties, functions, and responsibilities.
- (6) The authority's primary responsibility shall be to recruit, promote, assist, place, and develop sporting events, facilities, attractions, and programs in the Commonwealth, with the ultimate goal of developing commerce, the economy, job opportunities, and revenue streams. The authority's duties shall include but not be limited to the following:
 - (a) Lead efforts to attract national and regional sporting events to Kentucky by working with the National Collegiate Athletic Association, the National Association of Intercollegiate Athletics, the Professional Golf Association, the National Football League, the National Basketball Association, the Professional Bowlers Association, the Professional Tennis Tour, the National Association for Stock Car Auto Racing, the United States Olympic Committee, Bassmasters, and other nationally recognized organizations;
 - (b) Work toward establishing professional franchises in Kentucky, and develop an overall strategic plan to recruit and retain all forms of professional and amateur sporting events, including boxing, motor vehicle racing, baseball, football, soccer, hockey, tennis, gymnastics, volleyball, and figure skating;
 - (c) Identify and propose improvements for sporting activity infrastructure, including opportunities for private and public partnership on infrastructure development; present for the Governor's approval any financial plan that would require state tax dollars to build new athletic facilities; and upon the Governor's approval of a proposed financial plan, present it to the General Assembly;

- (d) Foster relationships between sporting event organizers and event sponsors, and between and among state agencies, and provide advice and direction for increasing the number and quality of sporting events;
- (e) Evaluate various sports and sports-related activities and entities, such as auto racing, summer instructional camps for cheerleading, and sports agents, and make written recommendations to the Governor and the General Assembly as to whether additional regulation, licensing, or taxing are necessary;
- (f) Attempt to involve renowned Kentucky athletes in the war against drugs and the promotion of the Governor's Wellness Initiative;
- (g) Work with Kentucky Educational Television and other media outlets to establish and develop a twenty-four (24) hour television channel devoted to promoting and highlighting healthy lifestyles, sports, and applicable government programs, such as the state park system and the Department of Fish and Wildlife Resources;
- (h) Develop and recommend to the Governor, as necessary, legislation and administrative regulations to further the purposes of the authority, provide additional professional and amateur participation by Kentucky's citizens, provide adequate safety measures and ethical operations for sporting events, recruit and maintain professional and amateur sporting events, and address the fiscal and tax implications of the issues and activities of this section; and
- (i) Assume all duties, functions, responsibilities, records, equipment, and staff of the Governor's Commission on Sports, Physical Activity, and Wellness established under KRS 11.190, and establish a council titled the Council on Sports, Physical Activity, and Wellness to implement these transferred statutory responsibilities.

➔Section 139. KRS 148.795 is amended to read as follows:

- (1) As used in this section:
 - (a) "Agreement" means a recreational land use agreement where at least one (1) party is a governmental entity as defined in this section;
 - (b) "Government" or "governmental entities" means any government entity of the Commonwealth, including state government agency, city, county, urban-county government, consolidated local government, unified local government, or charter county;
 - (c) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery when attached to the realty;
 - (d) "Owner" means a private individual, corporation, or government who possesses a fee interest in the land; and
 - (e) "Recreational purpose" includes but is not limited to any of the following, or any combination thereof: hunting, fishing, rock climbing, swimming, boating, camping, picnicking, hiking, bicycling, horseback riding, pleasure driving, nature study, waterskiing, winter sports, all-terrain vehicle riding, and viewing or enjoying historical, archaeological, scenic, or scientific sites.
- (2) The Kentucky Recreational Trails Authority is hereby established and attached to the Office of the Secretary, Tourism, Arts and Heritage Cabinet, for the purpose of planning and implementing programs to expand tourism opportunities for off-road activities that are pertinent to nonmotorized and motorized vehicle use, including but not limited to pedestrians, bicycles, mountain bicycles, horses, all-terrain vehicles (ATVs), and off-highway vehicles (OHVs), on designated lands in Kentucky. Membership of the authority shall consist of the following:
 - (a) A chairman, selected from its members, to be designated by the Governor;
 - (b) Membership shall include the following members:
 - 1. Two (2) representatives of the Kentucky Motorcycle Association, to be appointed by the Governor from a list of five (5) nominees selected by the association. The initial term of one (1) member shall expire one (1) year after the date of appointment. The initial term of the other member shall expire two (2) years after the date of appointment;

2. One (1) member of the League of Kentucky Sportsmen, appointed by the Governor. The initial term of this member shall expire one (1) year after the date of appointment;
 3. One (1) member of the Kentucky Council of Area Development Districts, appointed by the Governor. The initial term of this member shall expire four (4) years after the date of appointment;
 4. Two (2) members selected from ATV associations, with consideration given to geographic diversity. The initial term of one (1) of these members shall expire two (2) years after the date of appointment, and the initial term of the other member shall expire three (3) years after the date of appointment;
 5. Two (2) members representing Kentucky Farm Bureau, with consideration to the eastern and western parts of the state. The initial term of one (1) member shall expire two (2) years after the date of appointment, and the initial term of the other member shall expire four (4) years after the date of appointment; and
 6. Two (2) members representing the coal industry, with consideration to the eastern and western parts of the state. The initial term of one (1) member shall expire two (2) years after the date of appointment, and the initial term of the other member shall expire four (4) years after the date of appointment;
- (c) Seven (7) additional members who shall be appointed by the Governor from the following groups:
1. One (1) member shall be chosen from a Kentucky bicycling organization that is affiliated with either the League of American Bicyclists, the United States Cycling Federation, or the International Mountain Bicycling Association. The initial term of this member shall expire three (3) years after the date of appointment;
 2. One (1) member shall be from a Kentucky equine organization that has trail riding as its primary focus. The initial term of this member shall expire one (1) year after the date of appointment;
 3. One (1) member shall be chosen from a state or national hiking or backpacking organization. The initial term of this member shall expire two (2) years after the date of appointment;
 4. Two (2) members shall be chosen from five (5) persons nominated in writing by the Kentucky Horse Council. The initial term of one (1) of these members shall expire four (4) years after the date of appointment, and the initial term of the other member shall expire two (2) years after the date of the appointment;
 5. One (1) member shall be chosen by the Governor from the public at large. The initial term of this member shall expire three (3) years after the date of appointment; and
 6. One (1) member shall be selected from among the county judges/executive of the Commonwealth. The initial term of this member shall expire two (2) years after the date of appointment;
- (d) Additionally, the following shall serve as members by virtue of their official positions:
1. The secretary of the Transportation Cabinet, or the secretary's designee;
 2. The secretary of the Tourism, Arts and Heritage Cabinet, or the secretary's designee;
 3. The commissioner of the Department of Fish and Wildlife Resources, or the commissioner's designee;
 4. The secretary of the Justice and Public Safety Cabinet, or the secretary's designee;
 5. The secretary of the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, or the secretary's designee; and
 6. The Commissioner of the Department of Agriculture, or the Commissioner's designee; and
- (e) Upon the expiration of the terms of the initial members described in paragraphs (b) and (c) of this subsection, the Governor shall appoint thirteen (13) members of the public in such a manner as to ensure equal representation of motorized and nonmotorized use of trails and in accordance with the

requirements of paragraphs (b) and (c) of this subsection. Any vacancy on the authority shall be filled by the Governor for the unexpired term.

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

in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.

- (10) The Tourism, Arts and Heritage Cabinet may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A in order to carry out the provisions of this section.

➔Section 140. KRS 148.876 is amended to read as follows:

- (1) The power of eminent domain may only be exercised to acquire land in fee within the boundaries of the trail, except that the power of eminent domain shall not be exercised to acquire any privately owned dwelling, areas designated for residential structures and their surrounding properties, or property owned or leased, including adjacent or contiguous tracts of land leased or owned or which may be acquired, for the purposes of operating an oil or gas well, surface or underground coal mine operation, or surface or underground mineral quarrying operation, if the person holds a state permit or license issued by the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet, Division of Mine Permits or Office of Mine Safety and Licensing.
- (2) Within the boundaries of the trail, the department may acquire, on behalf of the Commonwealth, fee title or lesser interests in land. Acquisition of land may be by gift, by purchase with donated funds, by funds appropriated by the General Assembly, by the use of proceeds from the sale of bonds, by exchange, by assumption of property tax payments, or by other authorized means. Notwithstanding the provisions in KRS 350.085(3) and 353.610, in acquiring any interests the Commonwealth or its agencies shall waive the three hundred (300) foot restriction contained in KRS 350.085(3) and boundary restrictions for a well set forth in KRS 353.610.

➔Section 141. KRS 149.010 is amended to read as follows:

- (1) There is hereby created and there shall be maintained within the Department for Natural Resources in the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet a Division of Forestry to supervise all forestry property and advance forest interests of the state through development of such property and interests. It shall initiate such projects as will promote public appreciation of forest protection and of reforestation; encourage tree planting in general and on the public highways in particular; grow, collect and distribute seedlings; form and foster junior forestry clubs; cooperate with local civic organizations in the care of trees and planting of more trees; provide for organized forest fire protection; cooperate with the federal government, state departments and landowners in the perpetuation of forests, the promotion of tree growth and the redemption of wasteland for agricultural purposes; and encourage an interest in forestry by correspondence, press, pamphlets, reports, moving pictures and organizations.
- (2) The director of the Division of Forestry with the approval of the secretary for ***energy and environment***~~environmental and public protection~~ shall adopt and enforce such rules and regulations as may be necessary to carry out the functions assigned the cabinet by law.

➔Section 142. KRS 149.015 is amended to read as follows:

There shall be established and maintained within the nursery or nurseries of the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet a section or sections for the propagation of blight resistant chestnut tree seedlings. Such seedlings shall be distributed to landowners and citizens of the Commonwealth at reasonable cost and under and subject to such rules and regulations as may be established by the secretary for environmental and public protection.

➔Section 143. KRS 149.020 is amended to read as follows:

- (1) The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet may receive by donation, purchase, or lease lands for forestry purposes, and may convey, exchange, or lease said lands and may sell timber or other forest products thereon. In exercising this function the cabinet shall be exempted from any provision of KRS 45.301 or 45A.045, except with respect to the purchase, conveyance, exchange, or inventory of lands.
- (2) No land shall be purchased, leased, or received as a donation unless the title thereto is merchantable and has been approved by the Attorney General.

➔Section 144. KRS 149.030 is amended to read as follows:

The ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet may establish forest reserves in places where the land is suitable for the growth of timber and for the propagation of wild animal life. It may lease lands suitable for the purpose of growing timber and adapted to the propagation of game and wild animals. Such leases shall be for a term of not less than twenty (20) nor more than one hundred (100) years, and the rental shall not exceed the amount of state, county and school taxes on the property. The rentals shall be paid not later than December 31 in each year, out of funds accruing to the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet. All taxes shall be paid by the owners of the property prior to or at the time the rentals are paid by the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet.

➔Section 145. KRS 149.040 is amended to read as follows:

- (1) The ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet has complete control over all property acquired or leased by it. It may post all forest reserves and may eject all trespassers from property under its control.
- (2) No person shall injure any property under its control, or interfere in any manner with the management and supervision of the property.
- (3) No person shall acquire title by adverse possession to any property under control of the cabinet.
- (4) The cabinet may cooperate with any department of the state or the federal government, for the purpose of protecting and propagating fish and game.

➔Section 146. KRS 149.060 is amended to read as follows:

If merchantable timber is taken from land leased to the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet, one-half (1/2) of the stumpage value of the timber shall be paid into the State Treasury and the other half (1/2) shall be paid to the lessor or his assigns. The sale of timber grown upon leased lands shall be made only by consent of all parties interested in the land or by court order. If all interested parties do not agree to sell the timber, the cabinet may, by a suit in equity, to which all persons interested shall be made parties, obtain an order directing the cabinet to sell merchantable timber on any leased lands.

➔Section 147. KRS 149.070 is amended to read as follows:

When any action is instituted in behalf of the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet, the county and Commonwealth's attorney shall represent it in the county in which the action is brought. The Attorney General shall have supervisory authority over all actions instituted for or against the cabinet.

➔Section 148. KRS 149.080 is amended to read as follows:

Forest wardens employed by the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet, shall assist in preventing, controlling and extinguishing forest fires, under direction of the cabinet. A forest warden must be a full-time employee of the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet who has been appointed by the secretary. A deputy forest warden can be a full-time or part-time employee of the cabinet or a non-employee who has been appointed by the secretary to have the same rights and privileges of a forest warden except the issuing of citations or arrests for violations of this chapter or collection of suppression costs.

➔Section 149. KRS 149.083 is amended to read as follows:

No person shall resist, obstruct, interfere with or threaten, or attempt to intimidate, or in any other manner interfere with any officer or employee of the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet in the discharge of his duties under the provisions of KRS Chapter 149.

➔Section 150. KRS 149.087 is amended to read as follows:

- (1) The ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet may secure such automobile liability insurance as will reasonably protect the interest of employees of the cabinet, particularly those employees driving trucks or heavy equipment in the conduct of official business.
- (2) Policies authorized by this section shall be purchased only in accordance with regulations prescribed by the ***commissioner***~~{executive director}~~ of insurance and the secretary of the Finance and Administration Cabinet.

➔Section 151. KRS 149.090 is amended to read as follows:

- (1) A forest warden, for violation of laws for the protection of the forest of the state, has the following arrest powers:

- (a) With a warrant;
 - (b) Without a warrant any person he observes committing a misdemeanor or a felony; and
 - (c) Without a warrant when he has reasonable grounds to believe that the person being arrested has committed a felony. No action for trespass shall lie against any forest warden, or person summoned by him, for crossing or working upon lands of another in connection with his duties as forest warden.
- (2) A forest warden may summon any resident of the state over eighteen (18) years of age who is physically able to assist in extinguishing forest fires. Inability or failure to pay such persons does not bar the authority of the warden to summon them.
- (3) A forest warden may require the use of horses, automobiles, tools and other equipment needed in extinguishing fires. Owners of said required equipment and materials shall receive reasonable compensation therefor, as determined by the forest warden. In case of disagreement upon the terms of compensation, the dispute shall be referred to the secretary for *energy and environment*, ~~environmental and public protection~~ who shall make the final decision.

→Section 152. KRS 149.097 is amended to read as follows:

The secretary for *energy and environment*, ~~environmental and public protection~~ may offer rewards out of moneys, appropriated to the *Energy and Environment*, ~~Environmental and Public Protection~~ Cabinet, for information leading to the apprehension and conviction of persons violating the laws relating to the setting of fires and forest fire control.

→Section 153. KRS 149.160 is amended to read as follows:

When the *Energy and Environment*, ~~Environmental and Public Protection~~ Cabinet determines that a danger of forest fire exists in a county in which the statewide system of forest fire protection has been established under KRS 149.510 to 149.600, the cabinet shall respond to the forest fire danger and employ those persons and means as, in its judgment, are expedient and necessary to respond to the forest fire danger or to extinguish the fire, within the limits of the expense that it has been authorized to incur in its instructions from the secretary for *energy and environment*, ~~environmental and public protection~~. The cabinet shall keep an itemized account of all expenses thus incurred and immediately send the account verified by affidavit to the secretary for *energy and environment*, ~~environmental and public protection~~ for examination. Upon approval by the secretary for *energy and environment*, ~~environmental and public protection~~, the account shall be paid from such fund or funds as are available to the cabinet for such purpose. No such payment shall be made to any person who has intentionally started the fire or to any person whose negligence caused or contributed to the setting of the fire.

→Section 154. KRS 149.170 is amended to read as follows:

No action for trespass shall lie against the secretary for *energy and environment*, ~~environmental and public protection~~, or any agent or employee of the *Energy and Environment*, ~~Environmental and Public Protection~~ Cabinet, or any forest warden on account of lawful acts done in legal performance of their duties.

→Section 155. KRS 149.180 is amended to read as follows:

Whenever possible, the secretary for *energy and environment*, ~~environmental and public protection~~ shall collect the costs of firefighting done and approved as provided in KRS 149.160, from the person responsible for the origin of the fire by his negligence or intent. The recovered costs shall be deposited in a special fund in the *Energy and Environment*, ~~Environmental and Public Protection~~ Cabinet. The recovered costs shall be repaid to the county in which the costs were incurred, if such county has fully paid its annual assessment to the statewide system as provided for in KRS 149.540 for the year in which the fire suppression costs were incurred. If a county is not eligible to receive the recovered costs, the money shall be used by the Division of Forestry to improve fire protection services. The funds so repaid to the county shall be placed in the county forest fire protection fund provided for in KRS 149.590. Any money in the *Energy and Environment*, ~~Environmental and Public Protection~~ Cabinet's, or its predecessor's, special fund upon July 15, 1998, that were not repaid to a county for having failed to fully pay its annual assessment, shall be used by the Division of Forestry to improve fire protection services. In the event the suppression cost is not collected, the Commonwealth's attorney of the county in which the fire occurred shall institute and prosecute the necessary proceedings. Costs recovered under this section shall be ordered to be paid directly to the *Energy and Environment*, ~~Environmental and Public Protection~~ Cabinet. The court shall not direct that the costs be paid through the circuit clerk.

→Section 156. KRS 149.280 is amended to read as follows:

- (1) The secretary for ***energy and environment***~~{environmental and public protection}~~, or his authorized agent, may, upon request, and whenever he deems it essential to the best interests of the people of the Commonwealth, cooperate with counties, cities, corporations, institutions or individuals in preparing plans for the protection, management and replacement of trees, woodlands and timber tracts, under an agreement that the parties obtaining such assistance pay at least the field expenses of the men employed in preparing said plans. Services rendered under this cooperative plan may include the designation of trees for sale or removal, measuring or estimating the commercial volume contained in the trees designated, marketing advice, and general forestry advice concerning the management of the landowner's forest.
- (2) When services are rendered under this section, the landowner or his agent, upon presentation of a statement, shall pay to the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet, within thirty (30) days of receipt of the statement, the amount due. The amounts so collected by the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet shall be paid into the State Treasury and shall be credited to a special fund for forest management and marketing, and, with such other funds as may be appropriated by the General Assembly, or contributed by the United States or any governmental or private agency for such purposes, shall be used and disbursed by the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet for such purpose.

➔Section 157. KRS 149.325 is amended to read as follows:

The secretary for ***energy and environment***~~{environmental and public protection}~~ shall be the compact administrator representing the Commonwealth of Kentucky as provided for in Article III of the compact approved by KRS 149.310. The ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet is hereby authorized to do any and all things required to make effective the provisions of the compact.

➔Section 158. KRS 149.330 is amended to read as follows:

As used in KRS 149.330 to 149.355, unless the context requires otherwise:

- (1) "Best management practices" means effective, practical, economical, structural, or nonstructural methods that prevent or reduce the movement of sediment, nutrients, pesticides, and other pollutants from the land to surface or groundwater, or that otherwise protect water quality from potential adverse effects of timber harvesting operations as developed by the Division of Forestry and approved by the Agriculture Water Quality Authority;
- (2) "Cabinet" means the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet;
- (3) "Director" means the director of the Division of Forestry;
- (4) "Division" means the Division of Forestry;
- (5) "Logger" means any person who conducts timber harvesting operations for commercial purposes;
- (6) "Operator" means any person who operates or exercises control over any timber harvesting operations;
- (7) "Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or business organization, and any agency or instrumentality of federal, state, or local government, including any publicly-owned utility or any publicly-owned corporation of federal, state, or local government;
- (8) "Timber harvesting operations" means activities directly related to the cutting or removal of trees from the forest as a raw material for commercial processes or purposes, including timber preharvesting and postharvesting activities associated with the implementation of appropriate best management practices. "Timber harvesting operations" does not include:
 - (a) The cutting of firewood;
 - (b) The cutting of evergreens grown for and cut for the traditional Christmas holiday season;
 - (c) The removal of trees incidental to clearing for coal mining or farm purposes or incidental to ground-disturbing construction activities, including well sites, and access roads and gathering lines for oil and natural gas operations;
 - (d) The cutting of trees for maintaining existing, or during construction of, rights-of-way for public highways or public utilities, unless those trees are being sold or provided as raw material for commercial wood product purposes; or
 - (e) The cutting of trees by an individual, nonindustrial landowner on his own property, if the cutting is performed by the individual, nonindustrial landowner; and

(9) "Water pollution" has the same meaning as in KRS 224.01-010.

➔Section 159. KRS 149.365 is amended to read as follows:

As used in KRS 149.360 to 149.430 and 149.991, unless the context requires otherwise:

- (1) "Secretary" means the secretary for *energy and environment*~~{environmental and public protection}~~.
- (2) "Cabinet" means the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet.
- (3) "Person" means an individual, corporation, partnership, association, municipality, state and federal government, or other public body or other legal entity, or any officer, employee or agent of any of the foregoing.
- (4) "Timberland" means any land which has enough timber or woody brush, standing or down, to constitute a fire menace to itself or adjoining lands, but does not include lands under cultivation or entirely in grass, nor land that is an isolated fire risk unless a fire on it would imperil the lands of an adjoining landowner.
- (5) "Flammable material" shall include but is not limited to refuse, debris, waste forest material, brush, stumps, logs, rubbish, fallen timber, grass, stubble, leaves, slash, and grain.

➔Section 160. KRS 149.370 is amended to read as follows:

No person shall:

- (1) Within or adjacent to timberland, dispose of a lighted match, cigarette, cigar, ashes, or other flaming or glowing substance, or any other substance or thing in such condition that it is likely to ignite a forest, brush, grass, or woods fire, or throw or drop any of the aforesaid objects or substances from a moving vehicle or drop or leave any of the aforesaid objects or substances within the limits of the right-of-way of any road or highway in such timberland. The driver of a moving vehicle shall be deemed prima facie liable where it cannot be determined which of the occupants of the moving vehicle threw or dropped any of the aforesaid objects or substances.
- (2) Smoke in timberland during an emergency period of fire danger as proclaimed in KRS 149.405.
- (3) Within or adjacent to timberland, set a backfire or cause a backfire to be set, except under the direct supervision of the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet, or unless it can be established that the setting of such backfire is necessary for the purpose of saving life or valuable property.
- (4) Without authority, destroy, deface, or remove any notice, sign, or poster of the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet, posted for the better protection of wood lots, forests, or wild lands from fire or trespass.
- (5) Use or operate within or adjacent to timberland a welding torch, tarpot, or other device which may cause a fire, without clearing flammable material surrounding the operation or without taking such other reasonable precautions necessary to ensure against the starting and spreading of fire.
- (6) Discharge or cause to be discharged a gun firing incendiary or tracer bullets or tracer charge or combustible gun wadding onto or across any timberland.
- (7) Have in his possession on timberland any incendiary or tracer bullet or tracer charge, except in the course of transporting the same in conformity with law.
- (8) In or adjacent to timberland, set fire or direct another to set fire to any flammable material for debris removal, cooking, heating, or to provide light without first obtaining permission from the landowner and taking necessary precautions to prevent the fire from spreading to adjacent lands. All burning materials shall be attended until extinguished.

➔Section 161. KRS 149.405 is amended to read as follows:

- (1) It shall be unlawful, when the forest lands, brush lands and fields in this state or any part thereof have become so dry or parched as to create an extraordinary fire hazard endangering lives and property, for any person, except the owner, tenant or owner's authorized agent, persons regularly engaged in cutting, processing, or moving forest products, persons engaged in constructing, maintaining, and operating utility or pipeline rights-of-way, or persons on official duty, to enter or travel in any state, county, municipal or private forest lands,

brush lands, fields or idle or abandoned lands in the area so affected except on public highways or well defined private roads.

- (2) When such an emergency is found to exist by the secretary for **energy and environment**~~{environmental and public protection}~~, the Governor may proclaim such a condition to exist in the Commonwealth or any described part thereof. The provisions of subsection (1) shall be effective only during the time such proclamation is in force and only in the area where such emergency is declared to exist.
- (3) The Secretary of State shall cause notice of such proclamation or any amendments or rescission thereof to be published in a newspaper or newspapers of general circulation in the area affected.

➔Section 162. KRS 149.415 is amended to read as follows:

The **Energy and Environment**~~{Environmental and Public Protection}~~ Cabinet shall administer KRS 149.360 to 149.430 and shall have power to issue, amend and revise such rules and regulations as may be authorized hereby or as may reasonably be necessary to implement the same. The cabinet is authorized to make, conduct or participate in any investigations and surveys designed to establish the cause of and responsibility for a particular forest fire or forest fire conditions generally and to cooperate with any and all law enforcement officers of or in this state in the apprehension and prosecution of persons violating this law. Nothing contained in KRS 149.360 to 149.430 shall be construed to limit or otherwise impair the jurisdiction or powers of any other department, agency or officer of or in this state to investigate, apprehend, prosecute or punish violations of law.

➔Section 163. KRS 149.430 is amended to read as follows:

- (1) If any forest fire shall originate as a result of the violation by any person of any provision of KRS 149.360 to 149.430, such person shall be, in addition to the penalty prescribed under KRS 149.991, liable to the state and to each county for the full amount of all expenses incurred by the state and county respectively in suppressing each fire, such amounts to be recoverable by action brought by the secretary for **energy and environment**~~{environmental and public protection}~~ in the name of the Commonwealth on behalf of the Commonwealth and by the county attorney on behalf of the county.
- (2) In addition to any penalty pursuant to KRS 149.991, any person violating any of the provisions of KRS 149.360 to 149.430 shall be answerable in damages to any persons suffering such damage for the cost incurred in the suppression of any fire resulting from such violation and for damage to property resulting from such fires.
- (3) Damages assessed under this section shall be ordered to be paid directly to the **Energy and Environment**~~{Environmental and Public Protection}~~ Cabinet or to any other injured person or organization specified by written order of the court. The court shall not direct that the damages be paid through the circuit clerk.

➔Section 164. KRS 149.510 is amended to read as follows:

As used in KRS 149.510 to 149.600, unless the context requires otherwise:

- (1) "Secretary" means the secretary for **energy and environment**~~{environmental and public protection}~~;
- (2) "Cabinet" means the **Energy and Environment**~~{Environmental and Public Protection}~~ Cabinet;
- (3) "Timberland" means any land which has enough timber or woody brush, standing or down, to constitute a fire menace to itself or adjoining lands, but does not include lands under cultivation or entirely in grass, nor land that is an isolated fire risk unless a fire on it would imperil the lands of an adjoining landowner.

➔Section 165. KRS 149.520 is amended to read as follows:

- (1) It shall be the duty of the cabinet to establish and maintain a statewide system of forest fire prevention, detection and suppression.
- (2) The cabinet shall formulate a plan and program subject to the approval of the secretary for **energy and environment**~~{environmental and public protection}~~ to extend forest fire protection to all counties not now participating in the state program. The plan shall provide for the establishment of such protection in all the counties of the state on or before January 1, 1964.

➔Section 166. KRS 149.600 is amended to read as follows:

- (1) Any person aggrieved by a listing of any portion of his property as timberland by the property valuation administrator may file a protest with the county judge/executive, provided the protest is in writing and is made

within thirty (30) days of receipt of notice of the listing. Protest may be made on the ground that the land or any portion so listed is not timberland, or that the timberland so listed will not be benefited by the forest fire protective system then in effect, or benefited by the proposed forest fire protective system if the assessment is being made for the first time in that county.

- (2) The county judge/executive shall hear all protests properly filed. Protests shall be heard within a reasonable time after the filing thereof, and reasonable notice shall be given to the protestant and the secretary for **energy and environment**~~environmental and public protection~~ as to the time and place of the hearing. The county judge/executive shall have authority to issue subpoenas to compel the attendance of any witness desired by any interested party, and he shall be authorized to administer the oath to any witness.
- (3) Proceedings for hearing any protest shall be summary and the findings of the county judge/executive shall be final, and an order shall be entered either dismissing the protest or directing the proper county officials to alter their records in accordance with the findings.

→Section 167. KRS 149.610 is amended to read as follows:

The purpose of KRS 149.610 to 149.680 is to place in the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, the authority and responsibility to control infestations or infections by insects or disease, which are hereby declared to be a public nuisance, in order to protect and preserve forest resources, enhance the growth and maintenance of forests, promote stability of forest-using industries, aid in fire control by reducing the menace created by dying and dead trees, conserve forest cover on watersheds, and protect recreational, wildlife and other values of the forests of the Commonwealth.

→Section 168. KRS 149.620 is amended to read as follows:

The secretary for **energy and environment**~~environmental and public protection~~ shall make surveys and investigations to determine the threat or presence of infestations and control of forest pests. For this purpose duly designated representatives of the secretary may enter at reasonable times on public and private lands for the purpose of conducting such surveys, investigations and controls.

→Section 169. KRS 149.630 is amended to read as follows:

Whenever the secretary for **energy and environment**~~environmental and public protection~~ finds that any forest area is infested, threatened to be infested, infected, or threatened to be infected with insects or disease, he shall determine whether measures of control are needed and are available and the area over which the control measures shall be applied. He shall prescribe the proposed zone in which control measures are to be applied, and shall publish notice of the proposal, as required by law. Such notice shall include a brief description of the location of the proposed zone of infestation or infection and the approximate time when control measures will be executed.

→Section 170. KRS 149.640 is amended to read as follows:

The secretary for **energy and environment**~~environmental and public protection~~ may apply measures of infestation and infection control on public and private forests and other lands anywhere in the Commonwealth, to any trees, timber, plants or shrubs thereon harboring or which may harbor any insects or disease. The secretary may enter into agreements with owners of such lands covering the control work on their lands, and fix the pro rata basis on which the cost of such work will be shared between the Commonwealth and said owner; provided, that the failure of the secretary to offer an agreement to or execute an agreement with any owner shall not impair the right of the secretary's representatives to enter on the lands of said owner to conduct control operations.

→Section 171. KRS 149.650 is amended to read as follows:

The secretary for **energy and environment**~~environmental and public protection~~ is authorized to carry out control work on other adjacent or interior holdings, which, if uncontrolled, would cause a reinfestation or reinfection of the controlled area, and to contract with owners of land in the affected area relative to payment of the cost of such work.

→Section 172. KRS 149.660 is amended to read as follows:

The secretary for **energy and environment**~~environmental and public protection~~ may cooperate with the federal government or agencies thereof, other agencies of the Commonwealth, county or municipal governments, agencies of neighboring states, or other public or private organizations, or individuals and may accept such funds, equipment, supplies or services from cooperators and others as may be deemed appropriate. The secretary may provide in

agreements with the federal government or its agencies for matching of federal funds as required under federal laws relating to forest pests.

➔Section 173. KRS 149.670 is amended to read as follows:

All moneys collected under the provisions of KRS 149.610 to 149.680, including such as may be contributed or paid by the federal government or any other public or private agency, organization or individual, shall be placed in the State Treasury to the credit of a revolving, trust or agency fund account for use by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet in carrying out the purposes of KRS 149.610 to 149.680.

➔Section 174. KRS 149.680 is amended to read as follows:

The secretary for **energy and environment**~~environmental and public protection~~ is authorized as required by law, to employ necessary personnel, procure necessary equipment, supplies and services; to enter into contracts in the name of the secretary and to provide funds to any agency of the United States for work or services under the forest pest control program. The secretary for **energy and environment**~~environmental and public protection~~ may prescribe rules and regulations for carrying out the purposes of KRS 149.610 to 149.680.

➔Section 175. KRS 150.175 is amended to read as follows:

The kinds of licenses and tags authorized by this chapter, and the acts authorized to be performed under the licenses and tags, subject to the other provisions of this chapter and subject to administrative regulations promulgated under this chapter, shall be as follows:

- (1) Statewide resident sport fishing license, which authorizes the holder to take fishes by angling, or take crayfish by a minnow seine, or by hand, to take minnows by the use of a minnow seine, minnow trap, or dip net, or to take fishes by grabbing, giggering, snagging, snaring, jugging, and bow and arrow, and to take frogs and turtles from any waters in any county of this state open for such purposes and subject to the limitations in this chapter and additional limitations that the department may from time to time prescribe. This license shall not authorize the holder to sell fish;
- (2) A short-term sport fishing license, which authorizes the holder to perform all acts authorized by a statewide sport fishing license and subject to the same limitations or prescribed administrative regulations. This license shall not authorize the holder to sell fish;
- (3) A resident commercial fishing license and a nonresident commercial fishing license, which authorize a holder to perform any act authorized by a sport fishing license and to take rough fishes from the waters of the state by the use of commercial fishing gear as prescribed by administrative regulation. The license shall also authorize the holder to sell rough fishes, other than those protected by administrative regulation;
- (4) A commercial fishing gear tag, which shall be attached to each piece of commercial fishing gear including hoop nets, slat traps, trotline, wing nets, and to each one hundred (100) feet of linear gear or portion thereof in use, including commercial seines, gill nets, or trammel nets. Commercial gear tags may be issued only to a person holding a resident or nonresident commercial fishing license;
- (5) Live fish and bait dealer's licenses, resident and nonresident, which authorize the holder to sell bait and live fish as may be prescribed by administrative regulation;
- (6) Musseling licenses, resident and nonresident, which authorize the holder to take mussels for commercial purposes as may be prescribed by administrative regulation;
- (7) A statewide resident hunting license, which authorizes the holder to take or pursue wild animals, wild birds, frogs, and turtles with gun, bow and arrow, dog, or falcon, or to participate in a fox-hunting party engaged in the hunting or pursuing of foxes with dogs for sport, according to the provisions of the laws and administrative regulations of the department;
- (8) A junior statewide hunting license, which may be issued to a person before he **or she** has reached his **or her** sixteenth birthday, and which authorizes the holder to exercise all the privileges authorized by a statewide hunting license. No junior hunting license shall be issued without the written permission of parent, guardian, or person having custody of the person under sixteen (16) years of age;
- (9) Trapping licenses, resident and nonresident, which authorize the holder to take wild animals by trapping upon his **or her** own lands or upon the lands of another person, if the holder of the license has first obtained oral or written consent as provided in KRS 150.092 and administrative regulation;

- (10) Taxidermist licenses, commercial and noncommercial, which authorize the holder to engage in the act of preparing, stuffing, and mounting the skins of wildlife;
- (11) A commercial guide's license, which authorizes the holder to guide hunting and fishing parties according to the provisions of the laws and administrative regulations of the department;
- (12) Fur buyer's licenses, resident and nonresident, which authorize the holder to buy raw furs from licensed trappers and hunters and to sell raw furs so purchased. Applicants for the license shall state the number of premises to be used and shall display at each a copy of the license as furnished by the department, except that the commissioner may limit the number of copies furnished and may revoke the license for violation;
- (13) A fur processor's license, which may be issued only to a resident, a partnership, firm, or corporation of this state and which authorizes the holder to buy raw furs when in legal possession for processing, manufacture, or retention in cold storage or for resale;
- (14) A nonresident sport fishing license, which authorizes the holder to perform any act authorized by a resident statewide sport fishing license. This license shall not authorize the holder to sell fish;
- (15) A nonresident annual hunting license, which authorizes the holder to perform any act authorized by a resident statewide hunting license;
- (16) Shoot-to-retrieve field trial permits, four (4) day and single day, which authorize a permit holder to conduct a shoot-to-retrieve field trial on private or government-owned lands. With a four (4) day permit, all participants, whether residents or nonresidents, shall not be required to possess any other license to participate in the permitted field trial, and the permit shall expire four (4) days after the date on which the field trial began. With the single day permit, the permit is valid for one (1) day and all participants shall have a valid resident or nonresident annual Kentucky hunting license. A permit is not required to conduct a shoot-to-retrieve field trial on a licensed shooting preserve; however, all participants that take or attempt to take game shall have in their possession a resident or nonresident annual Kentucky hunting license;
- (17) Game permits and junior game permits, which, in combination with a valid statewide hunting license or a valid junior statewide hunting license, authorize the holder to take or pursue the specified game species in any designated open area of this state, during the open season and according to the provisions of the laws and administrative regulations governing the hunting;
- (18) A combination hunting and fishing license, which authorizes only resident holders to perform all acts valid under either a sport fishing or hunting license;
- (19) A trout permit, which in combination with a valid statewide fishing license, authorizes the holder to take trout by angling or as may be prescribed by administrative regulation;
- (20) A commercial waterfowl permit, which authorizes the holder to establish and operate a commercial waterfowl hunting preserve;
- (21) A short-term hunting license, which authorizes the holder to perform all acts authorized by a statewide hunting license according to the provisions of the laws and administrative regulations of the department;
- (22) A joint statewide resident sport fishing license issued to a husband and wife which authorizes them to take fish as provided in subsection (1) of this section. The license fee for this joint license shall be ten percent (10%) less than the license fee set by the commission for two (2) statewide resident sport fishing licenses;
- (23) A Kentucky waterfowl permit, which in combination with a valid statewide hunting license and compliance with applicable federal law, authorizes the holder to take or pursue waterfowl and migratory shore or upland game birds;
- (24) A pay lake license which authorizes the holder to operate privately owned impounded waters for fishing purposes for which a fee is charged;
- (25) A migratory game bird permit, which, in combination with a statewide hunting license and compliance with applicable federal law, allows the holder to take migratory shore or upland game birds;
- (26) A senior/disabled combination hunting and fishing license, which authorizes the holder to perform all acts valid under a sport fishing license, a sport hunting license, or a state permit to take deer, turkey, trout, waterfowl, or migratory shore or upland game birds, and which shall be available to a Kentucky resident who is:

- (a) Sixty-five (65) years of age or older; or
- (b) An American veteran at least fifty percent (50%) disabled as a result of a service-connected disability; or
- (c) Declared permanently and totally disabled by the Federal Social Security Administration, the United States Office of Personnel Management, the Teachers' Retirement System of the State of Kentucky, the ~~Department~~~~Office~~ of Workers' Claims, or its equivalent from another state, or the United States Railroad Retirement Board.

The senior/disabled combination license shall not be valid unless the holder carries proof of residency and proof of age or disability, as the department may require by administrative regulation, on his or her person while performing an act authorized by the license;

- (27) A sportsman's license for residents that includes an annual hunting and fishing license and such permits as allowed by administrative regulations promulgated by the department; and
- (28) A special license for residents and nonresidents for the purpose of hunting on licensed shooting areas. This license shall be valid only for the shooting areas for which it was issued and shall remain in effect for one (1) year. If the hunter holds either a nonresident or resident statewide hunting license for the current year, the special license shall not be required.

➔Section 176. KRS 151.035 is amended to read as follows:

- (1) The Kentucky Geological Survey shall be designated as the Commonwealth's official repository for all information relating to the occurrence and quality of groundwater as defined in KRS 151.100.
- (2) The ***Energy and Environment*** Cabinet ~~for Environmental and Public Protection~~, the Cabinet for Health and Family Services, and any other cabinet, department, commission, board, or governmental agency, except as provided in subsection (4) of this section, that, by statute, administrative regulation, or as part of its routine activities, collects or generates information about groundwater, shall transmit or cause to be transmitted that information to the Kentucky Geological Survey within ninety (90) days of receipt or generation, or a time determined between the Geological Survey and the other party.
- (3) The information to be transmitted may include:
 - (a) Drillers logs and completion reports of wells drilled or dug for the purpose of producing, testing, or monitoring groundwater;
 - (b) Geophysical logs of water wells;
 - (c) Water quality analyses of both organic and inorganic constituents;
 - (d) Results of all pump, extraction, and injection tests;
 - (e) Flow determinations of surface discharges of groundwater; and
 - (f) Any additional data as the Kentucky Geological Survey shall require.
- (4) All institutions of higher learning shall be encouraged, but not required, to submit to the Kentucky Geological Survey copies of all research data, including theses and dissertations relating to the occurrence or quality of groundwater.

➔Section 177. KRS 151.100 is amended to read as follows:

As used in KRS 151.110 to 151.460 and 151.990, the words listed herein shall have the following respective meanings, unless another or different meaning or intent shall be clearly indicated by the context:

- (1) The word "authority" shall mean the Water Resources Authority of Kentucky;
- (2) The word "cabinet" shall mean the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet;
- (3) The word "stream" or "watercourse" shall mean any river, creek or channel, having well defined banks, in which water flows for substantial periods of the year to drain a given area, or any lake or other body of water in the Commonwealth;
- (4) The word "diffused surface water" shall mean that water which comes from falling rain or melting snow or ice, and which is diffused over the surface of the ground, or which temporarily flows vagrantly upon or over the

surface of the ground as the natural elevations and depressions of the surface of the earth may guide it, until such water reaches a stream or watercourse;

- (5) The word "ground water" or "subterranean water" shall mean all water which fills the natural openings under the earth's surface including all underground watercourses, artesian basins, reservoirs, lakes, and other bodies of water below the earth's surface;
- (6) The word "floodway" shall mean that area of a stream or watercourse necessary to carry off flood water as determined by the secretary;
- (7) The word "floodplain" shall mean the area in a watershed that is subject to inundation;
- (8) The word "watershed" shall mean all the area from which all drainage passes a given point downstream;
- (9) The word "domestic use" shall mean the use of water for ordinary household purposes, and drinking water for poultry, livestock, and domestic animals;
- (10) The word "water resources project" or "project" shall mean any structural or nonstructural study, plan, design, construction, development, improvement or any other activity including programs for management, intended to conserve and develop the water resources of the Commonwealth and shall include all aspects of water supply, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures;
- (11) The word "withdraw" or "withdrawal of water" shall mean the actual removal or taking of water from any stream, watercourse or other body of public water;
- (12) The word "dam" shall mean any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:
 - (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the cabinet; or
 - (b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre-feet or more;
- (13) "Embankment dam" shall mean any dam constructed of excavated natural materials or of industrial waste materials;
- (14) "Gravity dam" shall mean a dam constructed of concrete or masonry that relies on its weight for stability;
- (15) The word "person" shall mean any individual, public or private corporation, political subdivision, government agency, municipality, copartnership, association, firm, trust, estate, or other entity whatsoever;
- (16) "Secretary" shall mean the secretary of the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet;
- (17) "Authorized representative" shall mean an individual specifically authorized by the secretary to act in his behalf;
- (18) The word "reservoir" shall mean any basin which contains or will contain the water impounded by a dam; and
- (19) "Owner" shall mean any person who owns an interest in, controls, or operates a dam.

➔Section 178. KRS 151.550 is amended to read as follows:

- (1) There is hereby created a Community Flood Damage Abatement Program within the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet.
- (2) It is hereby declared to be the purpose of the program to provide funds and technical assistance to local governments to initiate flood control projects and programs.
- (3) This program shall be administered by the secretary according to standards designed to promote adequate planning, construction and conservation measures to deal with water drainage problems.
- (4) Any local sponsoring community desiring to qualify for funding, must:
 - (a) Make application to the cabinet which shall be in the form and manner prescribed by the cabinet;
 - (b) Provide at no expense to the cabinet, all lands and easements necessary for project construction;

- (c) Agree to operate and maintain the project in a manner acceptable to the Commonwealth to insure the continued capacity of the project to prevent or minimize flood damages;
 - (d) Submit evidence of the history of flooding within the last five (5) years;
 - (e) Submit evidence of flood damage in dollars within the last five (5) years.
- (5) The cabinet shall have and exercise the power and authority to annually inspect the completed project to insure compliance with any of the provisions of this section or with any rules, regulations or orders adopted pursuant thereto, or with any of the conditions contained in subsection (4)(c) of this section.

➔Section 179. KRS 151.614 is amended to read as follows:

- (1) Stream Restoration and Mitigation Authorities established under KRS 151.610 to 151.615 shall work in close partnership with local, state, and federal agencies in actively advocating for the restoration, protection, and enhancement of the watershed through stream restoration and mitigation projects. To this end, an authority may:
- (a) Recommend proposed stream restoration and mitigation projects to the 404 Mitigation Review Team for its consideration; and
 - (b) Undertake the management of stream restoration and mitigation projects and may, in accordance with policies and regulations of the USACE, seek approval to be designated by the USACE as a qualified mitigation organization.
- (2) Stream Restoration and Mitigation Authorities may:
- (a) Establish a technical advisory committee, soliciting participation from representatives of area utilities and water, sewer, and sanitation districts, federal, state, and local governments, and agencies thereof, consultants, colleges, and universities to assist the authority in the prioritization of proposed mitigation projects, the management of mitigation projects and in other efforts to improve watershed management;
 - (b) Review and comment on plans developed by federal, state, and local government agencies which relate to the watershed management and identify and recommend areas in which improved coordination of planning and project design could, on a case-by-case and a systemic basis, result in greater efficiencies and better outcomes for watershed management and water resource protection;
 - (c) Initiate, sponsor, and participate in educational programs to increase public awareness and stakeholder involvement in water resources protection and watershed management;
 - (d) Prepare a six (6) year work plan, with annual review, for improvement of the water resources of the watershed, including the:
 1. Identification and prioritization of site-specific stream restoration projects;
 2. Development of recommendations for coordination of infrastructure improvements and water resource enhancement;
 3. Solicitation of public participation in development of the work plan and of other strategies for water resource improvement and watershed management; and
 4. Description of accomplishment during the previous year and the status of projects undertaken by the authority of other entities within the watershed;
 - (e) Review project proposals for mitigation or restoration within the watershed to ensure that the appropriate benchmarks and monitoring of preproject and postproject hydrologic and biologic conditions are included in the mitigation and restoration projects in order to measure success in achievement of the project goals;
 - (f) Conduct pilot or demonstration projects for stream restoration and mitigation; and
 - (g) Contract for technical assistance in undertaking any of the responsibilities authorized under KRS 151.610 to 151.615.
- (3) Stream Restoration and Mitigation Authorities shall report to the Legislative Research Commission by October 31 of each year on any stream restoration and mitigation work performed by the authority in the watershed, including the amount of mitigation funds received from USACE or from a permittee under a Section 404

permit approved by the USACE, and any funding received from all sources and a listing of upcoming restoration and mitigation projects authorized by the USACE or the Department for Environmental Protection.

- (4) When performing any stream restoration or mitigation activity, the authority shall comply with all permitting procedures set out in federal and state statutes and associated regulations of the USACE and the Kentucky ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet, and other local, state, and federal agencies, as appropriate.
- (5) The work plan provided for in paragraph (d) of subsection (2) of this section shall not be construed as amending or affecting plans developed under local, state, or federal law, including plans developed under Section 208 of the Federal Water Pollution Act, 33 U.S.C. sec 1288.

➔Section 180. KRS 151.710 is amended to read as follows:

- (1) The Governor shall appoint members to the Kentucky River Authority, created to carry out the essential public purpose of protecting the health and welfare of the people of the Commonwealth as declared in KRS 151.700.
- (2) The Governor shall appoint the secretaries of the Finance and Administration Cabinet and the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet and ten (10) other persons as the members of the authority. The secretaries may designate alternates. Of the ten (10) persons, one (1) shall be a registered engineer, one (1) an expert in water quality, one (1) a mayor, and one (1) a county judge/executive. The mayor and the county judge/executive shall be officers from counties which obtain the major portion of their water supply from the Kentucky River. Five (5) members shall reside in a county adjacent to the main stem of the Kentucky River, one (1) of the five (5) members residing in counties adjacent to locks and dams one (1) through four (4); and one (1) member shall reside in a county adjacent to either the North Fork, Middle Fork, or South Fork of the Kentucky River. Of the twelve (12) members, only one (1) may be an employee of the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet.
- (3) Of the ten (10) members first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, three (3) for terms of three (3) years, and three (3) for terms of four (4) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the authority for a term of four (4) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term. Any member whose term has expired may continue to serve and vote until his or her successor is appointed and qualified.
- (4) Each member shall receive as compensation one hundred dollars (\$100) per day for attending a meeting of the authority.
- (5) Any member who misses three (3) consecutive meetings of the authority shall be deemed to have vacated the office. The authority shall declare the office vacant and the office shall be filled as provided by subsections (2) and (3) of this section.
- (6) The authority annually shall elect one (1) of its members as chairman. A quorum for the transaction of business shall be seven (7) members, and a majority of the members present at a meeting may take action on any matter legally before the authority.
- (7) Members shall be paid their necessary travel expenses incurred in attending meetings and in the performance of their official duties, in addition to the per diem compensation of one hundred dollars (\$100).
- (8) The authority shall meet at least quarterly, and may meet upon the call of the chairman.
- (9) The chairman shall be paid necessary travel expenses and a one hundred dollar (\$100) per diem compensation for conducting official business of the authority.
- (10) The authority shall be attached for administrative purposes to the Finance and Administration Cabinet, and the cabinet shall provide the necessary personnel to provide administrative services for the authority.
- (11) The necessary travel expenses and per diem compensation of the members of the authority in attending meetings and in the performance of their official duties shall be paid by the authority.
- (12) The authority shall promulgate administrative regulations necessary to carry out its duties, and shall report annually to the Governor and the Legislative Research Commission.

➔Section 181. KRS 151.720 is amended to read as follows:

The Kentucky River Authority is authorized and empowered to:

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

specifically authorized or permitted within the biennial executive budget. There is hereby created the Kentucky River Park to be located as determined by the authority;

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

➔Section 182. KRS 151B.175 is amended to read as follows:

- (1) The executive director of the Office of Career and Technical Education is authorized to provide medical and accident insurance for students enrolled in the state secondary area technology centers and area vocational education centers. The Office of Career and Technical Education may enter into a contract or contracts with one (1) or more sureties or insurance companies or their agents to provide appropriate medical and accident insurance coverage and to provide group coverage to all students enrolled in state-operated schools under its jurisdiction. The appropriate group coverage shall be issued by one (1) or more sureties or insurance companies authorized to transact business in this state, and such coverage shall be approved by the *commissioner*~~{executive director}~~ of insurance.
- (2) The executive director of the Office of Career and Technical Education shall promulgate administrative regulations to implement the medical and accident insurance program. The executive director of the Office of Career and Technical Education may fix the rate of fees for all secondary students, the provisions of KRS 151B.165 with respect to fees for secondary students notwithstanding, as he or she deems necessary to meet the expense in whole or in part for appropriate student medical and accident insurance.
- (3) The limits of liability and other appropriate provisions for student medical and accident insurance authorized by this section shall be set by the executive director of the Office of Career and Technical Education.

➔Section 183. KRS 152.590 is amended to read as follows:

The *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet shall have the following general powers:

- (1) To acquire by purchase, exercise of the right of eminent domain, grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, and by lease or other contract the right to use and occupy any lands, selected in the discretion of the secretary of the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet as constituting necessary, desirable or acceptable sites for projects of the cabinet, including any and all lands adjacent to a project site as in the discretion of the secretary may be necessary or suitable for satellite projects or restricted areas; but in all instances lands which are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose;
- (2) To convey to private enterprise, or to lease to private enterprise for such term as in the discretion of the secretary of the Finance and Administration Cabinet may be in the public interest, any lands so acquired, either for a fair and reasonable consideration or solely or partly as an inducement to the establishment or location in the Commonwealth of any scientific or technological facility, project, satellite project or nuclear storage area; but subject to such restraints as may be deemed proper to bring about a reversion of title or termination of any lease in the event the grantee or lessee, as the case may be, shall cease to use the premises or facilities in the conduct of business or activities consistent with laws and regulations of the Commonwealth; provided, however, radioactive waste material sites may be leased but may not otherwise be disposed of except to the Commonwealth, or to the United States;

- (3) To construct, reconstruct, maintain, repair, operate and regulate projects at such locations within the Commonwealth as may be determined by the secretary;
- (4) To fix by contract, or to establish and revise from time to time and charge and collect revenues, rentals, rates and charges for use of the services and facilities of projects;
- (5) To combine for financing purposes any two (2) or more projects;
- (6) To establish and enforce rules and regulations for the use of any project;
- (7) Without reference to KRS Chapter 56, to acquire and hold real and personal property in the exercise of its powers and the performance of its functions and duties under this section, and to dispose of the same with due regard for public health and safety, except in the case of radioactive waste material sites, which may be disposed of only to the Commonwealth itself, or to the United States, except as provided in subsection (2);
- (8) To designate the locations and establish, limit and control such points of ingress to and egress from each project as the secretary may determine to be necessary or desirable to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;
- (9) To make and enter into such contracts and agreements with governmental agencies and private enterprise as may be necessary or incidental to the performance of its duties and the execution of its powers under this section;
- (10) To employ scientists, consulting engineers, health officers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in the judgment of the secretary and to fix their compensation;
- (11) To receive and accept from any governmental agency, or from private enterprise, appropriations, grants or contributions in money, property, labor or other things of value, to be held, used and applied for or in aid of any project;
- (12) To do all acts and things necessary or convenient to carry out the powers expressly granted in this section.

➔Section 184. KRS 152.712 is amended to read as follows:

- (1) ~~{The Governor's Office of Energy Policy is created and attached for administrative purposes to the Office of the Governor. The Governor's Office of Energy Policy shall be headed by an executive director.~~
- (2) ~~{~~ **The *Department for Energy Development and Independence in the Energy and Environment Cabinet*** ~~{Governor's Office of Energy Policy}~~ shall:
 - (a) Oversee the ~~{development and}~~ implementation of Kentucky's comprehensive energy strategy;
 - (b) Provide leadership to enhance the benefits of energy efficiency and alternative energy through supporting awareness, technology development, energy preparedness, partnerships, and resource development;
 - (c) Enhance the economic opportunities and benefits to Kentucky citizens and industry through expansion of current markets and the development of market opportunities for Kentucky coal, natural gas, petroleum, oil shale, tar sands, liquid and gaseous fuels from coal, and chemicals from coal;
 - (d) To the extent funding is available, administer grant programs to support energy-related research, development, and demonstration, including the support of multistate cooperative regional partnerships and research initiatives;
 - (e) Develop and implement programs for the development, conservation, and utilization of energy in a manner to meet essential human needs while maintaining the Kentucky economy at the highest feasible level. The programs shall include:
 1. Central access for collection, maintenance, and analysis of data and information on all forms of energy supply, demand, conservation, and related subjects;
 2. Formulation of a contingency plan to address any energy shortage which may occur from time to time. The contingency plan shall relate to the curtailment, allocation, planning, and management of all forms of energy;

3. Development and implementation of major energy conservation programs involving all sectors of the Kentucky economy, including energy audits of educational facilities and state-owned buildings; and
 4. Provision for the application of appropriate technologies with regard to alternative energy development, including the development of solar and other renewable resources and small-scale hydroelectric plants, and promotion, when feasible, of the production of energy from other resources such as solid waste and biomass;
- (f) Provide technical assistance to the Finance and Administration Cabinet in implementing the Energy Efficiency in Government Buildings Program;
 - (g) Enter into agreements, administer grant programs, and serve as a liaison with the federal government and other states in matters relating to energy; and
 - (h) Participate in the review of applications and, upon request of the authority, assist the Kentucky Economic Development Finance Authority in monitoring tax incentive agreements as provided in Subchapter 27 of KRS Chapter 154.
- (2)~~(3)~~ The *department*~~{office}~~ may establish reasonable application fees to offset costs associated with reviewing and processing applications, including costs associated with hiring outside consultants.
- (3)~~(4)~~ The *department*~~{office}~~ is encouraged to use state funding available to it as a match for federal or private funding to increase the resources available to support energy research and development.
- (4)~~(5)~~ The *department*~~{office}~~ is encouraged to explore and develop regional partnerships and cooperative research initiatives with other states and governmental entities to enhance resources available for energy research and development.

➔Section 185. KRS 152.713 is amended to read as follows:

- (1) For purposes of this section, "renewable energy" has the same meaning as in KRS 154.20-400.
- (2) The Center for Renewable Energy Research and Environmental Stewardship is hereby created and attached to the *Energy and Environment Cabinet*~~{Governor's Office of Energy Policy}~~ for administrative purposes. The *Energy and Environment Cabinet*~~{Governor's Office of Energy Policy}~~ shall provide consultation, coordination services, technical assistance, and staff support to the board of directors created in subsection (4) of this section, on an as-needed basis, and perform other necessary administrative functions until the center is deemed fully operational. The *secretary*~~{executive director}~~ of the *cabinet*~~{office}~~ or his or her designee shall coordinate the development of the center and act as the chair of the board of directors created in subsection (4) of this section until the board is established and is operational.
- (3) The Center for Renewable Energy Research and Environmental Stewardship shall:
 - (a) Provide leadership, research, support, and policy development in renewable energy;
 - (b) Advance the goal of renewable energy;
 - (c) Promote technologies, practices, and programs that increase efficiency in energy utilization in homes, businesses, and public buildings;
 - (d) Emphasize energy policies that would result in cost-conscious, responsible development of Kentucky's energy resources and a commitment to environmental quality;
 - (e) Promote partnerships among the state's postsecondary education institutions, private industry, and nonprofit organizations to actively pursue federal research and development resources that are dedicated to renewable energy;
 - (f) Promote the continued development of public-private partnerships dedicated to promoting energy efficiency through education and outreach;
 - (g) Establish research priorities with approval of the board of directors created in subsection (4) of this section, relating to renewable energy, and develop procedures and processes for awarding research grants to eligible recipients as defined by the board and to the extent that funding is available;

- (h) Collaborate with the ***Department for Energy Development and Independence***~~{Governor's Office of Energy Policy}~~ to avoid duplication of efforts, provide appropriate data and information, and support the implementation of Kentucky's comprehensive energy strategy; and
 - (i) Carry out other activities to further the efficient and environmentally responsible use of renewable energy.
- (4) (a) There is hereby created a governing board of directors to provide policy direction, establish a strategic research agenda and operating policies, and provide financial and operational oversight for the Center for Renewable Energy Research and Environmental Stewardship. The initial board shall be appointed within sixty (60) days following July 15, 2008.
- (b) The board shall consist of thirteen (13) members:
1. One (1) member to represent the ***Department for Energy Development and Independence***~~{Governor's Office of Energy Policy}~~ as designated by its ***commissioner***~~{executive director}~~;
 2. Three (3) members representing postsecondary education interests who shall be appointed by the Governor;
 3. One (1) member to be designated by the governing body of the Kentucky Science and Technology Corporation;
 4. One (1) member from an energy conservation organization who shall be appointed by the Governor;
 5. The secretary of the Economic Development Cabinet or the secretary's designee;
 6. One (1) member who shall be a recognized consumer advocate to be appointed by the Governor;
 7. Three (3) members to represent companies that are focused on renewable energy who shall be appointed by the Governor;
 8. One (1) member who shall represent environmental interests to be appointed by the Governor; and
 9. One (1) member who shall be selected to represent local government interests to be appointed by the Governor.
- (c) The members appointed by the Governor shall serve two (2) year terms and may be reappointed. The members representing specific agencies shall serve for as long as the respective agencies determine appropriate.
- (5) The board shall:
- (a) Adopt operating procedures, including a meeting schedule;
 - (b) Meet at least quarterly;
 - (c) Select a chair and co-chair annually who may be reelected, not to exceed three (3) consecutive terms;
 - (d) Establish working groups or subcommittees of the board as the board determines is needed;
 - (e) Establish qualifications and job descriptions, set the compensation and benefits, and employ staff as it determines necessary to carry out its responsibilities under this section; and
 - (f) Provide an annual program and financial report to the Legislative Research Commission within ninety (90) days of the close of each fiscal year.

➔Section 186. KRS 152.714 is amended to read as follows:

From a list of potential sites developed by the ***Department for Energy Development and Independence***~~{Governor's Office of Energy Policy}~~ and suitable for development of alternative fuel facilities, gasification facilities, or renewable energy facilities as defined in KRS 154.27-010, the ***Department for Energy Development and Independence***~~{Governor's Office of Energy Policy}~~ may expend state funds for preliminary environmental and baseline assessments, inventories, and other activities on or for the potential sites in furtherance of environmental or other permitting required for the development of an eligible project.

➔Section 187. KRS 152.715 is amended to read as follows:

As used in KRS 152.710 to **152.720**~~[152.725]~~, unless the context requires otherwise:

- (1) "Alternative transportation fuels" means crude oil or transportation fuels produced by processes that convert coal, waste coal, or biomass resources or that extract oil from oil shale or tar sands to produce crude oil or fuels for powering vehicles, aircraft, and machinery. "Alternative transportation fuels" may include but are not limited to petroleum, jet fuel, gasoline, diesel fuel, hydrogen derived from coal, and diesel fuel and ethanol derived from biomass;
- (2) "Synthetic natural gas" means pipeline quality or industrial quality natural gas produced from coal through gasification processes;
- (3) "Fossil energy resources" means reserves of coal, oil shale, and natural gas; and
- (4) "Biomass resources" means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees; wood and wood residues; plants, aquatic plants, and plant oils; grasses; animal fats and animal by-products; animal manure; residue materials; and waste products.

➔Section 188. KRS 152.720 is amended to read as follows:

To ensure that Kentucky will lead the states in securing the energy independence of the United States and will consequently benefit from economic growth and stabilization of the Commonwealth's coal industry and agriculture, the **Department for Energy Development and Independence**~~[Governor's Office of Energy Policy]~~ shall develop and implement a strategy for production of alternative fuels and synthetic natural gas from fossil energy resources and biomass resources. The strategy shall address:

- (1) Technologies available or in use for producing alternative fuels and synthetic natural gas from fossil energy resources and biomass resources and the relative advantages of these in terms of process efficiencies, environmental performance, and marketable products, including chemicals, industrial feedstocks, and electricity;
- (2) Research, demonstration, and commercial-scale construction and operation of one (1) or more technologies, and follow-up expansion;
- (3) The essential nature of efficient cooperation, coordination, and synergy between the efforts of the **Department for Energy Development and Independence**~~[Governor's Office of Energy Policy]~~ and those of Kentucky's universities in order to maximize Kentucky's opportunities to access federal funds and to receive research grants and awards from federal and other sources to fund the development of clean coal technology, coal-to-liquid-fuel conversion, synthetic natural gas, alternative transportation fuels, and biomass resources;
- (4) The identification of federal funds available for research, development, construction, and operation of alternative fuels or synthetic natural gas plants at laboratory, demonstration, and commercial scale;
- (5) Establishment of a major federal energy research laboratory in Kentucky;
- (6) Industry participation, both by single firms and by consortia, in research, development, construction, and operation of alternative transportation fuels or synthetic natural gas plants;
- (7) Establishment or expansion of Kentucky state government incentives for development, construction, or operation of alternative transportation fuels and synthetic natural gas production facilities, including but not limited to financial incentives, tax incentives, mandating or providing incentives for use of alternative transportation fuels and synthetic natural gas by state government, school districts, or utilities, authority to issue bonds, and acquisition and preliminary environmental assessment of industrial sites; and
- (8) Development of incentives to encourage energy conservation and renewable fuel and energy use and deployment of renewable energy, including solar power, wind power, hydropower, and other sources.

➔Section 189. KRS 152.590 is amended to read as follows:

The **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet shall have the following general powers:

- (1) To acquire by purchase, exercise of the right of eminent domain, grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, and by lease or other contract the right to use and occupy

any lands, selected in the discretion of the secretary of the ~~*Energy and Environment*~~ ~~*Environmental and Public Protection*~~ Cabinet as constituting necessary, desirable or acceptable sites for projects of the cabinet, including any and all lands adjacent to a project site as in the discretion of the secretary may be necessary or suitable for satellite projects or restricted areas; but in all instances lands which are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose;

- (2) To convey to private enterprise, or to lease to private enterprise for such term as in the discretion of the secretary of the Finance and Administration Cabinet may be in the public interest, any lands so acquired, either for a fair and reasonable consideration or solely or partly as an inducement to the establishment or location in the Commonwealth of any scientific or technological facility, project, satellite project or nuclear storage area; but subject to such restraints as may be deemed proper to bring about a reversion of title or termination of any lease in the event the grantee or lessee, as the case may be, shall cease to use the premises or facilities in the conduct of business or activities consistent with laws and regulations of the Commonwealth; provided, however, radioactive waste material sites may be leased but may not otherwise be disposed of except to the Commonwealth, or to the United States;
- (3) To construct, reconstruct, maintain, repair, operate and regulate projects at such locations within the Commonwealth as may be determined by the secretary;
- (4) To fix by contract, or to establish and revise from time to time and charge and collect revenues, rentals, rates and charges for use of the services and facilities of projects;
- (5) To combine for financing purposes any two (2) or more projects;
- (6) To establish and enforce rules and regulations for the use of any project;
- (7) Without reference to KRS Chapter 56, to acquire and hold real and personal property in the exercise of its powers and the performance of its functions and duties under this section, and to dispose of the same with due regard for public health and safety, except in the case of radioactive waste material sites, which may be disposed of only to the Commonwealth itself, or to the United States, except as provided in subsection (2);
- (8) To designate the locations and establish, limit and control such points of ingress to and egress from each project as the secretary may determine to be necessary or desirable to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;
- (9) To make and enter into such contracts and agreements with governmental agencies and private enterprise as may be necessary or incidental to the performance of its duties and the execution of its powers under this section;
- (10) To employ scientists, consulting engineers, health officers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in the judgment of the secretary and to fix their compensation;
- (11) To receive and accept from any governmental agency, or from private enterprise, appropriations, grants or contributions in money, property, labor or other things of value, to be held, used and applied for or in aid of any project;
- (12) To do all acts and things necessary or convenient to carry out the powers expressly granted in this section.

➔Section 190. KRS 153.420 is amended to read as follows:

The Kentucky Center for the Arts Corporation:

- (1) Shall supervise construction of the Kentucky Center for the Arts in conjunction with the Finance and Administration Cabinet, and shall provide all management functions for the facility and for any other property acquired or leased pursuant to its powers under this section;
- (2) May take, acquire and hold property, and all interests therein, by deed, purchase, gift, devise, bequest, lease or eminent domain, or by transfer from the State Property and Buildings Commission, and may dispose of any property so acquired in any manner provided by law. In the exercise of its power of eminent domain, it shall proceed in the manner provided in the Eminent Domain Act of Kentucky, KRS 416.540 to 416.680;
- (3) May consult or enter into agreements with other segments of the arts and entertainment industry to provide technical, professional, or management support or assistance, consistent with its purpose and mission;

- (4) May issue revenue bonds, subject to procedures which shall be established by the Finance and Administration Cabinet, solely payable from the charges, revenues, rentals, and other funds pledged for their payment for the purpose of paying all or any part of the cost of any project or for the acquisition of property;
- (5) Shall promote the growth and development of the arts, convention trade, tourism and the hotel industry within Jefferson County and the Commonwealth, through utilization of the Kentucky center and activities authorized in this section to enhance these and the public interest;
- (6) May adopt administrative regulations, as provided in KRS Chapter 13A, governing the operation, maintenance or use of property under its custody and control;
- (7) May levy a surcharge on tickets for all functions held within the center to contribute to operating revenue;
- (8) May receive tax revenues from any governmental unit, and financial contributions of local governments, private persons and foundations;
- (9) Shall have exclusive control of all exhibitions, performances and concessions in the Center for the Arts. The corporation shall have a prior lien upon the property of any private exhibitor, concessionaire, or other person holding an exhibition or performance or operating a concession in the center, and may sell such property upon ten (10) days' notice to satisfy any indebtedness;
- (10) Shall develop in conjunction with local hotels, and the arts and entertainment industry, tourist packages including performance and group plans, and shall participate with local hotels and convention bureaus in attracting non-arts related conferences and conventions;
- (11) May establish an executive committee from among its membership with full authority to act between its meetings to the extent delegated by the corporation;
- (12) May sue and be sued and maintain and defend legal actions in its corporate name;
- (13) May, if the corporation elects, be exempt from the provisions of KRS 56.065 to 56.180, and, with the approval of the secretary of the Finance and Administration Cabinet and the ~~Department Office~~ of Insurance, purchase from the funds allotted to the corporation property insurance for buildings and contents from responsible insurance companies doing business in this state; and
- (14) May purchase liability insurance for the protection of the corporation and its employees from liability arising in the operation of the center.

➔Section 191. KRS 154.01-010 is amended to read as follows:

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

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

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

renewable resources; research parks; office facilities; engineering facilities; research and development laboratories; repair, restoration, or conversion of tobacco warehouses for an economic development or commercial use; warehousing facilities; parts distribution facilities; depots or storage facilities; port facilities; railroad facilities, including trackage, right-of-way, and appurtenances; airports and airport renovation; water and air pollution control equipment or waste disposal facilities; tourist facilities; theme or recreational parks; health care and health related facilities; farms, ranches, forests, and other agricultural or forestry commodity producers; agricultural harvesting, storage, transportation, or processing facilities or equipment; grain elevators; shipping heads and livestock pens; livestock; wharves and dock facilities; water, electricity, hydroelectric, coal, petroleum, or natural gas provision facilities; dams and irrigation facilities; sewage, liquid, and solid waste collection, disposal treatment, and drainage services and facilities.

- (c) Except for airport-related facilities and tax increment financing projects approved under Subchapter 30 of this chapter, "project" shall not include that portion of an endeavor devoted to the sale of goods at retail or that portion of an endeavor devoted to housing which does not consist of the manufacture of housing;
- (21) "Reclamation development fund" means the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land;
- (22) "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under subsection (20) of this section;
- (23) "Reclamation development plan" means a plan submitted to the *Energy and Environment* ~~Environmental and Public Protection~~ Cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project;
- (24) "Secretary" means the chief executive officer and secretary of the Cabinet for Economic Development;
- (25) "State" means the Commonwealth of Kentucky; and
- (26) "Tax revenues" means any revenues received by the Commonwealth directly or indirectly as a result of the industrial improvement project, including state corporate income taxes, the limited liability entity tax imposed by KRS 141.0401, state income taxes paid by employees who work in the project, state property taxes, state corporation license taxes, or state sales and use taxes.

➔Section 192. KRS 154.10-010 is amended to read as follows:

- (1) (a) The Kentucky Economic Development Partnership, a board governing the Cabinet for Economic Development, is created and established, performing essential governmental and public functions and purposes essential to improving and promoting the health and general welfare of the people of the Commonwealth through sustainable economic development, as prescribed in KRS 154.01-020.
- (b) The board shall have reorganization powers and authority as prescribed in KRS 12.028 and shall constitute an administrative body as defined in KRS 12.010, but it and the cabinet shall not be subject to the reorganization by the Governor, KRS Chapter 12 notwithstanding.
- (c) The board shall serve as the governing body of the cabinet and shall exercise all powers and authorities conferred upon it by statute, including, but not limited to, the following functions:
 1. Strategic planning;
 2. Finance;
 3. Business assistance;
 4. Marketing and promotion;
 5. Community development;
 6. Workforce development;
 7. Innovation; and

8. All economic development powers and authorities not specifically conferred by statute to another agency or authority of state government.
- (2) The board shall consist of **thirteen (13)**~~eleven (11)~~ voting members and two (2) nonvoting members. The **thirteen (13)**~~eleven (11)~~ voting members shall consist of the Governor, the secretary of the Finance and Administration Cabinet, the secretary of the ~~Environmental and~~ Public Protection Cabinet, **the secretary of the Energy and Environment Cabinet, the secretary of the Labor Cabinet**, and eight (8) private sector members who shall be appointed by the Governor. The secretary of the Governor's Executive Cabinet shall serve as a voting member upon the absence of the Governor. The secretary of the Cabinet for Economic Development and the secretary of the Tourism, Arts and Heritage Cabinet shall serve as nonvoting members.
- (3) By no later than thirty (30) days after July 14, 1992, the governing bodies of each of the following organizations shall meet and nominate two (2) persons from each of the six (6) Congressional districts of the Commonwealth and two (2) persons from the state at large, as candidates for the initial appointment as private sector members to the board:
 - (a) The Kentucky Industrial Development Council;
 - (b) The Associated Industries of Kentucky;
 - (c) The Kentucky State AFL-CIO;
 - (d) The Kentucky Farm Bureau Federation;
 - (e) The Kentucky Chamber of Commerce; and
 - (f) The Kentucky Economic Development Corporation.
- (4) The Governor shall select the original eight (8) private sector members from the aggregation of the lists provided pursuant to subsection (3) with at least one (1) appointment being chosen from each organization's list and at least one (1) appointment being chosen from each Congressional district. After the initial appointments, appointments to vacancies shall be made in the same manner as prescribed in subsection (3) of this section, except that there is no requirement that the vacancy be filled from the same organization's list as the original appointment.
- (5) The terms of office of the initial appointments of the private sector members to the board shall be staggered so that one-fourth (1/4) of all appointments shall expire one (1), two (2), three (3), and four (4) years, respectively, from the date of their appointment. All succeeding appointments shall be for four (4) years.
- (6) In making appointments to the board, the Governor shall assure broad geographical representation, as well as representation from the major sectors of Kentucky's economy by leading executives with a knowledge of the problems of large and small businesses, local economic development, and the transfer of research and development from the laboratory to the marketplace. In filling vacancies, the Governor shall attempt to assure the continuing representation on the board of broad constituencies of Kentucky's economy, including manufacturing and agriculture.
- (7) Vacancies on the board which may occur from time to time shall be filled as follows:
 - (a) Any vacancy which occurs shall be filled for the unexpired term in accordance with the procedures established for the original appointment.
 - (b) If any private sector member misses more than two (2) consecutive meetings of the board, then that position shall be declared vacant and filled in accordance with this section.
- (8) The board shall meet quarterly and at other times upon call of the chairman or a majority of the board.
- (9) A quorum shall be a majority of the voting membership of the board.
- (10) A quorum shall be required to organize and conduct the business of the board, except that an affirmative vote of seven (7) or more members of the entire board shall be required to fire the cabinet's secretary, and to adopt or amend the strategic plan.
- (11) Private sector members shall serve without compensation but shall be reimbursed for all reasonable, necessary, and actual expenses.

- (12) All existing duties, responsibilities, functions, personnel, programs, funds, obligations, records, and real and personal property of the Cabinet for Economic Development, as of July 14, 1992, shall be under the authority and control of the board.

➔Section 193. KRS 154.10-090 is amended to read as follows:

- (1) The secretary and the directors of other state agencies and entities receiving state funds for programs and activities which may affect state economic development shall cooperate in the coordination of those programs and activities to achieve the successful implementation of the state's strategic economic development plan.
- (2) The board shall compile a list of state agencies and the extent to which they have direct programmatic involvement in Kentucky's economic development systems. This information shall be presented to the General Assembly before each even-numbered-year regular session for the purpose of considering programmatic and budget adjustments.
- (3) Nothing in this chapter shall be construed as modifying, superseding, or repealing any provisions of KRS Chapter 146, 151, 224, or 350, or the obligations of the ***Energy and Environment*** ~~(*Environmental and Public Protection*)~~ Cabinet under those chapters.

➔Section 194. KRS 154.12-203 is amended to read as follows:

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

- (d) The executive director of the Kentucky Long-Term Policy Research Center, or his designated representative;
 - (e) The executive director of the Office of Homeland Security, or his designated representative;
 - (f) The secretaries of the following cabinets, or their designees:
 - 1. Finance and Administration;
 - 2. Justice;
 - 3. ***Energy and Environment***~~(Environmental and Public Protection)~~;
 - 4. Transportation;
 - 5. Education;
 - 6. Health and Family Services;~~and~~
 - 7. Personnel;
 - 8. ***Labor; and***
 - 9. ***Public Protection;***
 - (g) The Attorney General, or his designee;
 - (h) The commissioner of the Department of Veterans' Affairs or a designee;
 - (i) The executive director of the Kentucky Commission on Military Affairs or a designee;
 - (j) Kentucky's Civilian Aides to the Secretary of the United States Army;
 - (k) Two (2) members of the Kentucky General Assembly, with experience in or an interest in military and defense-related issues, one (1) member to be appointed by the President of the Senate, and one (1) member to be appointed by the Speaker of the House;
 - (l) The commander or the designee of the commander of each of the following as nonvoting, ex officio members:
 - 1. Fort Campbell;
 - 2. Fort Knox;
 - 3. United States Army Recruiting Command;
 - 4. Bluegrass Army Depot;
 - 5. Louisville District of the United States Army Corps of Engineers;
 - 6. The One Hundredth Training Division;
 - 7. Naval Surface Warfare Center - Port Hueneme Division, Louisville Detachment; and
 - 8. Any other installation or organization, including but not limited to the United States Coast Guard, Air Force, Navy, and Marine Corps, with a military mission in the Commonwealth; and
 - (m) Five (5) at-large members appointed by the Governor who shall be residents of counties significantly impacted by military installations.
- (4) The terms of the five (5) at-large members shall be staggered so that two (2) appointments shall expire at two (2) years, one (1) appointment shall expire at three (3) years, and two (2) appointments shall expire at four (4) years, from the dates of initial appointment.
- (5) (a) The commission shall establish an executive committee consisting of the secretary of the Cabinet for Economic Development, the adjutant general of the Commonwealth, the commissioner of the Department of Veterans' Affairs, the executive director of the Kentucky Commission on Military Affairs, and the five (5) at-large members. The chair and vice chair of the Kentucky Commission on Military Affairs shall be appointed by the Governor from among the members of the executive committee.

- (b) The chair and vice chair of the commission shall also serve as chair and vice chair of the executive committee.
- (c) The executive committee shall serve as the search committee for an executive director of the commission and shall have any other authority the commission delegates to it.
- (6) The commission shall meet two (2) times each year, and may meet at other times on call of the chair, to establish the commission's goals and to review issues identified and recommendations made by the executive committee. A majority of the members shall constitute a quorum for the transaction of the commission's business. Members' designees shall have voting privileges at commission meetings.
- (7) Members of the commission shall serve without compensation, but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.
- (8) The commission may establish committees or work groups composed of commission members and citizens as necessary to advise the commission in carrying out its responsibilities, duties, and powers. Citizen members of committees or work groups shall not have a vote.
- (9) The commission may promulgate necessary administrative regulations as prescribed by KRS Chapter 13A.
- (10) The commission may adopt bylaws and operating policies necessary for its efficient and effective operation.
- (11) There shall be an executive director, who shall be the administrative head and chief executive officer of the commission, recommended by the executive committee, approved by the commission, and appointed by the Governor. The executive director shall have authority to hire staff, contract for services, expend funds, and operate the normal business activities of the commission.
- (12) The Kentucky Commission on Military Affairs and its executive committee shall be an independent agency attached to the Office of the Governor.

➔Section 195. KRS 154.12-205 is amended to read as follows:

- (1) There is hereby created an independent, de jure corporation of the Commonwealth with all the general corporate powers incidental thereto which shall be known as the "Bluegrass State Skills Corporation." The corporation shall be a political subdivision of the state and shall be attached to the Cabinet for Economic Development.
- (2) The corporation is created and established to improve and promote the employment opportunities of the citizens of the Commonwealth by creating and expanding programs of skills training and education which meet the needs of business and industry.
- (3) The corporation shall be governed by a board of directors consisting of eighteen (18) members, including the following six (6) ex officio members: the commissioner of the Department of Workforce Investment or his or her designee, the secretary of the Cabinet for Economic Development, the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Labor **Cabinet**, the president of the Council on Postsecondary Education, the secretary of the Education and Workforce Development Cabinet, and the president of the Kentucky Community and Technical College System. The twelve (12) other members shall be appointed by the Governor, including persons having knowledge and experience in business and industry, skills training, education, and minority employment; and at least one (1) of the twelve (12) members shall be appointed to represent labor organizations. Each member appointed by the Governor shall serve for a term of four (4) years, except that in making the initial appointments, the Governor shall appoint three (3) members to serve for one (1) year, three (3) members to serve for two (2) years, three (3) members to serve for three (3) years, and three (3) members to serve for four (4) years. All succeeding appointments shall be for a term of four (4) years.
- (4) In the event of a vacancy, the Governor may appoint a replacement member who shall hold office during the remainder of the term so vacated.
- (5) Any member may be removed from his appointment by the Governor for cause.
- (6) The Governor shall designate a member of the board as its chairman.
- (7) Members of the board of directors of the corporation, except for ex officio members, shall be entitled to compensation for their services in the amount of one hundred dollars (\$100) for each regular or special called

meeting of the corporation, and all members shall be entitled to reimbursement for any actual and necessary expenses incurred in the performance of their duties.

- (8) The board of directors of the corporation shall annually elect a vice chairman, a secretary, and a treasurer. The secretary shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, and its official seal.
- (9) The secretary of the Cabinet for Economic Development shall hire an executive director and establish his salary. The executive director shall be the chief administrative and operational officer of the corporation and shall direct and supervise its administrative affairs and general management subject to the policies, control, and direction of the board.
- (10) All officers and employees of the corporation having access to its funding shall give bond to the corporation, at its expense, in the amount and with the surety as the board may prescribe.

➔Section 196. KRS 154.20-105 is amended to read as follows:

Moneys in the reclamation development fund:

- (1) Shall be used to foster reclamation development projects described in a reclamation development plan submitted to the authority as part of the application for reclamation development fund moneys, except that no money in the reclamation development fund shall be used for any reclamation development project until the reclamation development plan with respect to that project has been approved by the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet pursuant to KRS Chapter 350; and
- (2) May be made available to any person or entity, public or private, organized for profit or not for profit; and
- (3) Shall be made on the terms and conditions the authority, in its sole discretion, determines to be reasonable, appropriate, and consistent with the purposes and objectives of the authority and this chapter, which may include, but not be limited to, the pledging of adequate security.

➔Section 197. KRS 154.20-277 is amended to read as follows:

- (1) Each investment fund manager shall cause the books and records of the investment fund to be audited on an annual basis by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied. The audit shall address the financial condition of the investment fund and compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284. Each year the audit report shall be completed and certified by the independent certified public accountant and delivered to the authority within ninety (90) days after the end of the investment fund's fiscal year.
- (2) The authority and the Department of Revenue, individually or collectively, may examine, under oath, any of the officers, trustees, partners, members, managers, directors, agents, employees, or investors of an investment fund regarding the affairs and business of the investment fund. The authority and the Department of Revenue, individually or collectively, may issue subpoenas and subpoenas duces tecum and administer oaths. Refusal to obey such a subpoena or subpoena duces tecum may be reported to the Franklin Circuit Court, which shall enforce the subpoena or subpoena duces tecum according to the rules of civil or criminal procedure, as applicable.
- (3) In addition to the audits required by this section, the authority or the Department of Revenue may audit one (1) or more investment funds or investment fund managers in any year on a random basis or for cause. The authority or the Department of Revenue may also audit, for cause, any small business in which an investment fund has made a qualified investment. Nothing in this section shall be construed to prohibit the Department of Revenue from conducting any audit relating to the administration or enforcement of the tax laws of the Commonwealth which the Department of Revenue determines to be appropriate.
- (4) If any audit conducted pursuant to this section discloses that an investment fund or investment fund manager is not in compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284, the authority and the Department of Revenue may consult with one another with respect to this noncompliance and the Department of Revenue may exercise any of its powers to protect the Commonwealth's interest and to enforce the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284.
- (5) The authority may give an investment fund manager written notice of any noncompliance with the provisions of KRS 154.20-250 to 154.20-284 and specify a period of time the investment fund manager shall have to cure any noncompliance. Failure to cure any such noncompliance within the period of time specified by the authority may result in further action by the authority pursuant to this section.

- (6) Nothing in this section shall be construed to prohibit the **Department**~~{Office}~~ of Financial Institutions, Division of Securities, or any other securities regulatory organization or body with jurisdiction over the activity of an investment fund or the investment fund manager from conducting any examination or investigation relating to the securities activities of the investment fund or investment fund manager. If any examination or investigation conducted pursuant to any securities laws or regulations discloses that an investment fund or investment fund manager is not in compliance with any provision of any applicable securities laws or regulations, the appropriate securities regulator may take whatever action it deems appropriate in accordance with such securities laws and regulations to respond to the noncompliance, notwithstanding any action the authority or the Department of Revenue may or may not take with respect to the noncompliance.

➔Section 198. KRS 154.20-530 is amended to read as follows:

The authority may cause to be established, by any number of natural persons not in excess of fifteen (15), a Kentucky nonprofit corporation which shall have as its purpose the insurance of mortgage loans entered into by and between lenders and persons or corporations located in Kentucky and offering gainful employment to the inhabitants of the Commonwealth. The mortgage insurance corporation shall not be deemed to have been established for the purposes of this chapter unless and until its articles of incorporation shall have been approved by the authority, and if so approved, no approval by the **Department**~~{Office}~~ of Insurance shall be required. Such articles of incorporation, in order to secure such approval, shall contain, inter alia, the following provisions:

- (1) The corporation shall be designated "Kentucky Mortgage Insurance and Guarantee Corporation;"
- (2) No member of the board of directors of the insurance corporation shall receive any emoluments for his services thereon, except that he may be reimbursed for expenditures incurred by him in the performance of duties for the insurance corporation;
- (3) All assistance fees received by the insurance corporation shall be held in a trust account in one or more banks and trust companies having a principal place of business in the Commonwealth;
- (4) The trust account shall be held for the security of the holders of mortgage loans or bonds guaranteed by the insurance corporation, except that provision may be made for the payment of expenses of the insurance corporation from the trust account or a segregated portion thereof;
- (5) The trust account shall be governed by a trust agreement entered into by and between the insurance corporation and the trustee or trustees. Said trust agreement shall contain such lawful provisions and limitations as may be deemed appropriate, and may include a pledge of premiums and other moneys deposited in the fund to the payment of the obligations insured by the insurance corporation; and
- (6) The trust agreement shall make appropriate provisions for the investment by the trustee or trustees of funds in the trust account for the benefit of the insurance corporation and of any claimants against the trust account. The moneys so pledged and thereafter received by the trust account shall be subject to the lien of such pledge without any further act, and the lien of such pledge shall be valid and binding against all parties in accordance with the terms of the trust agreement.

➔Section 199. KRS 154.27-010 is amended to read as follows:

As used in this subchapter:

- (1) "Activation date" means the date on which an approved company begins incurring recoverable costs or engaging in recoverable activity pursuant to the tax incentive agreement. The activation date shall be set forth in the tax incentive agreement and shall be a date within five (5) years of the date of final approval of the tax incentive agreement. The authority may extend the five (5) year period to no more than seven (7) years upon written application for an extension by the approved company. To implement the activation date, the approved company shall notify the authority of its intent to activate the tax incentives authorized in the tax incentive agreement. The activation date shall apply to all incentives included in the tax incentive agreement regardless of whether the approved company has met the requirements to receive all incentives at that time. If the approved company does not implement the activation date before the date established in the tax incentive agreement, the activation date shall be the date established in the tax incentive agreement;
- (2) "Affiliate" has the same meaning as in KRS 154.22-010;
- (3) (a) "Alternative fuel facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after

August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce alternative transportation fuel for sale.

- (b) The alternative fuel facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels;
- (4) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- (5) "Approved company" means a corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity approved for incentives for an eligible project;
- (6) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (7) "Base amount" means the tons of coal purchased and used or severed and used by the approved company as feedstock for an eligible project during the twelve (12) months prior to the month in which the approved company first begins receiving incentives under KRS 143.024 and 154.27-060, that were subject to the tax imposed by KRS 143.020;
- (8) "Biomass resources" has the same meaning as in KRS 152.715;
- (9) (a) "Capital investment" means:
 - 1. Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 - 2. The cost of acquiring land or rights in land and any cost incident thereto, including recording fees;
 - 3. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project which is not paid by the contractor or otherwise provided;
 - 4. All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 - 5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project; and
 - 6. All other costs of a nature comparable to those described in this subsection.
- (b) "Capital investment" does not include costs described in paragraph (a) of this subsection that are paid for with funds received from the federal government or that are reimbursed by the federal government;
- (10) "Carbon capture ready" means planning for or anticipating capture of carbon dioxide in a manner to facilitate continued operation of the facility in compliance with applicable federal requirements;
- (11) "Center for Applied Energy Research" means the University of Kentucky Center for Applied Energy Research;
- (12) "Commonwealth" means the Commonwealth of Kentucky;
- (13) "Construction period" means the period beginning with the activation date of the eligible project and ending on a date set forth in the tax incentive agreement, which shall be no later than five (5) years from the activation date;
- (14) "Department" means the Department of Revenue;
- (15) "Eligible project" means:
 - (a) An alternative fuel facility or a gasification facility meeting the investment requirements of KRS 154.27-020; or
 - (b) A renewable energy facility meeting the investment requirements of KRS 154.27-020;

- (16) "Estimated labor component" means the projected percentage of the total capital investment attributable to labor;
- (17) (a) "Facility" means a single location within the Commonwealth at which machinery and equipment are used in a manufacturing process that transforms raw materials into a product with commercial value.
1. The facility shall include the physical plant structure where the manufacturing process occurs and machinery and equipment within the physical plant structure.
 2. The facility may include:
 - a. On-site machinery and equipment used exclusively for processing coal or other raw materials for use in the manufacturing process at the facility;
 - b. For an alternative fuel facility or gasification facility, on-site power station operations, if those operations are primarily used to produce electricity for the facility;
 - c. On-site refining operations, if those operations are used exclusively to refine and blend fuels produced by the facility; and
 - d. The in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, if the exclusive purpose of the pipeline is to transport carbon dioxide from the facility to a point of sale, storage, or other carbon management applications.
- (b) "Facility" shall not include any mining operations;
- (18) "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- (19) (a) "Gasification facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale:
1. Alternative transportation fuels;
 2. Synthetic natural gas;
 3. Chemicals;
 4. Chemical feedstocks; or
 5. Liquid fuels;
- from coal, waste coal, coal-processing waste, or biomass resources, through a gasification process. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce one (1) or more of the products set forth in this paragraph.
- (b) The gasification facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels;
- (20) "Kentucky gross profits" shall have the same meaning as in KRS 141.0401;
- (21) "Kentucky gross receipts" shall have the same meaning as in KRS 141.0401;
- (22) ~~["Office" means the Governor's Office of Energy Policy created by KRS 152.712;~~
- ~~(23)~~ "Post-construction incentives" means the incentives available under KRS 154.27-060 and 154.27-080;
- ~~(23)~~~~(24)~~ "Renewable energy facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded after August 30, 2007, and that, after the new construction, retrofit, or upgrade, utilizes:
- (a) Wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources to generate electricity in excess of one (1) megawatt for sale to unrelated entities; or
 - (b) Solar power to generate electricity in excess of fifty (50) kilowatts for sale to unrelated entities.

For a retrofit of an existing facility, the modification or addition shall primarily result in the production of electricity as described in paragraph (a) or (b) of this subsection;

- ~~(24)~~~~(25)~~ "Resident" shall have the same meaning as in KRS 141.010;
- ~~(25)~~~~(26)~~ "Retrofit" means a modification or addition to an existing facility that results in the production of a new and different product or uses a new or different process to produce the same product at the facility. Modifications or additions to a facility that maintain, restore, mend, or repair a facility shall not be considered a retrofit of the facility, and shall not be considered part of the capital investment if undertaken at the same time as a retrofit;
- ~~(26)~~~~(27)~~ "Synthetic natural gas" has the same meaning as in KRS 152.715;
- ~~(27)~~~~(28)~~ "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.27-040;
- ~~(28)~~~~(29)~~ "Termination date" means a date established by the tax incentive agreement that is no more than twenty-five (25) years from the activation date; and
- ~~(29)~~~~(30)~~ "Upgrade" means an investment in an existing facility that results in an increase in the productivity of the facility. Increased productivity shall be measured in relation to the type of products that are required to be produced by that facility to be an eligible project.

→Section 200. KRS 154.27-030 is amended to read as follows:

- (1) A company with an eligible project may submit an application for incentives to the authority prior to making any capital investment it will seek to recover.
- (2) The application shall include:
 - (a) The name of the applicant and identification of any affiliates of the applicant;
 - (b) The type of eligible project;
 - (c) A description of the location;
 - (d) A full description of the eligible project scope, including but not limited to:
 1. A list and the status of permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;
 2. A description of the carbon capture readiness of the facility, if the proposed eligible project is an alternative fuel facility or a gasification facility;
 3. Any feasibility studies, including supporting documents;
 4. Anticipated sources of eligible project funding;
 5. The total anticipated capital investment and the time period over which the capital investment will occur;
 6. The proposed feedstock and the estimated volume of feedstock use per year;
 7. A description of the proposed products to be produced by the facility and the process that will be used to produce the products;
 8. The planned capacity of the facility after construction, retrofit, or upgrade;
 9. The estimated output of the facility upon completion; and
 10. A plan for and description of how the company will employ Kentucky residents at the facility and how the company will ensure, to the extent possible, that workers employed during construction, retrofit, or upgrade of the facility are Kentucky residents. The plan shall include projected numbers;
 - (e) Identification of the specific incentives sought;
 - (f) Payment of any applicable application fees required by the authority to offset reasonable costs of reviewing and processing the application; and
 - (g) Other information as required by the authority.

- (3) The authority shall forward the application to the ***Department of Revenue***~~[department]~~ and the ***Department for Energy Development and Independence***~~[office]~~ for review and comment with a date by which comments shall be provided back to the authority. The authority may forward the application to the Center for Applied Energy Research for review and comment as well.
- (4) (a) The authority shall review the application and shall verify that:
1. The applicant has met all of the statutory and regulatory requirements established by this subchapter and regulations promulgated thereunder;
 2. The applicant has secured or is in the process of securing all necessary permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;
 3. The proposed facility is carbon capture ready, if the proposed facility is an alternative fuel facility or gasification facility;
 4. The company has a plan that includes a projected number of Kentucky residents that will be employed during the construction, retrofit, or upgrade of the facility and at the facility upon completion; and
 5. Any other requirements established by the authority.
- (b) The Department ***of Revenue and the Department for Energy Development and Independence*** shall review the application and shall verify that the company seeking approval and all affiliate companies are in good standing with the department.
- (c) The authority may engage the services of outside consultants to assist in the review of the application. Costs associated with the engagement of outside consultants shall be borne by the applicant.
- (5) (a) Upon the earlier of:
1. The receipt of comments and recommendations from the ***Department for Energy Development and Independence***~~[office]~~, the ***Department of Revenue***~~[department]~~, and the Center for Applied Energy Research, if applicable; or
 2. The expiration of the time period established by the authority for receiving comments pursuant to subsection (3) of this section;
- the authority may, through the adoption of a resolution, preliminarily approve an applicant for incentives under this subchapter.
- (b) Preliminary approval shall be based upon representations of the applicant in the application and attachments as well as other information submitted with the application. The authority shall make a finding that, based upon the applicant's representations, the project appears to be eligible for incentives pursuant to this subchapter.
- (c) Prior to final approval:
1. The applicant shall:
 - a. Provide all supportive data requested by the authority;
 - b. Secure all required permits or take appropriate steps to do so; and
 - c. Cooperate with the authority to obtain opinions or recommendations from any outside consultants; and
 2. The authority shall, in consultation with the ***Department for Energy Development and Independence***~~[office]~~ or any other entity, verify the representations of the applicant.
- (d) 1. A preliminarily approved company seeking an advance disbursement employment incentive under KRS 154.27-090 shall, prior to receiving final approval from the authority, provide to the authority a labor market analysis prepared by a public postsecondary education institution in the Commonwealth with knowledge of the labor market in the region in which the eligible project will be located.

2. The labor market analysis shall evaluate the construction market in the region where the proposed project is to be located and the estimated labor component of the proposed project. The public postsecondary education institution may consult with the Center for Applied Energy Research or the ***Department for Energy Development and Independence***~~[office]~~ in determining the types of laborers required for the construction, retrofit, or upgrade of the eligible facility.
 3. The labor market analysis shall include an estimate of the percentage of the estimated labor component that constitutes wages to be paid to Kentucky residents.
- (e) Based upon all of the information available, the authority may, through adoption of a resolution, give its final approval and authorize the execution of a tax incentive agreement to be negotiated pursuant to KRS 154.27-040.
- (6) The authority may request any materials and make any inquiries concerning an application that the authority deems necessary.
 - (7) The actual capital investment that may be recovered and percentages of each incentive that an approved company may receive shall be negotiated between the approved company and the authority and shall not exceed the limitations established by KRS 154.27-020.
 - (8) The General Assembly recognizes that the incentives offered under this subchapter include the possibility of the release of incentives to approved companies prior to construction completion, and that the release of these incentives may present more risk for the Commonwealth. The authority is directed to consider the possible increased risk to the Commonwealth when negotiating tax incentive agreements that include incentives prior to construction completion, and to incorporate repayment or similar remedy provisions in the tax incentive agreement to the extent the authority determines such provisions are necessary to protect the investment made by the Commonwealth if the approved company fails to comply with the terms of the tax incentive agreement.
 - (9) The authority and the approved company shall enter into a tax incentive agreement in accordance with KRS 154.27-040.
 - (10) The authority, with input from the ***Department for Energy Development and Independence***~~[office]~~ and the ***Department of Revenue***~~[department]~~, shall establish additional standards and requirements for the application process through the promulgation of administrative regulations in accordance with KRS Chapter 13A. The standards shall include but not be limited to the creditworthiness of eligible companies and the likelihood of economic success of the economic development project.

➔Section 201. KRS 154.27-040 is amended to read as follows:

The terms and conditions of the tax incentive agreement shall be negotiated between the authority and the approved company. The tax incentive agreement may include one (1) or more of the incentives available under this subchapter or any combination of the incentives as negotiated between the authority and the approved company. The tax incentive agreement shall include but not be limited to the following provisions:

- (1) The duties and responsibilities of the parties;
- (2) The specific identification of incentives included in the tax incentive agreement, including the permissible percentage recovery under each included incentive;
- (3) A detailed description of the eligible project, including an estimate of the capital investment;
- (4) If the eligible project is an alternative fuel facility or a gasification facility, a requirement that the facility be carbon capture ready;
- (5) The minimum capital investment required and the maximum capital investment that may be recovered;
- (6) The time within which the minimum capital investment shall be made;
- (7) The activation date and the termination date. The agreement shall commence on the activation date and shall terminate upon the earlier of full receipt of the maximum amount of incentives by the approved company or twenty-five (25) years from the activation date;
- (8) A target percentage of the workforce that is Kentucky residents during the construction, retrofit, or upgrade of the facility, and at the facility upon completion of construction;
- (9) If the wage assessment permitted by KRS 154.27-080 is included, the percentage rate at which the assessment shall be imposed;

- (10) If the advance disbursement employment incentive permitted by KRS 154.27-090 is included:
- (a) The estimated labor component and the estimated Kentucky resident factor as determined under KRS 154.27-090;
 - (b) A schedule for the disbursement of funds during the construction period;
 - (c) A provision that requires a reduction or adjustment in the receipt of post-construction incentives for which the approved company is eligible under the tax incentive agreement until the advance disbursement has been repaid by the approved company;
 - (d) A provision addressing an alternate payment method if the incentives are not sufficient to repay the advance disbursement; and
 - (e) A repayment schedule that includes the amount of reduction, the incentives the reduction shall apply to, the amount of interest due, the time period over which the advance disbursement amount shall be recouped, and the amount that shall be recouped in each year. To the extent possible, the repayment schedule shall include uniform incremental payments;
- (11) That the approval of the company is not a guarantee of incentives and that actual receipt of the incentives shall be contingent on the approved company filing the required requests for incentives and meeting the requirements established by the tax incentive agreement and by KRS 139.517, 141.421, 143.024, 154.27-060, 154.27-070, 154.27-080, and 154.27-090 that apply to the incentives included;
- (12) That the approved company shall provide the authority with documentation of capital expenditures in a manner acceptable to the authority;
- (13) Negotiated terms relating to repayment or similar remedies for incentives received prior to the completion of construction if the approved company fails to comply with the terms of the tax incentive agreement;
- (14) That, if the authority determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:
- (a) The authority shall have the right to suspend the incentives available to the approved company;
 - (b) Both the authority and the department shall have the right to pursue any remedy provided under the tax incentive agreement;
 - (c) The authority may terminate the tax incentive agreement; and
 - (d) Both the authority and the department may pursue any other remedy at law to which it may be entitled;
- (15) A requirement that the authority monitor the tax incentive agreement;
- (16) A requirement that the approved company provide to the authority the information necessary to monitor the tax incentive agreement and authorization for the authority to share that information with the **Department of Revenue**~~[department]~~, the **Department for Energy Development and Independence**~~[office]~~, or any other entity the authority determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement; and
- (17) Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the tax incentive agreement.

➔Section 202. KRS 154.27-050 is amended to read as follows:

- (1) The department may release to an approved company any sales tax incentives under KRS 139.517 and 154.27-070 after review of the request for incentives required by KRS 139.517 and determination of the amount due regardless of whether the minimum capital investment has been made as required by the tax incentive agreement.
- (2) The authority shall monitor all tax incentive agreements. The authority may seek assistance from the **Department for Energy Development and Independence**~~[office]~~, the **Department of Revenue**~~[department]~~, the Center for Applied Energy Research, or other entities or individuals in performing its monitoring functions.
- (3) The department shall track the amount of revenues released and incentives received for each eligible project under each tax incentive agreement and shall provide the authority the information upon request.

- (4) On or before December 1, 2008, and every December 1 thereafter, the authority and the department shall jointly prepare a report for the Legislative Research Commission. The report shall include a list of all companies with which tax incentive agreements have been entered into and a summary of the terms of each agreement, including the type of facility approved, product to be produced, estimated output upon completion, required minimum capital investment and maximum recovery, incentives approved by type of tax and amount, activation date, and termination date.

➔Section 203. KRS 154.27-090 is amended to read as follows:

- (1) An approved company may be eligible for the advance disbursement of a portion of the post-construction period incentives for which it has been approved. The amount of the advance disbursement shall be based on the employment of Kentucky residents during the construction of the facility, shall be negotiated with the authority as part of the tax incentive agreement, and shall not exceed the limitations established by this section.
- (2) The authority shall compute the maximum amount of the advance disbursement employment incentive as follows:
- (a) The base amount shall equal the total capital investment specified in the tax incentive agreement multiplied by the labor intensity factor as determined in paragraph (c) of this subsection;
- (b) The base amount shall then be multiplied by the Kentucky resident factor as determined in paragraph (d) of this subsection. The resulting amount shall be the maximum advance disbursement employment incentive that the authority may approve;
- (c) The labor intensity factor shall be:
1. Twenty-five percent (25%), if the estimated labor component for the eligible project is greater than thirty percent (30%) of the total capital investment;
 2. Twenty percent (20%), if the estimated labor component for the eligible project is greater than twenty-five percent (25%) but less than or equal to thirty percent (30%) of the total capital investment; or
 3. Fifteen percent (15%), if the estimated labor component for the eligible project is equal to or less than twenty-five percent (25%) of the total capital investment; and
- (d) The Kentucky resident factor shall be four percent (4%) multiplied by a fraction, the numerator of which shall be the estimated total gross wages that will be paid to Kentucky residents who are working on the construction, retrofit, or upgrade of the eligible project, and the denominator of which shall be the estimated total gross wages that will be paid to all workers working on the construction, retrofit, or upgrade of the eligible project.
- (3) The tax incentive agreement shall include a schedule for the disbursement of the advance disbursement employment incentive during the construction period. In negotiating the disbursement schedule, the authority shall consider the possible increased risk to the Commonwealth associated with the disbursement of funds prior to construction completion.
- (4) (a) The approved company shall repay the advance disbursement through a reduction in the post-construction period incentive amounts it would otherwise receive. The amount by which the post-construction period incentive amounts are reduced shall be applied as a credit against the amount owed by the approved company.
- (b) The amount of the annual reduction, the incentives the reduction shall apply to, interest due, the time period over which the advance disbursement amount shall be recouped, and alternate payment methods if incentives are not sufficient to repay the advance disbursement shall be negotiated between the authority and the approved company as part of the tax incentive agreement.
- (c) The repayment schedule included in the tax incentive agreement shall require uniform incremental payments, to the extent possible, and shall continue until the entire advance disbursement amount has been repaid by the approved company.
- (d) The tax incentive agreement shall include a provision addressing an alternate method for payment if incentives are not sufficient to repay the advance disbursement.
- (e) The total post-construction incentive payments for which an approved company is eligible shall be tracked by the department. That portion of the incentive amounts identified in the tax incentive

agreement as being devoted to the repayment of the advance disbursement amount shall be credited against the balance due from the approved company and shall not be paid to or retained by the approved company.

- (f) The department shall forward the amounts credited to the repayment of the advance disbursement amount to the Cabinet for Economic Development, Department of Financial Incentives for deposit in the Energy Projects Economic Development Bond Pool.
 - (g) During the period for which any portion of the post-construction incentive payments are being credited toward the advance disbursement amount, the approved company shall, at the direction of the authority or the department, file all required requests for incentives, submit all required remittances, make all required tax payments, and provide to the department and the authority any information that would normally be required for the approved company to receive the incentives.
- (5) The authority may, for purposes of administering the provisions of this section, solicit information or consultation from one (1) or more of the following sources:
- (a) The ***Department for Energy Development and Independence***~~{office}~~;
 - (b) The Center for Applied Energy Research;
 - (c) The Department for Workforce Investment; or
 - (d) Any public postsecondary education institution within the Commonwealth.

➔Section 204. KRS 154.47-025 is amended to read as follows:

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

- (1) Developing, in conjunction with other agencies, workforce training plans for the secondary wood products industry as provided for in KRS 154.47-055;
- (2) Reviewing and recommending to the Cabinet for Economic Development the approval of proposals to establish business networks for businesses and industries engaged in any value-added processing of raw wood products or the manufacturing of wood products as set forth in KRS 154.47-040, and cooperating with the Cabinet for Economic Development to promote the development of business networks among secondary wood products businesses and industries;
- (3) Advising the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet on regulatory matters which impact the economic competitiveness and development of the state's secondary wood products industry;
- (4) Advising the ~~{Department of}~~ Labor ***Cabinet*** regarding modifications to the state workers' compensation laws in an effort to make Kentucky's secondary wood products industry more competitive;
- (5) Advising the Finance and Administration Cabinet regarding procurement of Kentucky-made secondary wood products by state agencies, including the procurement of these products by the Kentucky Department of Parks as part of any proposed state parks renovation projects;
- (6) Soliciting, borrowing, accepting, receiving, investing, and expending funds from any public or private source, including, but not limited to, general fund appropriations of the Commonwealth of Kentucky, grants or contributions of money, property, labor, or other things of value to be used to carry out the corporation's operations, functions, and responsibilities;
- (7) Entering into contracts or agreements necessary or incidental to the performance of its duties, functions, and responsibilities;
- (8) Establishing benchmarks for the purpose of evaluating workforce training and technology transfer programs applicable to the secondary wood products industry;
- (9) Employing consultants and other persons as may be required in the judgment of the board to be essential to the board's operations, functions, and responsibilities; and
- (10) Promulgating administrative regulations, in accordance with KRS Chapter 13A, governing its statutory powers, duties, and responsibilities.

➔Section 205. KRS 154.47-075 is amended to read as follows:

- (1) The Kentucky Division of Forestry shall develop and implement a program to provide training and assistance to private woodland owners in best management practices of forest development and sustainability. The training and assistance program shall provide advice and assistance in matters relating to productivity, management priorities, stewardship, planning, timber quality, forest improvement, and proper ecological management.
- (2) The board, in cooperation with the Kentucky Division of Forestry, the ~~{Department of}~~ Labor **Cabinet**, and representatives from the University of Kentucky, Eastern Kentucky University, and Morehead State University, shall develop and implement a program to provide training and assistance in the area of worker safety for both the primary and secondary wood industry.

➔Section 206. KRS 154.47-110 is amended to read as follows:

- (1) To encourage the continued development of Kentucky's primary and secondary wood products industries, the Kentucky Forest Products Council is established.
- (2) The council shall work with members of the primary and secondary wood products industries and owners of forest resources to foster cooperation in the planning and implementation of forest resources technical assistance and education efforts, including, but not limited to, silvicultural best management practices, a forest stewardship program, a master logger program, guidelines for water quality management, forest fire prevention and other technical assistance and education efforts focused on sustaining the development and productivity of the Commonwealth's forest resources.
- (3) The council shall be comprised of the following members:
 - (a) The secretary of the **Energy and Environment**~~{Environmental and Public Protection}~~ Cabinet or his designee, who shall serve ex officio;
 - (b) The director of the Division of Forestry or his designee;
 - (c) The chairman of the University of Kentucky Department of Forestry or his designee;
 - (d) The chairman of the Kentucky Soil and Water Conservation Commission or his designee;
 - (e) A representative of the Kentucky Forest Industries Association appointed by the Governor;
 - (f) A representative of the primary wood products industry appointed by the Governor;
 - (g) A representative of the secondary wood products industry appointed by the Governor;
 - (h) A representative of the Kentucky Farm Bureau Federation appointed by the Governor;
 - (i) A certified tree farmer or forest steward appointed by the Governor;
 - (j) A representative of the Kentucky paper products industry appointed by the Governor; and
 - (k) Two representatives of public interest groups active in natural resource conservation or environmental protection issues appointed by the Governor from three (3) nominees, one (1) from the Cumberland Chapter of the Sierra Club, one (1) from the Kentucky Resources Council; and one (1) from Kentuckians for the Commonwealth.
- (4) The initial term of office of members appointed by the Governor shall be staggered so that the three (3) members shall serve for two (2) years each, two (2) members shall serve for three (3) years each, and two (2) members shall serve a four (4) year term. Subsequent appointments shall be for a term of four (4) years each. Vacancies shall be filled in the same manner as for the original appointment. Members appointed by the Governor may be reappointed by the Governor for succeeding terms.
- (5) The council chairperson shall be appointed from the membership by the Governor for a term of two (2) years and may be reappointed by the Governor for succeeding terms.
- (6) The **Energy and Environment**~~{Environmental and Public Protection}~~ Cabinet shall provide staff services to the council.

➔Section 207. KRS 154.48-010 is amended to read as follows:

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

- (1) "Activation date" means a date selected by an approved company in the tax incentive agreement at any time within a two (2) year period after the date of final approval of the tax incentive agreement by the authority;
- (2) "Affiliate" means the following:
 - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
 - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
 - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;
 - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
 1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or
 2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
 - (e) A grantor and a fiduciary of any trust;
 - (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
 - (g) A fiduciary of a trust and a beneficiary of that trust;
 - (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
 - (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (k) A corporation, a partnership, or a limited partnership if the same persons own:
 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership or limited partnership;
 - (l) A corporation and a limited liability company if the same persons own:
 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (m) A partnership or limited partnership and a limited liability company if the same persons own:

1. More than fifty percent (50%) of the capital interest or profits in the partnership or limited partnership; and
 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
- (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
- (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;
- (3) "Approved company" means any eligible company for which the authority has granted final approval of its application pursuant to KRS 154.48-025;
- (4) "Approved costs" means one hundred percent (100%) of the eligible skills upgrade training costs and up to twenty-five percent (25%) of the eligible equipment costs approved by the authority that an approved company may recover through the inducements authorized by KRS 154.48-010 to 154.48-035;
- (5) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (6) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training in the Department of Workforce Investment within the Education and Workforce Development Cabinet collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
- (a) Manufacturing;
 - (b) Transportation, communications, and public utilities;
 - (c) Wholesale and retail trade;
 - (d) Finance, insurance, and real estate; and
 - (e) Services;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "Eligible company" means any entity that undertakes an environmental stewardship project;
- (9) "Eligible costs" means eligible equipment costs plus eligible skills upgrade training costs expended after preliminary approval of the environmental stewardship project;
- (10) "Eligible equipment costs" means:
- (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of an environmental stewardship project;
 - (b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, and installation of an environmental stewardship project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
 - (c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, and installation of an environmental stewardship project;
 - (d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of an environmental stewardship project;
 - (e) All costs paid for by the approved company that are required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and access to transportation, and including off-site construction of the facilities necessary for implementation of an environmental stewardship project; and
 - (f) All other costs of a nature comparable to those described in this subsection.

- (11) "Eligible skills upgrade training costs" means:
- (a) Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an approved company in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
 - (b) Administrative fees charged by educational institutions in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
 - (c) The cost of supplies, materials, and equipment used exclusively in an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
 - (d) The cost of leasing a training facility where space is unavailable at an educational institution or at the premises of an approved company in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
 - (e) Employee wages to be paid in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
 - (f) Travel expenses paid by the approved company as incurred by its full-time employees resulting directly from the costs of transportation, lodging and meals that are directly related to an occupational training program necessary for the implementation of an environmental stewardship project; and
 - (g) All other costs of a nature comparable to those described in this subsection;
- (12) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k) or similar plans;
- (13) "Environmental stewardship product" means any new manufactured product or substantially improved existing manufactured product that has a lesser or reduced adverse effect on human health and the environment or provides for improvement to human health and the environment when compared with existing products or competing products that serve the same purpose. Such products may include but are not limited to those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics disposed or consumed, but shall not include products that are the result of the production of energy or energy producing fuels;
- (14) "Environmental stewardship project" or "project" means:
- (a) The acquisition, construction, and installation of new equipment and, with respect thereto:
 - 1. The construction, rehabilitation, and installation of improvements to facilities necessary to house the new equipment, including surveys;
 - 2. Installation of utilities including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities;
 - 3. Off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located;All of which are utilized by an approved company or its affiliate to manufacture an environmental stewardship product as reviewed and recommended to the authority by the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet; and
 - (b) The provision of an occupational training program to provide the employees of an approved company or its affiliate with the knowledge and skills necessary to manufacture the new product;
- (15) "Final approval" means the action taken by the authority designating an eligible company that has previously received a preliminary approval as an approved company and authorizing the execution of an environmental stewardship agreement between the authority and the approved company;

- (16) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
- (17) "Inducement" means the Kentucky tax credit as authorized by KRS 154.48-010 to 154.48-035;
- (18) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities;
- (19) "Preliminary approval" means the action taken by the authority designating an eligible company as a preliminarily approved company, and conditioning final approval by the authority upon satisfaction by the eligible company of the requirements set forth in the preliminary approval;
- (20) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and
- (21) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

➔Section 208. KRS 155.080 is amended to read as follows:

- (1) Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board.
- (2) Except for short term loans which members may make at their discretion, each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:
- (a) All loan limits shall be established at the thousand-dollar (\$1,000) amount nearest to the amount computed in accordance with the provisions of this section.
- (b) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed twenty (20) times the amount then paid in on the outstanding capital stock of the corporation.
- (c) The total amount outstanding on loan to the corporation made by any member at any one (1) time when added to the amount of the investment in the capital stock of the corporation then held by such member shall not exceed:

The following limit, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or, in the case of an insurance company, its last annual statement to the **commissioner**~~executive director~~ of insurance; two percent (2%) of the capital and surplus of commercial banks and trust companies; one percent (1%) of the total outstanding loans made by a building and loan association: provided, however, that any business development corporation created pursuant to this section, KRS 155.010 and 155.090 may in its articles of incorporation, or by appropriate amendment thereto, provide that the loan limit of a building and loan association member shall be only one-half of one percent (0.5%) of the total outstanding loans made by such building and loan association member; one percent (1%) of the capital and unassigned surplus of stock insurance companies, except fire insurance writing companies; one percent (1%) of the unassigned surplus of mutual insurance companies, except fire insurance writing companies; one-tenth of one percent (0.1%) of the assets of fire insurance writing companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

➔Section 209. KRS 155.160 is amended to read as follows:

The corporation shall be subject to the examination of the **commissioner**~~executive director~~ of the **Department**~~Office~~ of Financial Institutions, and shall make reports of its condition not less often than annually to said **commissioner**~~executive director~~, who in turn shall make copies of such reports available to the **commissioner**~~executive director~~ of insurance and to the Governor. The corporation shall also furnish such other information as may from time to time be required by the Secretary of State.

➔Section 210. KRS 160.325 is amended to read as follows:

- (1) In an effort to reduce the rising energy costs that are straining school budgets, on or before January 1, 2010, each board of education shall enroll in the Kentucky Energy Efficiency Program that is offered by the

Kentucky Pollution Prevention Center at the University of Louisville in order to obtain information regarding the potential energy savings for every board-owned and board-operated facility.

- (2) The Kentucky Pollution Prevention Center may prioritize the provision of assistance and development of energy management plans based upon available resources.
- (3) On or before December 1, 2011, and on or before December 1 of each year thereafter, the Kentucky Pollution Prevention Center shall file a report for the preceding fiscal year with the **Department for Energy Development and Independence**~~{Governor's Office of Energy Policy}~~ and the Legislative Research Commission. The report shall include:
 - (a) The number of boards of education enrolled in the Kentucky Energy Efficiency Program;
 - (b) The status of the development of energy management plans by those boards of education and anticipated savings to be obtained by those plans; and
 - (c) The amount and disposition of grants provided by the **Department for Energy Development and Independence**~~{Governor's Office of Energy Policy}~~ and any state appropriations for support of the Kentucky Energy Efficiency Program.

➔Section 211. KRS 162.060 is amended to read as follows:

The chief state school officer shall be furnished a copy of all plans and specifications for new public school buildings contemplated by boards of education and for all additions to or alterations of old buildings. He shall examine or cause to be examined all such plans and specifications and shall approve or disapprove them in accordance with the rules and regulations of the Kentucky Board of Education. Plan reviews for conformance with the Uniform State Building Code shall be conducted only by the **Department**~~{Office}~~ of Housing, Buildings and Construction. No board of education may award a contract for the erection of a new building or contract for an addition to or alteration of an old building until the plan has been approved by the chief state school officer.

➔Section 212. KRS 164.2842 is amended to read as follows:

- (1) (a) The spouse, regardless of age, and any child of a permanently and totally disabled law enforcement officer, firefighter, or volunteer firefighter injured while in active service or in training for active service, who is over the age of seventeen (17) and under the age of twenty-three (23) shall not be required to pay any matriculation or tuition fee upon his admission to any state-supported university, community college, or vocational training institution for a period not in excess of thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion.
- (b) For the spouse or child to be entitled to benefits under this section, the disabled law enforcement officer, firefighter, or volunteer firefighter shall be rated permanently and totally disabled for pension purposes or one hundred percent (100%) disabled for compensation purposes by the Kentucky Justice and Public Safety Cabinet, the appropriate city or county law enforcement agency which employed the disabled, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes, or if deceased, the claim to benefits is to be based on the rating held by the law enforcement officer, firefighter, or volunteer firefighter at the time of death. The parent's or spouse's service and rating shall be evidenced by certification from the records of the Kentucky Justice and Public Safety Cabinet, the appropriate local law enforcement agency, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes.
- (c) In the absence of certification of permanent and total disability by the Kentucky **Department**~~{Office}~~ of Workers' Claims, the Kentucky Justice and Public Safety Cabinet, the appropriate local law enforcement agency, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes, medical evidence showing permanent and total disability or the existence of permanent and total disability for a period of at least thirty (30) days immediately prior to death may be accepted, if this evidence is signed by a physician licensed to practice or an official of an accredited medical hospital.

- (d) The parent-child relationship shall be shown by birth certificate, legal adoption papers, or other documentary evidence. The spousal relationship shall be shown by a marriage certificate or other documentary evidence.
- (e) To entitle a spouse or child to benefits under this section the disabled law enforcement officer, firefighter, or volunteer firefighter shall have been a resident of the Commonwealth of Kentucky upon becoming a law enforcement officer, firefighter, or volunteer firefighter.
- (2) (a) The spouse, regardless of age, and any child of a person who was an employee participating in a state-administered retirement system and not otherwise covered by subsection (1) of this section and who was disabled as a result of a duty-related injury as described in KRS 61.621, who is over the age of seventeen (17) and under the age of twenty-three (23) shall not be required to pay any matriculation or tuition fee upon his admission to any state-supported university, community college, or vocational training institution for a period not in excess of thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion.
- (b) The parent-child relationship shall be shown by birth certificate, legal adoption papers, or other documentary evidence. The spousal relationship shall be shown by a marriage certificate or other documentary evidence.
- (3) The marriage of an eligible child shall not serve to deny full entitlement to the benefits provided in this section.

➔Section 213. KRS 164.587 is amended to read as follows:

- (1) The board of regents may provide medical and accident insurance for students enrolled in the Kentucky Community and Technical College System institutions. The president, on behalf of the system, may enter into a contract or contracts with one (1) or more sureties or insurance companies or their agents to provide appropriate medical and accident insurance coverage and to provide group coverage to all students enrolled in institutions within the system. The appropriate group coverage shall be issued by one (1) or more sureties or insurance companies authorized to transact business in this state, and the coverage shall be approved by the ~~commissioner~~~~executive director~~ of insurance.
- (2) The board shall approve policies upon recommendation of the president to implement the medical and accident insurance program. The board may fix the rate of fees for all postsecondary and adult students as it deems necessary to meet the expense in whole or in part for appropriate student medical and accident insurance.
- (3) The limits of liability and other appropriate provisions for student medical and accident insurance authorized by this section shall be set by the board.

➔Section 214. KRS 164.6903 is amended to read as follows:

As used in KRS 164.6901 to 164.6935, unless the context requires otherwise:

- (1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract;
- (2) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;
- (3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male and female students, the athletic program for males or the athletic program for females, as appropriate;
- (4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;
- (5) "~~Office~~~~Division~~" means the ~~Office~~~~Division~~ of Occupations and Professions in the ~~Environmental and~~ Public Protection Cabinet;
- (6) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;

- (7) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics;
- (8) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity;
- (9) "Professional-sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete;
- (10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;
- (11) "Registration" means registration as an athlete agent pursuant to KRS 164.6901 to 164.6935;
- (12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and
- (13) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

➔Section 215. KRS 164.6905 is amended to read as follows:

- (1) By acting as an athlete agent in this state, a nonresident individual appoints the *Office*~~[Division]~~ of Occupations and Professions as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.
- (2) The *office*~~[division]~~ may issue subpoenas for any material that is relevant to the administration of KRS 164.6901 to 164.6935.
- (3) The *office*~~[division]~~ may promulgate administrative regulations in accordance with KRS Chapter 13A that are necessary to carry out the provisions of KRS 164.6901 to 164.6935.

➔Section 216. KRS 164.6909 is amended to read as follows:

- (1) An applicant for registration shall submit an application for registration to the *office*~~[division]~~ in a form prescribed by the *office*~~[division]~~. An application filed under this section is a public record. The application must be in the name of an individual, and except as otherwise provided in subsection (2) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:
 - (a) The name of the applicant and the address of the applicant's principal place of business;
 - (b) The name of the applicant's business or employer, if applicable;
 - (c) Any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of this application;
 - (d) A description of the applicant's:
 - 1. Formal training as an athlete;
 - 2. Practical experience as an athlete agent; and
 - 3. Educational background relating to the applicant's activities as an athlete agent;
 - (e) The names and addresses of three (3) individuals not related to the applicant who are willing to serve as references;
 - (f) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five (5) years next preceding the date of submission of the application;
 - (g) The names and addresses of all persons who are:
 - 1. With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and

2. With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;
 - (h) Whether the applicant or any person named pursuant to paragraph (g) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (i) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (g) of this subsection has made a false, misleading, deceptive, or fraudulent representation;
 - (j) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (g) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (k) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (g) of this subsection arising out of occupational or professional conduct; and
 - (l) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (g) of this subsection as an athlete agent in any state.
- (2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (1) of this section. The *office*~~[division]~~ shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
 - (a) Was submitted in the other state within six (6) months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
 - (b) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
 - (c) Was signed by the applicant under penalty of perjury.

➔Section 217. KRS 164.6911 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, the *office*~~[division]~~ shall issue a certificate of registration to an individual who complies with KRS 164.6909(1) or whose application has been accepted under KRS 164.6909(2).
- (2) The *office*~~[division]~~ may refuse to issue a certificate of registration if the *office*~~[division]~~ determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the *office*~~[division]~~ may consider whether the applicant has:
 - (a) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (b) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;
 - (c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (d) Engaged in conduct prohibited by KRS 164.6925;
 - (e) Had a registration or licensure as an athlete agent suspended, revoked, or denied, or been refused renewal of registration or licensure as an athlete agent in any state;
 - (f) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or
 - (g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.
- (3) In making a determination under subsection (2) of this section, the *office*~~[division]~~ shall consider:

- (a) How recently the conduct occurred;
 - (b) The nature of the conduct and the context in which it occurred; and
 - (c) Any other relevant conduct of the applicant.
- (4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the ~~office~~~~division~~. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.
- (5) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (4) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The ~~office~~~~division~~ shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:
- (a) Was submitted in the other state within six (6) months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - (b) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (c) Was signed by the applicant under penalty of perjury.
- (6) A certificate of registration or a renewal of registration is valid for one (1) year.

➔Section 218. KRS 164.6913 is amended to read as follows:

- (1) The ~~office~~~~division~~ may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under KRS 164.6911(2).
- (2) The ~~office~~~~division~~ may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing in accordance with KRS Chapter 13B.
- (3) The ~~office~~~~division~~ may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

➔Section 219. KRS 164.6915 is amended to read as follows:

An application for registration or renewal of registration must be accompanied by a fee in the following amount:

- (1) An initial application for registration fee determined by the ~~office~~~~division~~, not to exceed three hundred dollars (\$300);
- (2) An annual renewal fee determined by the ~~office~~~~division~~, not to exceed three hundred dollars (\$300); or
- (3) An application for registration fee based upon certification of registration or licensure issued by another state determined by the ~~office~~~~division~~, not to exceed two hundred fifty dollars (\$250).

➔Section 220. KRS 164.6923 is amended to read as follows:

- (1) An athlete agent shall retain the following records for a period of five (5) years:
 - (a) The name and address of each individual represented by the athlete agent;
 - (b) Any agency contract entered into by the athlete agent; and
 - (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (2) Records required to be retained in subsection (1) of this section are open to inspection by the ~~office~~~~division~~ during normal business hours.

➔Section 221. KRS 164.6929 is amended to read as follows:

- (1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of KRS 164.6901 to 164.6935. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

- (2) Damages of an educational institution under subsection (1) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of KRS 164.6901 to 164.6935 or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.
- (3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.
- (4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (5) The ~~office~~~~division~~ may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for a violation of KRS 164.6901 to 164.6935.
- (6) KRS 164.6901 to 164.6935 does not restrict rights, remedies, or defenses of any person under law or equity.

➔Section 222. KRS 164.760 is amended to read as follows:

The authority shall be subject to the supervision and examination of the ~~Department~~~~Office~~ of Financial Institutions (or any successor), but shall not be deemed to be a banking organization nor required to pay a fee for any such supervision or examination. The authority shall file an annual audited financial report with the Governor within ninety (90) days after the close of the fiscal year. The annual audit shall be made by an independent certified public accountant. The annual audited financial report shall include but may not be limited to the financial condition of the authority as of the end of the fiscal year and the revenues and expenditures for the fiscal year. The fiscal year shall be from July 1 through June 30.

➔Section 223. KRS 164.948 is amended to read as follows:

As used in KRS 164.9481, 164.9483, and 164.9485, unless the context requires otherwise:

- (1) "Campus" means all property owned, managed, or controlled by an institution of postsecondary education including but not limited to academic buildings; student housing and recreational facilities; residential facilities operated by any officially recognized student organization; all sections of public property such as streets, sidewalks, and parking facilities immediately contiguous to campus buildings; and remote facilities leased for use as classroom space or student living.
- (2) "Campus security authority" means campus police, security officers, and any official at a postsecondary education institution who has significant responsibility for student and campus activities, including student discipline, student housing, student judicial affairs, and student life administration. Professional mental health, pastoral, and other licensed counselors when functioning in that capacity are not considered campus security authorities.
- (3) "Crime" means murder, manslaughter, reckless homicide, assault, menacing, wanton endangerment, terroristic threatening, stalking, forcible or nonforcible sex offenses, burglary, criminal damage to property, arson, theft, motor vehicle theft, robbery, weapons possession, and criminal attempt for any of the aforementioned crimes, and arrests for drug-related violations and liquor law violations.
- (4) "Immediately" means before the last fire unit has left the scene in order for the ~~state fire marshal~~~~marshal's office~~ to have the opportunity to speak with fire unit personnel before they leave the scene, but no later than two (2) hours following the time the fire or threat of fire is discovered. In the event of a minor fire to which the local fire officials are not called or do not respond, "immediately" means no later than one (1) hour following the discovery of the fire.
- (5) "Postsecondary education institution" means any Kentucky public four (4) year institution or two (2) year community college or technical college that grants a postsecondary education credential, and any private college or university that is licensed by the Council on Postsecondary Education under KRS 164.945 to 164.947.

➔Section 224. KRS 164.9483 is amended to read as follows:

- (1) Under the provisions of KRS Chapter 227, the state fire marshal shall have jurisdiction over all property in the state including property of public postsecondary education institutions and property of any private college or university that is licensed by the Council on Postsecondary Education as provided for by KRS 164.945 to 164.947, insofar as it is necessary for the administration and enforcement of any duty imposed on the office by

law or administrative regulation and all laws, ordinances, regulations, and orders designed to protect the public from fire loss.

- (2) The state fire marshal or the *state* fire marshal's employee or appointee may, without delay or advance notice and at all reasonable hours of the day or night, enter in or upon any property defined under KRS 227.200 located on the campus to make an inspection, investigation, or any other action necessary for the purpose of preventing fire loss or determining the origin of any fire.
- (3) No person shall obstruct, hinder, or delay such an officer in the performance of his or her duty.
- (4) Upon learning of a fire or threat of fire, a campus security authority designated by the college or university president to be responsible and liable for reporting shall immediately report each fire or threat of fire to the state fire ~~marshal~~~~marshal's office~~ in Frankfort and the local deputies, assistants, and employees appointed under KRS 227.230. No fire scene located on a campus shall be cleared or cleaned without the express consent of the state fire marshal to do so after a representative of the *state* fire ~~marshal~~~~marshal's office~~ has had an opportunity to investigate the scene.

➔Section 225. KRS 164A.585 is amended to read as follows:

- (1) Subject to authorization by the General Assembly and KRS 164A.580, the governing boards may make plans and specifications, advertise for bids, let contracts or incur any financing commitments, either in the way of a charge against institution funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal, water supply system or other utility system.
- (2) Review of construction plans for conformance with the uniform state building code shall be conducted by the ~~Department~~~~Office~~ of Housing, Buildings and Construction. The board shall not approve any such project requiring its approval in any instance where it finds that the project is not needed, or that the proposed method of financing is not sound, or in cases where the project will exceed the amount of the funds available therefor, or the work contemplated will be insufficient to accomplish the purpose of the project, or that after providing for the ordinary recurring expenses of administration and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the Treasury to promptly pay for the work or that the work is to be done by employees of the institution.
- (3) Any capital construction project, except as provided in subsection (4) of this section, shall be contracted for on a competitive bid basis, and the execution of such contracts shall be approved and authorized by the board. When a capital construction project has been approved as provided in this section, in whole or in part, the board shall prepare the plans and specifications, advertise for bids, award the contracts, supervise the construction and handle the financial negotiations.
 - (a) The governing board shall ensure that every invitation for bids or request for proposals shall provide that an item equal to that named or described in the specifications may be furnished.
 - (b) The specifications may identify a sole brand in cases where, in the written opinion of the chief procurement officer, documented unique and valid conditions require compatibility, continuity, or conformity with established standards.
 - (c) An item shall be considered equal to the item named or described if, in the opinion of the governing board and the design professional responsible for the specifications:
 1. It is at least equal in quality, durability, strength, design, and other criteria deemed appropriate;
 2. It will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased; and
 3. It conforms substantially to the detailed requirements for the item in the specifications.
- (4) A capital construction project, the total cost of completion of which will not exceed two hundred fifty thousand dollars (\$250,000), may be performed by the employees of the institution or by individuals hired specifically for the project. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the board as defined in KRS 164A.575.

➔Section 226. KRS 164A.840 is amended to read as follows:

Each fiscal year all license, permit, and acreage fees, collected by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet and which are related to mining or minerals, shall be deposited to the credit of the mining and minerals trust fund in an amount not to exceed the annual debt service required for a mining and minerals building.

➔Section 227. KRS 165A.340 is amended to read as follows:

- (1) There is hereby established a State Board for Proprietary Education which shall ~~be attached to the Environmental and Public Protection Cabinet, Division of Occupations and Professions, and shall~~ consist of eleven (11) voting members to be appointed by the Governor as follows:
 - (a) Three (3) members representative of privately owned educational institutions appointed from a list of seven (7) names submitted by the Kentucky Association of Career Colleges and Schools;
 - (b) Three (3) members representative of technical schools appointed from a list of seven (7) names submitted by the Kentucky Association of Career Colleges and Schools; and
 - (c) Five (5) members representative of the public at large.
- (2) The term of each member shall be four (4) years or until a successor is appointed. If a vacancy occurs on the board, a new member shall be appointed to serve the remainder of the unexpired term.
- (3) The director of the ***Office***~~[Division]~~ of Occupations and Professions in the ~~Environmental and~~ Public Protection Cabinet shall serve as executive director of the board. Members of the board shall annually elect one (1) of their number as chairman. The board may make all rules and regulations, including the establishment of fees and other charges consistent with the provisions of this chapter, as may be necessary to carry out the provisions and purposes of this chapter.
- (4) The board shall hold meetings at least four (4) times a year and as frequently as it deems necessary at the times and places as the board may designate and the majority of the members shall constitute a quorum.
- (5) The board may sue and be sued in its own name.
- (6) The members of the board shall receive one hundred dollars (\$100) per day for each meeting attended and may be paid their travel and other expenses while employed upon the business of the board.
- (7) The board shall administer the provisions of law pertaining to the conduct, operation, maintenance, and establishment of proprietary education institutions, and the activities of agents thereof when acting as such.
- (8) The board shall have the power to subpoena witnesses and school records as it deems necessary.

➔Section 228. KRS 174.410 is amended to read as follows:

- (1) The secretary shall be responsible for controlling and regulating the movement of all radioactive materials and the intrastate transport of other hazardous materials transported by all carrier modes within the Commonwealth.
- (2) The secretary, in consultation with the secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet and the secretary of the Cabinet for Health and Family Services, shall adopt by reference or in entirety, the Federal Hazardous Materials Transportation Regulations, 49 C.F.R. (1978), as amended, to effectively carry out the intent of KRS 174.400 to 174.425.
- (3) The cabinet and the Justice and Public Safety Cabinet shall cooperate with and assist the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet in implementing and enforcing the transportation provisions of any state hazardous waste regulations promulgated pursuant to KRS Chapter 224. The specific nature and details of the assistance effort shall be established by a formal cooperative agreement acceptable to the cabinets, and all activities shall occur in accordance with the terms of the agreement. The agreement shall address and include but not necessarily be limited to the following items:
 - (a) As a part of routine and periodic transportation checks and inspections, ensure that shipments of hazardous waste do not present a threat to the public or the environment; are accompanied by the required hazardous waste manifest or such other shipping or delivery documents as may be acceptable to the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet; and comply with applicable shipping standards;
 - (b) Upon receipt of a written request from the secretary or general counsel of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, actively conduct field investigations relating to the illegal, improper, or unauthorized transport of hazardous waste in the state. Such

investigations may, at a minimum, include passive and active surveillance, apprehension, and reporting, with the scope and extent of each investigation to be previously agreed to by the involved cabinets;

- (c) Compile and maintain such necessary records that may normally be required to carry out the provisions of this subsection and shall for minor violations report quarterly, and for major violations report weekly, to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet on the status of the interagency hazardous-waste transportation monitoring and enforcement activity for irregularities or violations;
- (d) Provide any information, evidence, and other support, either in written form or in the form of oral testimony during a legal proceeding or both, as may be required by the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet to fully carry out its statutory responsibility under the appropriate sections of KRS Chapter 224;
- (e) The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall, unless specifically agreed otherwise, have primary responsibility for initiating and conducting all legal proceedings arising from the terms and provisions of this subsection; and
- (f) The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall provide sufficient training, technical assistance, and other support to the appropriate cabinets to prepare representatives of the cabinets to adequately carry out the responsibilities set forth in this subsection.

➔Section 229. KRS 174.420 is amended to read as follows:

- (1) Any person transporting hazardous materials in the Commonwealth shall carry a copy of the shipping papers required in 49 C.F.R. (1978), as amended, in the transporting vehicle while in the Commonwealth.
- (2) In the event of an accident involving hazardous material, the operator of the vehicle shall:
 - (a) Notify the Department of Kentucky State Police of the accident within one (1) hour, who shall then notify the local jurisdiction and any other appropriate state agency with emergency action responsibility, and
 - (b) Provide the shipping papers to state and local emergency response authorities, and immediately bring to their attention the fact that the vehicle is transporting hazardous materials.
- (3) In addition to the other requirements of this section, any person transporting hazardous wastes shall carry in the transporting vehicle a copy of a manifest in a form approved by the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet.

➔Section 230. KRS 176.054 is amended to read as follows:

The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall furnish to the Department of Highways such seedlings or young trees as the department may require, or as may be available. The Department of Highways shall pay to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet the reasonable value thereof as may be agreed upon between such departments.

➔Section 231. KRS 177.977 is amended to read as follows:

- (1) The Transportation Cabinet shall publish a directory, including supporting maps and other documents, designating the official coal road system in coal impact and coal producing counties which shall include all public highways, roads, bridges, and streets over which quantities of coal sufficient to significantly affect the condition and state of repair of such highways, roads, bridges, and streets have been transported in the immediately preceding year. The cabinet shall further publish the total county mileage of the official coal road system and the total ton-miles within each coal impact and coal producing county for said preceding year.
- (2) Every person, producer or processor shipping or transporting coal over the public highways, roads, bridges, and streets, shall file with the Transportation Cabinet information at intervals as the cabinet shall designate by administrative regulation promulgated pursuant to KRS Chapter 13A, for the purpose of identifying those highways, roads, and streets comprising the coal road system and the quantities of coal transported thereon, in order that the cabinet can accurately calculate total ton-miles within each coal impact and coal producing county. A copy of the information furnished to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet pursuant to the provisions of KRS 350.0285 and a copy of the information furnished to the Department for Natural Resources pursuant to the provisions of KRS 351.070 and 352.420 shall be submitted

to the Transportation Cabinet to satisfy the reporting requirements of this subsection and the transportation plan shall be annually updated to reflect in route changes.

➔Section 232. KRS 183.125 is amended to read as follows:

- (1) The cabinet may purchase necessary insurance to provide adequate protection for the public; its authorized pilots and employees; pilots employed by other departments of state government; aircraft owned, leased or operated by the cabinet; aircraft owned, leased or operated by other departments of state government; the health and lives of persons being transported in aircraft owned, leased or operated by authorized pilots employed by the state.
- (2) The ~~commissioner~~~~executive director~~ of insurance, upon recommendation of the secretary of the Transportation Cabinet, shall initiate and be responsible for the purchase of such insurance. If other departments of state government desire that their pilots, employees, aircraft and passengers shall be insured under such policy, then the ~~commissioner~~~~executive director~~ of insurance shall prorate the cost of the insurance among the departments participating.
- (3) Each policy shall contain a provision reciting that the defense of immunity of the state against such liability shall be waived, but only to the extent of the limits of the policy. Judgment against the state in any case shall not exceed the limits of the policy. The venue of action shall be as provided by the civil rules. The limits of liability of the policy shall be determined by the ~~commissioner~~~~executive director~~ of insurance, the secretary of the Transportation Cabinet and the commissioners of any other participating departments.
- (4) Any policy purchased under this section, shall be purchased only from insurers authorized to do business in this state and shall be countersigned by a licensed resident agent.

➔Section 233. KRS 186.021 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, a county clerk shall not issue a replacement plate, decal, or registration certificate as provided in KRS 186.180, or a registration for renewal to any person who on January 1 of any year owned a motor vehicle on which state, county, city, urban-county government, school, or special taxing district ad valorem taxes are delinquent.
- (2) Pursuant to KRS 134.810(4), the owner as defined in KRS 186.010(7)(a) and (c) on January 1 of any year shall be liable for taxes due on a motor vehicle. A person other than the owner of record who applies to a county clerk to transfer the registration of a motor vehicle may pay any delinquent ad valorem taxes due on the motor vehicle to facilitate the county clerk's transferring registration of the motor vehicle. The person applying shall not be required to pay delinquent ad valorem taxes due on any other motor vehicle owned by the owner of record from which he is purchasing his motor vehicle as a condition of registration.
- (3) A county clerk shall not issue a replacement plate, decal, or registration certificate as provided in KRS 186.180, or a registration renewal for any motor vehicle that is not insured in compliance with KRS 304.39-080. Each applicant for registration renewal shall present proof of compliance to the county clerk in a manner prescribed in administrative regulations issued by the ~~Department~~~~Office~~ of Insurance. On and after January 1, 2006, if the motor vehicle is a personal motor vehicle as defined in KRS 304.39-087, proof of insurance shall be determined by the county clerk as provided in KRS 186A.042.

➔Section 234. KRS 186.065 is amended to read as follows:

- (1) Every state-owned motor vehicle, except as provided in subsection (2), shall have an official license plate. Except as provided in subsections (2), (3), and (4) on one (1) door on each side of every state-owned vehicle shall be the great seal of the Commonwealth and the words "For Official Use Only."
- (2) The Department of Revenue, the ~~Cabinets of~~ Transportation **Cabinet**, the Justice **and Public Safety Cabinet**, the ~~and Environmental and~~ Public Protection **Cabinet**, and the Attorney General may authorize registration under KRS 186.020 and be issued regular license plates for vehicles used for investigatory purposes. The Administrative Office of the Courts may authorize registration under KRS 186.020 and be issued regular license plates for vehicles used by justices and judges of the Supreme Court and Court of Appeals.
- (3) The Governor and the Lieutenant Governor may each use one (1) state-owned motor vehicle on which it shall not be necessary to have the state seal or the words "For Official Use Only."
- (4) The Justices and Judges of the Supreme Court and Court of Appeals may each use state-owned motor vehicles on which it shall not be necessary to have the state seal or the words "For Official Use Only."

➔Section 235. KRS 186.190 is amended to read as follows:

- (1) When a motor vehicle that has been previously registered changes ownership, the registration plate shall remain upon the motor vehicle as a part of it until the expiration of the registration year.
- (2) A person shall not purchase, sell, or trade any motor vehicle without delivering to the county clerk of the county in which the sale or trade is made the title, and a notarized affidavit if required and available under KRS 138.450 attesting to the total and actual consideration paid or to be paid for the motor vehicle. Any unexpired registration shall remain valid upon transfer of the vehicle to the new owner. Except for transactions handled by a motor vehicle dealer licensed pursuant to KRS Chapter 190, the person who is purchasing the vehicle shall present proof of insurance in compliance with KRS 304.39-080 to the county clerk before the clerk transfers the registration on the vehicle. Proof of insurance shall be in the manner prescribed in administrative regulations promulgated by the *Department*~~{Office}~~ of Insurance pursuant to KRS Chapter 13A. On and after January 1, 2006, if the motor vehicle is a personal motor vehicle as defined in KRS 304.39-087, proof of insurance shall be determined by the county clerk as provided in KRS 186A.042.
- (3) Upon delivery of the title, and a notarized affidavit if required and available under KRS 138.450 attesting to the total and actual consideration paid or to be paid for the motor vehicle to the county clerk of the county in which the sale or trade was made, the seller shall pay to the county clerk a transfer fee of two dollars (\$2), which shall be remitted to the Transportation Cabinet. If an affidavit is required, and available, the signatures on the affidavit shall be individually notarized before the county clerk shall issue to the purchaser a transfer of registration bearing the same data and information as contained on the original registration receipt, except the change in name and address. The seller shall pay to the county clerk a fee of six dollars (\$6) for his services.
- (4) If the owner junks or otherwise renders a motor vehicle unfit for future use, he shall deliver the registration plate and registration receipt to the county clerk of the county in which the motor vehicle is junked. The county clerk shall return the plate and motor vehicle registration receipt to the Transportation Cabinet. The owner shall pay to the county clerk one dollar (\$1) for his services.
- (5) A licensed motor vehicle dealer shall not be required to pay the transfer fee provided by this section, but shall be required to pay the county clerk's fee provided by this section.
- (6) The motor vehicle registration receipt issued by the clerk under this section shall contain information required by the Department of Vehicle Regulation.

➔Section 236. KRS 186.290 is amended to read as follows:

- (1) The Department of Vehicle Regulation shall provide and receive information on the emissions test status of vehicles registered in the Commonwealth of Kentucky. The Department of Vehicle Regulation shall provide appropriate emissions test and compliance status to the Department of Information Systems for inclusion in the AVIS database.
- (2) Upon notification to the Department of Vehicle Regulation from a county air pollution control district or the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet of expiration of a vehicle emissions compliance certificate, the Department of Vehicle Regulation shall immediately notify the person who owns the vehicle that unless evidence of compliance is received within thirty (30) days, the department shall revoke the registration of the motor vehicle until:
 - (a) The person presents an emissions certificate to the county clerk and pays the reinstatement fee required under KRS 186.180; or
 - (b) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that failure to obtain a current emissions certificate is the result of the inoperable condition of the motor vehicle.
- (3) The provisions of this section and KRS 186.180, 186.990, 224.20-760, and 224.20-765 shall not prevent the Transportation Cabinet, a county air pollution district, or the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet from seeking the enforcement or operation of any other statute or ordinance that ensures the compliance of motor vehicles in the Commonwealth under KRS Chapter 186, KRS 224.20-710 to 224.20-765, or KRS Chapter 77.

- (4) The provisions of this section and KRS 186.180, 186.990, 224.20-760, and 224.20-765 shall apply to vehicles that are registered in a county authorized under KRS 224.20-710 to 224.20-765 or KRS Chapter 77 to conduct vehicle emissions tests.

➔Section 237. KRS 186A.015 is amended to read as follows:

- (1) Except as provided for in KRS 235.050, the titling and registration of motorboats as defined in KRS 235.010 shall be administered through the automated motor vehicle and trailer registration and titling system developed and implemented under the provisions of KRS 186A.010.
- (2) The Transportation Cabinet, the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, the Department of Revenue, and all other agencies of state government affected by the system are hereby directed to cooperate in the orderly implementation of this system.
- (3) The Transportation Cabinet, as far as practicable, and not inconsistent with the provisions of KRS Chapter 235, shall promulgate administrative regulations requiring the procedures for boat titling and registration to be consistent with motor vehicle titling and registration. These administrative regulations may pertain but shall not be limited to the following:
- (a) Conditions and characteristics of certificate of title forms;
 - (b) Comparison and identification of hull identification numbers;
 - (c) Application for title or registration;
 - (d) Processing of title applications;
 - (e) Form of certificate of title;
 - (f) Notation of security interests or title;
 - (g) Title lien statements;
 - (h) Transfer of boat ownership;
 - (i) Duplicate certificate of title or registration; and
 - (j) Salvage titles.

➔Section 238. KRS 186A.040 is amended to read as follows:

- (1) The Department of Vehicle Regulation shall provide and receive information on the insurance status of vehicles registered in the Commonwealth of Kentucky pursuant to KRS 304.39-087 and 304.39-085. The department shall provide appropriate insurance information to the Commonwealth Office of Technology for inclusion in the AVIS database to assist in identifying uninsured motor vehicles.
- (2) (a) Upon notification to the Department of Vehicle Regulation from an insurance company of cancellation or nonrenewal of a policy pursuant to KRS 304.39-085, or on and after January 1, 2006, if the vehicle identification number (VIN) of a personal motor vehicle does not appear in the database created by KRS 304.39-087 for two (2) consecutive reporting months, the department shall immediately make a determination as to the notification of the insured. Notification to the insured shall state that the insured's policy is no longer valid and that the insured shall have thirty (30) days to show proof of insurance to the county clerk. The department shall further inform the insured that if evidence of insurance is not received within thirty (30) days the department shall revoke the registration of the motor vehicle until:
1. The person presents proof of insurance to the county clerk and pays the reinstatement fee required by KRS 186.180;
 2. The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the inoperable condition of the motor vehicle;
 3. The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the seasonal nature of the vehicle. The affidavit shall explain that when the vehicle is out of dormancy and when the seasonal use of the vehicle is resumed, the proper security will be obtained; or

4. The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that he or she requires a registered motor vehicle in order to carry out his or her employment and that the motor vehicle that he or she drives during the course of his or her employment meets the security requirement of Subtitle 39 of KRS Chapter 304. The person shall also declare in the affidavit that he or she will operate a motor vehicle only in the course of his or her employment. If a person has his or her motor vehicle registration revoked in accordance with this subsection three (3) times within any twelve (12) month period, the revocations shall constitute a violation of KRS 304.39-080. The department shall notify the county attorney to begin prosecution for violation of subtitle 39 of KRS Chapter 304.
 - (b) The Department of Vehicle Regulation shall be responsible for notification to the appropriate county attorney that a motor vehicle is not properly insured, if the insured does not respond to notification set out by paragraph (a) of this subsection. The notice that the department gives to the county attorney in accordance with paragraph (a) of this subsection shall include a certified copy of the person's driving record which shall include:
 1. The notice that the department received from an insurance company that a person's motor vehicle insurance policy has been canceled or has not been renewed; and
 2. A dated notice that the department sent to the person requiring the person to present proof of insurance to the county clerk.

Upon notification by the department, a county attorney shall immediately begin prosecution of the person who had his or her motor vehicle registration revoked three (3) times within any twelve (12) month period in accordance with paragraph (a) of this subsection.
 - (c) The certified copies sent by the department described in paragraph (b) of this subsection, shall be prima facie evidence of a violation of KRS 304.39-080.
 - (d) If the insured provides proof of insurance to the clerk within the thirty (30) day notification period, the department shall ensure action is taken to denote a valid insurance policy is in force.
- (3) (a) In developing the mechanism to electronically transfer information pursuant to KRS 304.39-087, the commissioner of the Department of Vehicle Regulation shall consult with the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance and insurers of personal motor vehicles to adopt a standardized system of organizing, recording, and transferring the information so as to minimize insurer administrative expenses. The commissioner of *vehicle regulation* shall to the maximum extent possible utilize nationally recognized electronic data information systems such as those developed by the American National Standards Institute or the American Association of Motor Vehicle Administrators.
 - (b) Notwithstanding any other provision of law, information obtained by the department pursuant to KRS 304.39-087 shall not be subject to the Kentucky Open Records Act, KRS 61.872 to 61.884, and shall not be disclosed, used, sold, accessed, utilized in any manner, or released by the department to any person, corporation, or state and local agency, except in response to a specific individual request for the information authorized pursuant to the federal Driver's Privacy Protection Act, 18 U.S.C. secs. 2721 et seq. The department shall institute measures to ensure that only authorized persons are permitted to access the information for the purposes specified by this section. Persons who knowingly release or disclose information from the database created by KRS 304.39-087 for a purpose other than those described as authorized by this section or to a person not entitled to receive it shall be guilty of a Class A misdemeanor for each release or disclosure.

➔Section 239. KRS 186A.060 is amended to read as follows:

The Department of Vehicle Regulation is directed to develop, in cooperation with county clerks, auto dealers, and the Department of Revenue, ~~Department~~~~Office~~ of Insurance, and Department of Kentucky State Police, the forms required to record all information pertinent to the initial registration, or titling and taxation, or transfer of registration or title of a vehicle. The Department of Vehicle Regulation shall make every effort to minimize and reduce the amount of paperwork required to apply for, or transfer, a vehicle title. When possible, the title document itself shall be used as the primary form used to effect a transfer of vehicle ownership. When no in-state title exists, then forms shall be designed by the department that require only the appropriate and essential information to effect the application for title. The department shall constantly review the information needs of government agencies and other organizations with the goal of reducing, or eliminating, unnecessary documentation. Information being sought for application for

title relevant to, but not limited to, vehicle identification, owner, buyer, usage tax, county clerk or inspector shall be set forth by the cabinet in such a way as to promote flexibility in reaching this goal, except that an applicant for a motor vehicle title shall not be required to provide his or her social security number as part of the application process. The use of an electronic medium shall be employed so that forms can be printed by the automated system. Existing statutory language in this chapter and KRS Chapter 186 pertaining to application, signature, forms, or application transfer record may be construed to be electronic in nature at the discretion of the cabinet as provided for by administrative regulation. Any person who knowingly enters, or attests to the entry of, false or erroneous information in pursuit of a certificate of title shall be guilty of forgery in the second degree.

➔Section 240. KRS 190.100 is amended to read as follows:

- (1)
 - (a) Every retail installment contract shall be in writing in at least eight (8) point type, shall contain all the agreements of the parties, shall be signed by the retail buyer, and a copy thereof shall be furnished to such retail buyer at the time of the execution of the contract;
 - (b) No provision of a retail installment contract which purports to provide for the inclusion of title to or a lien upon any goods other than the motor vehicle, accessories and special or auxiliary equipment used in connection therewith which either are the subject of the retail installment sale or are substitution in whole or in part therefor, as security for payment of such time sale price shall be valid or enforceable; but the other provisions of the retail installment contract shall not be affected thereby;
 - (c) No provisions for confession of judgment, power of attorney therefor, or wage assignment contained in any retail installment contract shall be valid or enforceable;
 - (d) If the finance charge applicable to a retail installment contract has been determined by a pre-computed method, the holder of a retail installment contract may collect a delinquency and collection charge on each installment in arrears for a period not less than ten (10) days in an amount not in excess of five percent (5%) of each installment or five dollars (\$5), whichever is the less. In addition to such delinquency and collection charge, the retail installment contract may provide for the payment of attorneys' fees not exceeding fifteen percent (15%) of the amount due and payable under such contract where such contract is referred to an attorney not a salaried employee of the holder of the contract for collection, plus the court costs;
 - (e) Unless notice has been given to the retail buyer of actual or intended assignment of a retail installment contract, payment thereunder or tender thereof made by the retail buyer to the last known holder of such contract shall be binding upon all subsequent holders or assignees; and
 - (f) Upon written request from the retail buyer, the holder of the retail installment contract shall give or forward to the retail buyer a written statement of the total amount unpaid under such contract. A retail buyer shall be given a written receipt for any payment when made in cash.
- (2) The retail installment contract shall contain the following:
 - (a) The cash sale price of the motor vehicle which is the subject matter of the retail installment sale;
 - (b) The amount of the retail buyer's down payment, whether made in money or goods, or partly in money or partly in goods;
 - (c) The difference between paragraphs (a) and (b) of this subsection;
 - (d)
 1. Amount, if any, included for insurance and other benefits; and
 2. Types of coverage and benefits;
 - (e) Official fees as defined in KRS 190.090; and
 - (f) Principal balance, which is the sum of paragraphs (c), (d), and (e) of this subsection.
- (3) The retail installment contract shall contain a definite statement in twelve (12) point bold type or larger, that the insurance, if any included in the retail installment sale provides or does not provide coverage for personal liability and property damage caused to others, as the case may be.
- (4) The amount, if any, included for insurance, shall not exceed the premiums chargeable in accordance with applicable rate filings made with the ~~commissioner~~ ~~executive director~~ of insurance. Every retail seller or sales finance company, if insurance on the motor vehicle is included in a retail installment contract shall within thirty (30) days after execution of the retail installment contract send or cause to be sent to the retail buyer a policy or

policies or certificate of insurance, which insurance shall be written by a company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance and the scope of the coverage and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of the insurance. The buyer of a motor vehicle under a retail installment contract shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the seller; provided, however, that the inclusion of the insurance premium in the retail installment contract when the buyer selects the agent, broker or company, shall be optional with the seller. If any such policy is canceled, the unearned insurance premium refund received by the holder of the contract shall be credited to the final maturing installments of the retail installment contract. For purposes of this subsection, single interest insurance insuring the retail seller or sales finance company shall not be considered insurance on the motor vehicle. Neither a copy of the policy nor a certificate of insurance of this type of insurance shall be sent to the retail buyer.

- (5) Any sales finance company hereunder may purchase or acquire from any retail seller any retail installment contract on such terms and conditions as may be agreed upon between them. No filing of the assignment, no notice to the retail buyer of the assignment, and no requirement that the retail seller shall be deprived of dominion over the payments thereunder or the goods covered thereby if repossessed by the retail seller shall be necessary to the validity of a written assignment of a retail installment contract as against creditors, subsequent purchasers, pledgees, mortgagees, and lien claimants of the retail seller.
- (6) An acknowledgment in the body of the retail installment contract by the retail buyer of the delivery of a copy thereof shall be conclusive proof of delivery in any action or proceeding by or against any assignee of a retail installment contract.
- (7)
 - (a) A "debt cancellation agreement" is a written provision in a retail installment contract, or separate addendum thereto, which provides for cancellation of all or part of an obligation of the buyer or obligor upon the occurrence of a specified event.
 - (b) In accordance with subsection (2)(d) of this section, a debt cancellation agreement shall be itemized by type on the retail installment contract and considered an "other benefit" for which the seller, sales finance company, or other holder may charge the buyer or obligor.
 - (c) A debt cancellation agreement shall not be considered a contract of, or for, insurance.

➔Section 241. KRS 194A.150 is amended to read as follows:

When federal programs require a particular citizens' council within or attached to the cabinet to include state officials as voting members, the secretary shall, for the specific purposes of those federal programs, be authorized to vote in those council meetings and shall further be authorized to call upon either the secretary of the Cabinet for Health and Family Services, the secretary of the Finance and Administration Cabinet, the chief state school officer, the secretary of the Justice and Public Safety Cabinet, the secretary of the ~~Environmental and~~ Public Protection Cabinet, ***the secretary of the Energy and Environment Cabinet, the secretary of the Labor Cabinet,*** the secretary of the Cabinet for Economic Development, the executive director of the Council on Higher Education, or any combination of the above as may be appropriate, to be voting members of expanded citizens' councils for the purposes of these federal programs. The secretary shall exercise this prerogative only when the federal programs specifically require that state officials be voting members of the citizens' councils.

➔Section 242. KRS 194A.622 is amended to read as follows:

- (1) There is hereby created the Kentucky Commission on Autism Spectrum Disorders, which shall consist of the following twenty-two (22) members who shall be initially appointed by July 1, 2005:
 - (a) The secretary of the Cabinet for Health and Family Services or his or her designee;
 - (b) The commissioner of the Department for Medicaid Services or his or her designee;
 - (c) The director of the Kentucky Early Intervention System, Department for Public Health, or his or her designee;
 - (d) The commissioner of the Department for Mental Health and Mental Retardation Services or his or her designee;
 - (e) The commissioner of the Department for Aging and Independent Living or his or her designee;

- (f) The chair of the Council on Postsecondary Education or his or her designee;
 - (g) The director of the Division of Exceptional Children Services or his or her designee;
 - (h) The commissioner of the Department of Vocational Rehabilitation or his or her designee;
 - (i) The *commissioner*~~[executive director]~~ of the *Department*~~[Office]~~ of Insurance or his or her designee;
 - (j) Two (2) nonvoting ex officio members from the House of Representatives, one (1) representing the majority party and one (1) representing the minority party, who shall be appointed by and serve at the pleasure of the Speaker of the House;
 - (k) Two (2) nonvoting ex officio members from the Senate, one (1) representing the majority party and one (1) representing the minority party, who shall be appointed by and serve at the pleasure of the President of the Senate;
 - (l) Four (4) professional ASD treatment providers, including at least one (1) mental health provider, one (1) physical health provider, and one (1) complex needs consultant from a special education cooperative, to be appointed by the Governor; and
 - (m) Five (5) parents, including three (3) who, at the time of their appointment to the commission, have a child with an ASD who is under eighteen (18) years of age and two (2) who, at the time of their appointment to the commission, have a child with an ASD who is eighteen (18) years of age or older, to be appointed by the Governor.
- (2) In making appointments to the commission, the Governor shall ensure broad representation of Kentucky's citizens who are concerned with the health and quality of life of individuals with an ASD, may appoint individuals who are also members of the Kentucky Council on Developmental Disabilities, and shall consider candidates recommended by the Autism Spectrum Disorders Advisory Consortium of Kentucky.
 - (3) Members shall serve without compensation but shall be reimbursed for their actual expenses incurred in the performance of commission duties in accordance with KRS 45.101 and administrative regulations promulgated thereunder. Members of the commission shall serve until the commission ceases to exist, a successor has been appointed, or until removed for good cause.
 - (4) The Cabinet for Health and Family Services shall provide staff and administrative support for the commission.
 - (5) The chair of the commission shall be designated by the Governor and may be a member in addition to those listed in subsection (1) of this section. The chair of the commission shall establish procedures for the commission's internal procedures.
 - (6) The commission shall meet at least three (3) times per year. The commission shall also meet as often as necessary to accomplish its purpose upon the call of the chair, the request of four (4) or more members, or the request of the Governor.
 - (7) The commission shall develop a comprehensive state plan for creating an integrated system of training, treatments, and services for individuals of all ages with an ASD. The commission shall utilize relevant data and research and consult with appropriate professionals, agencies, institutions, and organizations representing the private and public sectors, including the Kentucky Autism Training Center, to develop the state plan. The state plan shall include the following:
 - (a) An assessment of the diverse needs for services and supports for individuals with an ASD;
 - (b) Identification of state, federal, private, and any other appropriate funding sources;
 - (c) Development of a comprehensive training plan, which shall include the Kentucky Autism Training Center, to meet training needs;
 - (d) An analysis of standards for provider training and qualifications, best practice standards for services, and the need for additional service providers;
 - (e) An evaluation of health benefit plans and insurance coverage for the treatment of ASD;
 - (f) A plan for the identification of individuals of all ages with an ASD and for the creation of a statewide ASD registry;
 - (g) An analysis of program and service eligibility criteria;

- (h) An assessment of the need for coordinated, enhanced, and targeted special education and treatment programs for children with an ASD; and
 - (i) A timeline for implementing and monitoring the recommendations of the plan statewide. The timeline shall include input from the following:
 - 1. The Cabinet for Health and Family Services;
 - 2. The Department for Medicaid Services;
 - 3. The Department for Public Health;
 - 4. The Department for Mental Health and Mental Retardation Services;
 - 5. The Kentucky Early Intervention System;
 - 6. The Division of Exceptional Children Services;
 - 7. The Department of Vocational Rehabilitation;
 - 8. The ~~Department~~ *Office* of Insurance;
 - 9. The Department of Education;
 - 10. The Council on Postsecondary Education; and
 - 11. Other appropriate agencies, professionals, institutions, and organizations representing the public and private sectors, including the Kentucky Autism Training Center.
- (8) Based upon the comprehensive state plan for an integrated system of training, treatment, and services for individuals of all ages with an ASD, the commission shall make recommendations regarding legislation, administrative regulations, and policies to the Governor and the General Assembly on the following:
- (a) Needs for services and supports for individuals who have an ASD;
 - (b) Funding needs and sources, including state, federal, private, and any other appropriate funding sources;
 - (c) Training needs and a plan to implement a comprehensive training system, which shall include the Kentucky Autism Training Center;
 - (d) Standards for provider training and qualifications, best practice standards for services, and the need for additional providers;
 - (e) Goals for developing health benefit plans that provide insurance coverage for the treatment of ASD;
 - (f) A plan for the identification of individuals of all ages with an ASD and for the creation of a statewide ASD registry;
 - (g) Consistent program and service eligibility criteria;
 - (h) The need for coordinated, enhanced, and targeted special education and treatment programs for individuals with an ASD; and
 - (i) Strategies and timelines for establishing an accountable, cost-efficient, and cooperative system of services that integrates and builds upon existing public and private agencies, programs, and resources.
- (9) The commission shall submit the comprehensive state plan and recommendations to the Governor, the Kentucky Council on Developmental Disabilities, and the Legislative Research Commission by October 1, 2006, at which time the commission shall cease to exist unless reauthorized by the General Assembly.
- (10) The Kentucky Council on Developmental Disabilities shall appoint a subcommittee, which shall include members of the commission, to monitor the implementation of the state plan as developed by the commission beginning October 1, 2006. The subcommittee shall prepare, and the council shall submit, a report to the Governor and Legislative Research Commission that assesses progress in the implementation of the state plan and that makes recommendations on the need for modifications to the state plan as developed by the Kentucky Commission on Autism Spectrum Disorders. The subcommittee shall prepare, and the council shall submit, the report as it deems appropriate, but no less than biennially, until October 1, 2015.

➔Section 243. KRS 198A.035 is amended to read as follows:

- (1) The Kentucky Housing Corporation shall oversee the development and implementation of the Kentucky housing policy. The corporation shall create an advisory committee on housing policy consisting of the following:
- (a) The following nine (9) state government members, or their duly appointed designees: the commissioner of education; commissioner of the Governor's Office for Local Development; ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Housing, Buildings and Construction; secretary of the ~~Energy and Environment~~~~Environmental and Public Protection~~ Cabinet; secretary of the Cabinet for Health and Family Services; executive director of the Human Rights Commission; state historic preservation officer; secretary of the Transportation Cabinet; and executive director of the Kentucky Housing Corporation;
 - (b) At-large members shall be appointed by the chairman of the board of directors of the Kentucky Housing Corporation. There shall be one (1) at-large representative for each of the following:
 - 1. Public housing authorities;
 - 2. Mortgage banking industry;
 - 3. Manufactured housing industry;
 - 4. Realtors;
 - 5. Homebuilders;
 - 6. Urban nonprofit housing organizations;
 - 7. Rural nonprofit housing organizations;
 - 8. Urban advocates for the homeless;
 - 9. Rural advocates for the homeless;
 - 10. Residents of economically diverse urban neighborhoods;
 - 11. Residents of economically diverse rural neighborhoods;
 - 12. Rental property providers;
 - 13. Advocates for persons with physical disabilities;
 - 14. Advocates for persons with mental disabilities;
 - 15. The Kentucky State Building Trades Council;
 - 16. The Kentucky League of Cities; and
 - 17. The Kentucky Association of Counties; and
 - (c) One (1) member of the Senate and one (1) member of the House of Representatives.
- (2) State government members and General Assembly members shall serve on the advisory committee during the term of their elected or appointed state government positions. Members appointed as provided by subsection (1)(b) of this section shall be appointed for four (4) year terms, except that initially five (5) shall be appointed for two (2) year terms, six (6) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms.
- (3) The advisory committee shall meet at least quarterly and hold additional meetings as necessary. Eleven (11) members of the committee shall constitute a quorum for the purposes of conducting business and exercising its powers for all purposes.
- (4) Any vacancy shall be filled as provided by the requirements and procedures for the initial appointment and only for the remainder of the term of the initial appointment.
- (5) Any at-large member may be removed at any time, with or without cause, by resolution of a majority of the board of directors of the corporation.
- (6) The advisory committee shall consult with and advise the officers and directors of the corporation concerning matters relating to the Kentucky housing policy.

- (7) The corporation shall annually report its findings and recommendations regarding the Kentucky housing policy to the Governor and the Interim Joint Committee on Local Government of the Legislative Research Commission.
- (8) The advisory committee shall elect a presiding officer from among its members and may establish its own rules of procedure which shall not be inconsistent with the provisions of this chapter.
- (9) Members of the advisory committee shall serve without compensation. Members who are not employees of the Commonwealth shall be entitled to reimbursement for actual expenses incurred in carrying out their duties on the committee.
- (10) The Kentucky Housing Corporation shall provide the staff and funding for the administrative activities of the advisory committee. The Kentucky Housing Corporation shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of the advisory committee. The advisory committee may authorize studies as it deems necessary and utilize Kentucky Housing Corporation funds and other available resources from the public or private sector to provide housing needs data.

➔Section 244. KRS 198A.040 is amended to read as follows:

The corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including but without limiting the generality of the foregoing the power:

- (1) To make or participate in the making of insured construction loans to sponsors of land development or residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that construction loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (2) To make or participate in the making of insured mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (3) To purchase or participate in the purchase of insured mortgage loans made to sponsors of residential housing or to persons of lower and moderate income for residential housing; provided, however, that any such purchase shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (4) To make temporary loans from the housing development fund;
- (5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness;
- (6) To acquire real property, or any interest therein, by purchase, foreclosure, lease, sublease, or otherwise; to own, manage, operate, hold, clear, improve, and rehabilitate such real property; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purpose of the Kentucky Housing Corporation;
- (7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction, land development, mortgage, or temporary loan of any type permitted by this chapter;
- (8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;
- (9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract, or agreement of any kind to which the corporation is a party;
- (10) To acquire, establish, operate, lease, and sublease residential housing for persons and families of lower and moderate income and to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing and where no local housing authorities or other organizations exist to fill such need;

- (11) To include in any borrowing such amounts as may be deemed necessary by the corporation to pay financing charges, interest on the obligations for a period not exceeding two (2) years from their date, consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;
- (12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;
- (13) To provide technical and advisory services to sponsors of residential housing and to residents and potential residents thereof, including but not limited to housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;
- (14) To promote research and development in scientific methods of constructing low cost residential housing of high durability;
- (15) To encourage community organizations to participate in residential housing development;
- (16) To make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, or other organization or entity, necessary to accomplish the purposes of this chapter;
- (17) To accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;
- (18) To sue and be sued in its own name and plead and be impleaded;
- (19) To maintain an office in the city of Frankfort and at such other place or places as it may determine;
- (20) To adopt an official seal and alter the same at pleasure;
- (21) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;
- (22) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the corporation and to fix and pay their compensation from funds available to the corporation therefor, provided that any personal service contracts entered into shall be subject to review by the Government Contract Review Committee of the Legislative Research Commission;
- (23) To invest any funds held in reserve or in sinking fund accounts or any moneys not required for immediate disbursement in obligations guaranteed by the Commonwealth, the United States, or their agencies or instrumentalities; provided, however, that the return on such investments shall not violate any rulings of the Internal Revenue Service regarding the investment of the proceeds of any federally tax exempt bond issue;
- (24) To make or participate in the making of rehabilitation loans to the sponsors or owners of residential housing; provided, however, that any such rehabilitation loan shall be made only upon the determination by the corporation that the rehabilitation loan was not otherwise available wholly or in part from private lenders upon reasonably equivalent terms and conditions;
- (25) To insure or reinsure construction, mortgage, and rehabilitation loans on residential housing; provided, however, that any such insurance, reinsurance, or waiver shall be made only upon the determination by the corporation:
 - (a) That such insurance or reinsurance is not otherwise available wholly or in part from private insurers upon reasonably equivalent terms and conditions; and
 - (b) That such loan is a reasonably sound business investment; and provided further that insurance may be waived only where the corporation finds that the amount of the loan does not exceed eighty-five percent (85%) of the development costs, or eighty-five percent (85%) of the value of the property secured by the mortgage as determined by at least two (2) appraisers who are independent of the sponsors, builders, and developers;
- (26) To make grants from appropriated funds, agency and trust funds, and any other funds from any source available to the corporation, to sponsors, municipalities, local housing authorities, and to owners of residential housing for the development, construction, rehabilitation, or maintenance of residential housing and such

facilities related thereto as corporation shall deem important for a proper living environment, all on such terms and conditions as may be deemed appropriate by the corporation;

- (27) To make periodic grants to reduce principal and interest payments on mortgages or rentals payable by persons and families of lower and moderate income;
- (28) (a) To make a grant to reduce principal and interest payments on a mortgage or a rental payable by a regular member of the United States Armed Forces who names Kentucky as home of record for military purposes, during that member's deployment on active duty outside the United States, or payable by a member of a state National Guard or a Reserve component who names Kentucky as home of record for military purposes, during that member's federal active duty. To qualify for a grant, a member shall meet reasonable standards established by the corporation, including having family income equal to or less than two hundred percent (200%) of the state or area median income; and
 - (b) To provide a member identified in paragraph (a) of this subsection and that member's Kentucky resident spouse with the educational, technical, and ombudsman services that are necessary to maintain a mortgage during that member's federal active duty; and
- (29) To establish a program to assist persons and families of lower and moderate income to help defray the cost of assessment and decontamination services required under KRS 224.01-410. To qualify for the program, a person shall meet reasonable standards established by the corporation. A person shall not be eligible for the program if convicted of a felony or found by the corporation to be responsible for contamination of the relevant property through methamphetamine production. The corporation shall report on the establishment and use of this program to the Legislative Research Commission by October 1 of each year.

The Kentucky Housing Corporation shall be exempt from the regulations of the ~~Department (Office)~~ of Insurance and the laws of the Commonwealth relating thereto.

➔Section 245. KRS 198B.010 is amended to read as follows:

As used in this chapter, unless otherwise provided:

- (1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others:
 - (a) Armories;
 - (b) Assembly halls;
 - (c) Auditoriums;
 - (d) Bowling alleys;
 - (e) Broadcasting studios;
 - (f) Chapels;
 - (g) Churches;
 - (h) Clubrooms;
 - (i) Community buildings;
 - (j) Courthouses;
 - (k) Dance halls;
 - (l) Exhibition rooms;
 - (m) Gymnasiums;
 - (n) Hotels;
 - (o) Lecture rooms;
 - (p) Lodge rooms;
 - (q) Motels;

- (r) Motion picture theaters;
 - (s) Museums;
 - (t) Night clubs;
 - (u) Opera houses;
 - (v) Passenger stations;
 - (w) Pool rooms;
 - (x) Recreation areas;
 - (y) Restaurants;
 - (z) Skating rinks;
 - (aa) Television studios;
 - (bb) Theaters.
- (2) "Attic" means the space between the ceiling beams of the top habitable story and the roof rafters.
- (3) "Basement" means that portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling, and ventilating facilities, but which is not ordinarily used for purposes of general household habitation.
- (4) "Building" means any combination of materials, whether portable or fixed, which comprises a structure or nonmine underground area affording facilities or shelter for any human occupancy, whether infrequent or regular, and also means single-family dwellings, including those sold or constructed under a trade or brand name. The word "building" shall be construed wherever used herein as if followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning. "Building" shall also mean swimming pools constructed below grade on site, but not swimming pools assembled above grade on site. "Building" shall not mean a manufactured home governed by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. secs. 5401 et seq., or a farm dwelling or other farm buildings and structures incident to the operation and maintenance of the farm if the farm structures are located outside the boundary of a municipality and are not used in the business of retail trade or used as a place of regular employment for ten (10) or more people or structures used in the storage or processing of timber products.
- (5) "Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business, the rendering or receiving of professional services, or the displaying, selling, or buying of goods, wares, or merchandise, or the housing of vehicles of transportation, except where occupancy is of high hazard, including among others:
- (a) Banks;
 - (b) Barber shops;
 - (c) Beauty parlors;
 - (d) Department stores;
 - (e) Garages;
 - (f) Markets;
 - (g) Service stations;
 - (h) Offices;
 - (i) Stores;
 - (j) Radio stations;
 - (k) Telephone exchanges; and
 - (l) Television stations.

- (6) "Certified building inspector" means a person who has been certified by the *department*~~{office}~~ as having successfully completed the test requirements provided by KRS 198B.090 to practice as a city, county, or state building inspector within the Commonwealth.
- (7) "Certified plans and specifications inspector" means a person who has been certified by the *department*~~{office}~~ as having successfully completed the test requirements provided by KRS 198B.090 to practice as a city, county, or state plans and specifications inspector within the Commonwealth.
- (8) "Certified plumbing inspector" means a person who has been certified by the *department*~~{office}~~ as having successfully completed the test requirements provided by KRS 198B.090 and 318.140, or 318.090 to practice as a city, county, or state plumbing inspector within the Commonwealth.
- (9) "~~Commissioner~~~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of housing, buildings and construction.
- (10) "Construction" means the erection, fabrication, reconstruction, substantial alteration or conversion of a building, or the installation of equipment therein, but shall not include the ordinary repair of a building or structure.
- (11) "~~Department~~~~{Office}~~" means the *Department*~~{Office}~~ of Housing, Buildings and Construction.
- (12) "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or of receiving educational instruction. "Educational occupancy" shall not include a building for occupancy or use by thirty-five (35) persons or less assembled to receive religious and educational instruction. "Educational occupancy" includes but is not limited to:
- (a) Academies;
 - (b) Care centers;
 - (c) Colleges;
 - (d) Kindergartens;
 - (e) Libraries;
 - (f) Preschools;
 - (g) Relocatable classroom units;
 - (h) Schools;
 - (i) Seminaries; and
 - (j) Universities.
- (13) "Equipment" means facilities or installations, including but not limited to heating, electrical, ventilating, air conditioning, and refrigerating facilities or installations.
- (14) "High hazard occupancy" means the occupancy or use of a building or structure or any portion thereof that involves highly combustible, highly flammable, or explosive materials or which has inherent characteristics that constitute a special fire hazard, including among others:
- (a) Aluminum powder factories;
 - (b) Charging or filling stations;
 - (c) Distilleries;
 - (d) Dry cleaning plants;
 - (e) Dry dyeing plants;
 - (f) Explosive-manufacture, sale or storage;
 - (g) Flour and feed mills;
 - (h) Gasoline bulk plants;
 - (i) Grain elevators;

- (j) Lacquer factories;
 - (k) Liquefied petroleum gas;
 - (l) Mattress factories;
 - (m) Paint factories;
 - (n) Pyroxylin-factories, or warehouses; and
 - (o) Rubber factories.
- (15) "Industrial occupancy" means the occupancy or use of a building structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, except for occupancies of high hazard, including among others:
- (a) Assembly plants;
 - (b) Creameries;
 - (c) Electrical substations;
 - (d) Factories;
 - (e) Ice plants;
 - (f) Laboratories;
 - (g) Laundries;
 - (h) Manufacturing plants;
 - (i) Mills;
 - (j) Power plants;
 - (k) Processing plants;
 - (l) Pumping stations;
 - (m) Repair garages;
 - (n) Smokehouses; and
 - (o) Workshops.
- (16) "Industrialized building system" means any structure or component thereof which is wholly or in substantial part fabricated in an off-site manufacturing facility for installation or assembly on a permanent foundation at the building site.
- (17) "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable, or other care or treatment, or by persons involuntarily detained, including among others:
- (a) Asylums;
 - (b) Homes for the aged;
 - (c) Hospitals;
 - (d) Houses of correction;
 - (e) Infirmaries;
 - (f) Jails;
 - (g) Nursing homes;
 - (h) Orphanages;
 - (i) Penal institutions;
 - (j) Reformatories;

- (k) Sanitariums; and
 - (l) Nurseries.
- (18) "Mobile home" means mobile home as defined in KRS 227.550.
- (19) "Ordinary repair" means any nonstructural reconstruction or renewal of any part of an existing building for the purpose of its maintenance, or decoration, and shall include but not be limited to the replacement or installation of nonstructural components of the building such as roofing, siding, windows, storm windows, insulation, drywall or lath and plaster, or any other replacement, in kind, that does not alter the structural integrity, alter the occupancy or use of the building, or affect, by rearrangement, exitways and means of egress; but shall not include additions to, or alteration of, or relocation of any standpipe, water supply, sewer, drainage, gas, soil, waste, vent or similar piping, electric wiring, or mechanical equipment including furnaces and hot water heaters or other work affecting public health or safety.
- (20) "Story" means that part of a building comprised between a floor and the floor or roof next above which is not a basement or an attic.
- (21) "Person with a physical disability" means a person confined to a wheelchair; a person who uses braces or crutches; a person who because of the loss of a foot or leg or because of an arthritic, spastic, pulmonary, or cardiac condition, walks with difficulty or insecurity; a person who suffers from a faulty coordination or palsy; a person who is blind or whose sight is so impaired that, functioning in a public area, he or she is insecure or exposed to danger; a person whose hearing is so impaired that he or she is unable to hear warning signals; and a person whose mobility, flexibility, coordination, and perceptiveness are significantly reduced by aging.
- (22) "Facility for persons with physical disabilities" means any convenience or device which facilitates the health, safety, or comfort of a person with a disability, including, but not limited to, ramps, handrails, elevators, and doors.
- (23) "Manufactured home" is defined as in KRS 227.550.

➔Section 246. KRS 198B.020 is amended to read as follows:

- (1) There is created the Kentucky Board of Housing, Buildings and Construction within the Kentucky **Department**~~{Office}~~ of Housing, Buildings and Construction comprised of twenty-one (21) members to include: the **commissioner**~~{executive director}~~ of the **department**~~{office}~~, one (1) local government fire chief selected by the Governor from a list of three (3) submitted by the Kentucky Firemen's Association; the executive director of the Kentucky Housing Corporation; the commissioner of the Department for Public Health, Cabinet for Health and Family Services; the Attorney General or any assistant attorney general he or she may designate to represent the interests of consumers; one (1) professional homebuilder selected by the Governor from a list of three (3) submitted by the Home Builders Association of Kentucky; one (1) registered architect selected by the Governor from a list of three (3) submitted by the Kentucky Society of Architects; one (1) registered structural engineer selected by the Governor from a list of three (3) submitted by the Kentucky Society of Professional Engineers; one (1) registered mechanical engineer selected by the Governor from a list of three (3) submitted by the Kentucky Society of Professional Engineers; one (1) registered electrical engineer selected by the Governor from a list of three (3) submitted by the Kentucky Society of Professional Engineers; one (1) citizen member selected by the Governor to represent the interests of low and moderate-income housing consumers within the Commonwealth of Kentucky; one (1) citizen member at large; one (1) practicing general contractor selected by the Governor from a list of three (3) submitted by the Kentucky Association of General Contractors; one (1) practicing code administrator selected by the Governor from a list of three (3) submitted by the Codes Administrators Association of Kentucky; one (1) realtor selected by the Governor from a list of three (3) submitted by the Kentucky Association of Realtors; one (1) member selected by the Governor from a list of three (3) submitted by the Kentucky State Building Trades Council; one (1) member selected by the Governor from a list of three (3) submitted by the Kentucky Association of Plumbing, Heating and Cooling Contractors; one (1) member selected by the Governor from a list of three (3) submitted by the Mechanical Contractors Association; one (1) electrical contractor member selected by the Governor from a list of three (3) submitted by the National Electrical Contractors Association; one (1) retailer member selected by the Governor from a list of three (3) submitted by the Kentucky Retail Federation; and one (1) member selected by the Governor from a list of three (3) submitted by the Kentucky Building Materials Association.
- (2) Except for the **commissioner**~~{executive director}~~ of the **department**~~{office}~~, the commissioner of the Department for Public Health, the executive director of the Kentucky Housing Corporation, and the Attorney

General or his or her designee, who shall serve on the board during the term of their existing office and shall be voting members, board members shall be appointed for four (4) year terms, except that initially four (4) shall be appointed for two (2) year terms, four (4) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms. No board member shall be appointed for more than one (1) successive term except as provided in subsection (3) of this section. The Governor shall, within the limitations of this subsection, set the length of term of each of the initial appointees to the board.

- (3) Vacancies occurring on the board among those members appointed by the Governor shall be filled by seeking nominations as in subsection (1) of this section from the organization which originally nominated the member who is to be replaced. A replacement for a board member shall be appointed immediately upon the expiration of the departing board member's term of service. Should a board member vacate his or her position on the board prior to the expiration of the member's term, a replacement member shall be appointed for the period of the unexpired term. Should the unexpired term be less than two (2) years, the person selected to fill the unexpired term may subsequently be appointed to one (1) successive four (4) year term.
- (4) Members may be removed from the board by the Governor for unethical conduct or for failure to attend three (3) or more successive meetings of the board without reasonable cause.
- (5) The board shall meet at least quarterly~~[, and the first meeting shall occur no later than August 31, 1978].~~ Before assuming their duties, members of the board shall take an oath as specified in Section 228 of the Constitution of Kentucky.
- (6) The *commissioner*~~[executive director]~~ of the *department*~~[office]~~ shall serve as chairman of the board. The board may elect from its members other officers as are required to conduct its business, except that neither the commissioner of the Department for Public Health, the executive director of the Kentucky Housing Corporation, nor the Attorney General or his or her designee shall be elected to office on the board.
- (7) The board may adopt such rules, regulations, and bylaws as are necessary to conduct its internal business. Any administrative regulations promulgated by the board for any purpose other than internal business shall be subject to the requirements of KRS 198B.040(11).
- (8) No member of the board may vote on any matter which will result in his or her direct or indirect financial gain.
- (9) Those members of the board who are not salaried governmental employees shall be compensated for their time when attending board meetings or attending to official duties as directed by the board at the rate of fifty dollars (\$50) per day. All board members shall be compensated for expenses incurred in the conduct of board business.

➔Section 247. KRS 198B.030 is amended to read as follows:

- (1) There is hereby created the Kentucky *Department*~~[Office]~~ of Housing, Buildings and Construction within the ~~[Environmental and]~~Public Protection Cabinet. The ~~[secretary of the Environmental and Public Protection Cabinet shall appoint, with the approval of the]~~Governor shall appoint a *commissioner*~~[, an executive director]~~ to head the *department*~~[office]~~. The *commissioner*~~[executive director]~~ shall receive for his or her services such compensation as the Governor shall determine.
- (2) The *commissioner*~~[executive director]~~ may employ sufficient staff to carry out the functions of the *commissioner's*~~[executive director's]~~ office. Neither the *commissioner*~~[executive director]~~ nor any member of his or her staff shall be employed, either directly or indirectly, in any aspect of the building industry as regulated by this chapter while employed by the *Department*~~[Office]~~ of Housing, Buildings and Construction.
- (3) The *department*~~[office]~~ shall serve as staff for the board of housing, buildings and construction as established by this chapter, and shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of this body. The board shall prescribe the duties of the *commissioner*~~[executive director]~~ in addition to those duties otherwise delegated to him or her by the Governor or secretary, or prescribed for the *commissioner*~~[executive director]~~ by law. The *department*~~[office]~~ or *commissioner*~~[executive director]~~ shall submit any proposed administrative regulation to the board and shall not promulgate the administrative regulation without giving the board the opportunity to produce written comments, as required by subsection (9) of this section. If the board chooses to produce written comments, these comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.
- (4) The *department*~~[office]~~ may enter into contracts or agreements with the federal government, its subdivisions and instrumentalities, other agencies of state government or with its subdivisions and instrumentalities, or with private profit or nonprofit organizations in order to effect the purposes of this chapter.

- (5) Subject to the direction of the board of housing, buildings and construction, the **commissioner**~~executive director~~ shall cooperate with the agencies of the United States and with the governing bodies and housing authorities of counties, cities, and with not for profit organizations and area development districts in relation to matters set forth in this chapter, and in any reasonable manner that may be necessary for the state to qualify for, and to receive grants or aid from such agencies. To these ends and subject to the direction of the board, the **commissioner**~~executive director~~ shall have the power to comply with each condition and execute such agreements as may be necessary, convenient, or desirable.
- (6) Nothing in this chapter shall preclude any other agency, board, or officer of the state from being designated as the directing or allocating agency, board, or officer for the distribution of federal grants and aid, or the performance of other duties to the extent necessary to qualify for and to receive grants and aid for programs under the administration of the **department**~~office~~.
- (7) The **commissioner**~~executive director~~ is authorized to receive, for and on behalf of the state, the **department**~~office~~, and the board of housing, buildings and construction, from the United States and agencies thereof, and from any and all other sources, grants and aid and gifts made for the purpose of providing, or to assist in providing, any of the programs authorized by this chapter, including expenses of administration. All such funds shall be paid into the state treasury and credited to a trust and agency fund to be used by the **department**~~office~~ in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth.
- (8) The Kentucky Board of Home Inspectors established in KRS 198B.704 shall be attached to the **department**~~office~~ for administrative purposes.
- (9) (a) If the **department**~~office~~ has proposed a new or amended administrative regulation that directly and clearly relates to the work of a profession, class of workers, or industry that is under the authority of any board or advisory committee that is created by statute and is controlled, superseded, administratively attached, or affiliated with the **department**~~office~~, the **department**~~office~~ shall not promulgate the proposed administrative regulation without first receiving comments from the affected board or advisory committee, subject to the restrictions of paragraph (b) of this subsection.
- (b) 1. If a proposed administrative regulation affects a board or advisory committee that qualifies under paragraph (a) of this subsection, the **department**~~office~~ shall distribute the proposed administrative regulation to the board or advisory committee.
2. The affected board or advisory committee shall be granted a maximum of sixty (60) days to submit its comments on the proposed regulatory change. If the administrative regulation is a new emergency regulation, the affected board or advisory committee shall be granted a maximum of thirty (30) days to submit its comments on the proposed regulatory change.
3. The time limits in this paragraph shall begin from the day the **department**~~office~~ submits the regulatory change and sets a date for a proposed hearing for the comments of the affected board or advisory committee. If the board or advisory committee is already scheduled to meet at a time that will give it an adequate opportunity to review the regulation and respond, the hearing may be held at that meeting.
4. If a board or advisory committee is not scheduled to meet or meets only at the call of the **department**~~office~~, the **department**~~office~~ shall arrange for the board or advisory committee to meet at a time that will allow the board or advisory committee an adequate opportunity to review and comment on the regulation within the time limit. If the affected board or advisory committee fails to comment within the time limit, the **department**~~office~~ may proceed with the administrative changes at its discretion.
- (c) To the extent that any other statute relating to the **department's**~~office's~~ authority to promulgate administrative regulations conflicts with this section, this section shall take precedence.
- (d) If a board or advisory committee chooses to produce written comments, those comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.
- (e) The rights and privileges enumerated in this subsection that apply to boards and advisory committees shall also be granted to the Kentucky Board of Housing, Buildings and Construction.

- (10) Any power or limitation relating to administrative regulations promulgated by the *department*~~{office}~~ that are subject to subsection (9) of this section shall also apply to administrative regulations promulgated by the *commissioner*~~{executive director}~~ of the *department*~~{office}~~.

➔Section 248. KRS 198B.040 is amended to read as follows:

The Kentucky Board of Housing, Buildings and Construction shall have the following general powers and duties:

- (1) To conduct or cause to be conducted studies to determine the needs of the building industry of Kentucky;
- (2) To conduct or cause to be conducted or participate in studies of the costs of the various factors of building construction and use of buildings and to recommend programs and procedures which will minimize the cost of buildings, including the use of energy, while maintaining safety, durability, and comfort;
- (3) To administer regulatory legislation relating to buildings and construction;
- (4) To assume administrative coordination of the various state construction review programs and to cooperate with various federal, state, and local agencies in the programs as they relate to buildings and construction;
- (5) To assume administration and coordination of various state housing programs to include:
 - (a) Devising and implementing procedures, in conjunction with the Governor's Office for Local Development, for attaining and maintaining an accurate count of the housing inventory in Kentucky, including information on the age, physical condition, size, facilities, and amenities of this housing, and housing constructed and demolished each year;
 - (b) Designing programs coordinating the elements of housing finance, production, maintenance, and rehabilitation for the purpose of assuring the availability of safe, adequate housing in a healthful environment for all Kentucky citizens;
 - (c) Establishing or causing to be established public information and educational programs relating to housing, to include informing Kentucky citizens about housing and housing related programs that are available on all levels of government;
 - (d) Designing and administering, or participating in the design and administration of educational programs to prepare low income families for home ownership, and counseling them during their early years as homeowners;
 - (e) Promoting educational programs to assist sponsors in the development and management of low and moderate income housing for sale or rental;
 - (f) Cooperating with various federal, state, and local agencies in their programs as they relate to housing; and
 - (g) Conducting or causing to be conducted studies to determine the housing preferences of Kentucky citizens and the present and future housing requirements of the state;
- (6) To recommend state building industry policies and goals to the Kentucky General Assembly;
- (7) To adopt and promulgate a mandatory uniform state building code, and parts thereof, which shall establish standards for the construction of all buildings, as defined in KRS 198B.010, in the state;
- (8) To promulgate administrative regulations providing for the proper construction of public water purification plants, other than the water treatment equipment and systems in such plants; provided, however, that any such regulations must require that applications for permits to build public water purification plants will be submitted by the *department*~~{office}~~ to the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet for that cabinet's comments. Any such regulations shall require the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet's comments to be completed and submitted to the *department*~~{office}~~ within sixty (60) days;
- (9) To promulgate administrative regulations providing for the proper construction of sewage treatment plants, other than the sewage treatment equipment and systems in such plants; provided, however, that any such regulations must require that applications for permits to build public sewage treatment plants will be submitted by the *department*~~{office}~~ to the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet for that cabinet's comments. Any such regulations shall require the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet's comments to be completed and submitted to the *department*~~{office}~~ within sixty (60) days; and

- (10) To promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.
- (11) (a) As used in this subsection, "main board" means the Kentucky Board of Housing, Buildings and Construction.
- (b) If the main board has proposed a new or amended administrative regulation that directly and clearly relates to the work of a profession, class of workers, or industry that is under the authority of any board or advisory committee that is created by statute and is controlled, superseded, administratively attached, or affiliated with the main board, the main board shall not promulgate the proposed administrative regulation without first receiving comments from the affected board or advisory committee, subject to the restrictions of paragraph (c) of this subsection.
- (c) 1. If a proposed administrative regulation affects a board or advisory committee that qualifies under paragraph (b) of this subsection, the main board shall distribute the proposed administrative regulation to the board or advisory committee.
2. The affected board or advisory committee shall be granted a maximum of sixty (60) days to submit its comments on the proposed regulatory change. If the administrative regulation is a new emergency regulation, the affected board or advisory committee shall be granted a maximum of thirty (30) days to submit its comments on the proposed regulatory change.
3. The time limits in this paragraph shall begin from the day the main board submits the regulatory change and sets a date for a proposed hearing for the comments of the affected board or advisory committee. If the board or advisory committee is already scheduled to meet at a time that will give it an adequate opportunity to review the regulation and respond, the hearing may be held at that meeting.
4. If a board or advisory committee is not scheduled to meet or meets only at the call of the main board, the main board shall arrange for the board or advisory committee to meet at a time that will allow the board or advisory committee an adequate opportunity to review and comment on the regulation within the time limit. If the affected board or advisory committee fails to comment within the time limit, the main board may proceed with the administrative changes at its discretion.
- (d) To the extent that any other statute relating to the main board's authority to promulgate administrative regulations conflicts with this section, this section shall take precedence.
- (e) If a board or advisory committee chooses to produce written comments, those comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.
- (12) Any power or limitation relating to administrative regulations promulgated by the Kentucky Board of Housing, Buildings and Construction that are subject to subsection (11) of this section shall also apply to the ~~department~~~~office~~ and ~~commissioner~~~~executive director~~ as described in KRS 198B.030(9) and (10).

➔Section 249. KRS 198B.050 is amended to read as follows:

- (1) Within one (1) year from its initial meeting, after adequate notice in accordance with KRS Chapter 13A, the board shall adopt and promulgate a mandatory Uniform State Building Code which shall establish standards for the construction of all buildings, as defined in KRS 198B.010, in the state. The code shall provide that the review and approval, as necessary, of building plans for conformance with the Uniform State Building Code prior to construction approval shall be conducted only by the ~~department~~~~office~~ or a local government or governments delegated such responsibilities by this chapter, and any exceptions to this policy shall be explicitly stated in the code.
- (2) The code shall be comprehensive and shall include but not be limited to provisions for general construction; structural quality; mechanical systems to include heating, cooling, and ventilation; electrical systems; and life safety from hazards of fire, explosion, and other disasters, whether caused by acts of nature or man. The code shall encompass the Kentucky State Plumbing Code promulgated pursuant to KRS 318.130, boiler rules and regulations issued pursuant to KRS 236.030, and the national electrical code.

- (3) This code shall be designed after and may be selected from the models offered by such model code agencies as the Building Officials and Code Administrators, International, Inc.; the International Conference of Building Officials; the Southern Building Code Congress; and other nationally recognized organizations which may include governmental agencies. The code shall:
 - (a) Provide uniform standards and requirements for construction and construction materials;
 - (b) To the extent practicable, set forth standards, specifications and requirements in terms of performance objectives, so as to facilitate the use of new technologies, techniques, and materials. The code shall not discriminate in favor of particular suppliers' materials, techniques, or technologies;
 - (c) Protect the public health, safety, and welfare within the state.
- (4) Adoption of a code shall include provisions for the continuing review of, and the board shall adopt when deemed justified to fulfill the purposes of this chapter, new materials, technologies, and techniques in the building industry. The board may adopt a model code promulgated by a model code agency only if that agency provides a method for democratic participation by the board and any local governments which may enforce the code, in a continuing review and possible adoption of new materials, technologies, and techniques in the building industry.
- (5) The board shall issue regulations, after notice in accordance with KRS Chapter 13A, which are necessary to implement the Uniform State Building Code or to carry out any other responsibility assigned to said board by this chapter.
- (6) The board shall monitor the effectiveness of agencies designated by local governments to enforce the provisions of the Uniform State Building Code.
- (7) If the board determines that an agency is not enforcing the provisions of the Uniform State Building Code, it shall direct the *department*~~{office}~~ to determine where deficiencies exist. The *department*~~{office}~~ shall require the local government to correct the deficiencies within sixty (60) days and report to the *department*~~{office}~~ its method of correcting the deficiencies.
- (8) If the local government fails to correct the deficiencies, the *department*~~{office}~~ shall recommend to the board that the *department*~~{office}~~ be permitted to preempt the local program as provided for in KRS 198B.060(4).
- (9) The board shall provide for the supply, including amendments and revisions thereto, of sufficient copies of the Uniform State Building Code for all interested parties.

➔Section 250. KRS 198B.060 is amended to read as follows:

- (1) Each local government shall employ a building official or inspector and other code enforcement personnel as necessary, or shall contract for inspection and code enforcement services in accordance with subsections (8) and (11) of this section to enforce the Uniform State Building Code within the boundaries of its jurisdiction, except that permits, inspections, and certificates of occupancy shall not be mandatory for single-family residences unless a local government passes an ordinance requiring inspections of single-family residences.
- (2) Local governments shall be responsible for the examination and approval or disapproval of plans and specifications for churches having a capacity of four hundred (400) or less persons, and six thousand (6,000) or less square feet of total floor area, and buildings of no more than three (3) stories in height, exclusive of attic and basement, which do not contain more than twenty thousand (20,000) square feet of floor area, and are not intended for educational, institutional, or high hazard occupancy; or assembly, business, or industrial occupancy in excess of one hundred (100) persons, except churches as stated in this subsection, or for use as a frozen food locker plant as defined in KRS 221.010. Local governments shall be responsible for the issuance and revocation of building permits, licenses, certificates, and similar documents which cover activities within their area of responsibility, and the inspection of all buildings pursuant to the provisions of this chapter and the Uniform State Building Code. Each local government issuing a building or demolition permit or an initial certificate of occupancy on a new structure shall send a copy of the permit or certificate to the *commissioner*~~{executive director}~~ for his or her use in maintaining an accurate housing inventory for Kentucky.
- (3) Urban-county governments may determine service districts within their boundaries within which farm dwellings and other farm buildings, not used in the business of retail trade or as a place of regular employment for ten (10) or more people, shall be exempt from the requirements of the Uniform State Building Code. The determination may be reviewed and altered by the board.

- (4) With the exception of single-family dwellings, the **department**~~{office}~~ shall be responsible for the examination and approval or disapproval of plans and specifications for all buildings which are not the responsibility of local governments. The **department**~~{office}~~ may issue and revoke permits, licenses, certificates, and similar documents within its area of responsibility, and shall have concurrent jurisdiction with local governments for the inspection of all buildings pursuant to the provisions of this chapter and the Uniform State Building Code. If the **commissioner**~~{executive director}~~ determines that the local jurisdiction is not adequately performing any portion of its program, he or she may recommend to the board that the **department**~~{office}~~ preempt that portion of a local program, except that the **commissioner**~~{executive director}~~ shall not preempt or assert jurisdiction for the enforcement of the code on single-family dwellings. The **commissioner**~~{executive director}~~ shall explain his or her reasons for preemption in writing and provide a copy to the board and the local jurisdiction. The local jurisdiction may appeal the recommended preemption directly to the board, and the board shall review the appeal according to the procedures found in subsections (8) to (10) of KRS 198B.070. No preemption by the **department**~~{office}~~ shall take place until the final decision of the board. If the **department**~~{office}~~ preempts any portion of a local program, it shall collect the fees applicable to that portion of the program.
- (5) Any local government may petition the **commissioner**~~{executive director}~~ requesting that additional plan review functions be allocated to that local government. The petition shall include evidence of the local government's capability to perform additional plan review functions. The **commissioner**~~{executive director}~~, after review of the petition and supporting evidence, may grant or deny to the local government any part of a request for additional responsibility. If the **commissioner**~~{executive director}~~ denies any part of a petition, he or she shall explain his or her reasons for denial in writing, and provide a copy to the board and the local government. A local government may appeal the denial directly to the board, and the board shall review the appeal according to the procedures found in subsections (8) to (10) of KRS 198B.070. If the local government is granted additional responsibility by the **commissioner**~~{executive director}~~ or the board, the **department**~~{office}~~ shall hold concurrent jurisdiction over the additional responsibility, but the local government shall collect any fees for functions it performs pursuant to the additional responsibility.
- (6) Any local government may also petition the **commissioner**~~{executive director}~~ requesting that plans and specifications inspection, building inspection, and approval responsibility relating to the application of local plumbing permits for local installations be allocated to the local government. The petition shall not be granted unless the local government has demonstrated to the **commissioner**~~{executive director}~~ that it can perform these functions in accordance with the provisions of KRS 198B.050 to 198B.090.
- (7) The **commissioner**~~{executive director}~~ shall expedite the review of plans and specifications by assigning responsibilities and coordinating review activities among the **department's**~~{office's}~~ various functional divisions so as to prevent unnecessary duplication in the review of plans and specifications.
- (8) No building shall be constructed in this state until a local building official and an official representing the **department**~~{office}~~, if the **department**~~{office}~~ has jurisdiction, issue a permit for the construction. Nothing in this subsection shall require a single-family dwelling to be permitted or inspected unless a local government has established a building inspection program as set out in this section.
- (9) The local building official or the representative of the **department**~~{office}~~ shall issue a permit if the proposed building satisfies the requirements of the Uniform State Building Code and if the party desiring to construct the building has complied with all other legal requirements concerning the location and construction of the building. The applicant for a building permit, by the act of applying for the permit, shall be deemed to have consented to inspection by the local government or the **department**~~{office}~~, of the building during construction and upon the completion of construction for the purpose of determining that the building is constructed in compliance with the Uniform State Building Code.
- (10) (a) No permit for building, construction, reconstruction, renovation, demolition, or maintenance or for any activity related to building, construction, reconstruction, renovation, demolition, or maintenance shall be issued by any building department or by any political subdivision of the Commonwealth of Kentucky to any person seeking the permit unless the person shall assure, by affidavit, that all contractors and subcontractors employed, or that will be employed, on activity covered by the permit shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.

- (b) Any person who fails to comply with the assurances required under paragraph (a) of this subsection upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars (\$4,000) or an amount equal to the sum of all uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.
 - (c) The penalty imposed in paragraph (b) of this subsection shall be enforced by the county attorney for the county in which the violation occurred.
- (11) A certified electrical inspector shall be employed by, or contracted for, or contracted with a local government having responsibility over buildings as set out in this section as part of its building inspection program. After a certified electrical inspector has been provided for by the local government or the ~~department~~~~office~~, no utility shall initiate permanent electrical service to any new building, or any building which has been moved, until a final certificate of approval has been issued by a certified electrical inspector. Unless the ~~department~~~~office~~ shall notify the utility in writing as to which buildings are subject to ~~department~~~~office~~ approval, it shall be presumed by the utility that the building is subject to the jurisdiction of the local government. However, nothing in this section shall prohibit the supply or use of necessary electrical services during the construction and testing process.
- (12) This section shall apply to industrialized building systems, but destructive disassembly of industrialized building systems which carry a seal of approval pursuant to a manufactured building law in the state in which they were manufactured, which seal of approval is accepted by the Board of Housing, Buildings and Construction, shall not be performed in order to conduct the tests or inspections.
- (13) No building on which construction was begun nor any industrialized building system on which site preparation and assembly were begun after the Uniform State Building Code became effective shall be occupied until the local building official or a representative of the ~~department~~~~office~~ issues a certificate of occupancy certifying that the building was constructed in conformance with the standards of the Uniform State Building Code, or assembled or installed in conformance with applicable instructions. Nothing in this subsection shall be construed to require a certificate of occupancy to be issued for any single-family dwelling unless a local government has established jurisdiction for the enforcement of the Uniform State Building Code under this section.
- (14) A local government may associate with other local governments, and may seek the technical assistance of other agencies or area development districts in order to provide for the local enforcement of the Uniform State Building Code.
- (15) Local governments or associations of local governments may contract with a person, firm, or company to perform the plans and specifications inspection or building inspection functions required of the local government by the provisions of this section if:
- (a) The person performing the plans and specifications inspection is certified by the ~~department~~~~office~~ as having successfully completed the test requirements provided by KRS 198B.090 to practice as a certified plans and specifications inspector;
 - (b) The person performing the building inspection is certified by the ~~department~~~~office~~ as having successfully completed the test requirements provided in KRS 198B.090 to practice as a certified building inspector;
 - (c) The person, firm, or company does not have a conflict of interest between its plan review or inspection functions and any other employment or business activities;
 - (d) The person performing the plumbing inspection is certified by the ~~department~~~~office~~ as having successfully completed the requirements provided in KRS 318.140 to practice as a certified plumbing inspector; and
 - (e) The person, firm, or company does not have a conflict of interest between its plan review or inspection functions and any other employment or business activities.
- (16) If the ~~department~~~~office~~ has reason to believe that an inspector is not enforcing, or is improperly enforcing, the provisions of the Kentucky building codes, it shall conduct an informal hearing to review the inspector's procedures and return in written form the required corrections resulting from the hearing to the inspector, or may take action to suspend or revoke the inspector's certificate.

- (17) If, after written notification from the *department*~~{office}~~ to the inspector of any corrections required, the inspector fails to comply within sixty (60) days, the *department*~~{office}~~ shall suspend the inspector's certification until the inspector complies. Any action to suspend or revoke an inspector's certificate may be appealed to the board, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (18) Each local government and the *department*~~{office}~~ may establish a schedule of fees for the functions performed under the provisions of this chapter. The fees shall be designed to fully cover the cost of the service performed but shall not exceed the cost of the service performed. Fees payable to the *department*~~{office}~~ shall be paid into the State Treasury and credited to a trust and agency fund to be used by the *department*~~{office}~~ in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth.

➔Section 251. KRS 198B.070 is amended to read as follows:

- (1) The mayor or county judge/executive of a local government which is enforcing the Uniform State Building Code may, upon the approval of the local legislative body, appoint a local appeals board, consisting of five (5) technically qualified persons with professional experience related to the building industry, to hear appeals from the decisions of the local building official. At least three (3) members of the appeals board must not be employed by the local government hearing the appeal.
- (2) Local governments which are enforcing the Uniform State Building Code may cooperate with each other to provide a local appeals board and shall adhere to the provisions of KRS Chapter 65 when entering such cooperative agreements. No local building official or employee of a local inspection department may sit on a local appeals board if the board is hearing an appeal to a decision rendered by his or her department. No member of a local appeals board shall hear an appeal in a case in which he or she has a private interest.
- (3) Any party to a decision by the local building official may appeal that decision to the local appeals board. Upon receipt of an appeal from a qualified party, the local appeals board shall convene a hearing to consider the appeal within fifteen (15) days of receipt. All parties to the appeal shall be notified of the time and place of the hearing by letter mailed by certified mail no later than ten (10) days prior to the date of the hearing. The local appeals board shall render a decision within five (5) working days after the hearing.
- (4) A local appeals board may uphold, amend, or reverse the decision of a local building official, and there shall be no appeal from the decision of a local appeals board other than by appeal to the Board of Housing, Buildings and Construction. Appeals to the Board of Housing, Buildings and Construction shall include citation of those provisions of the Uniform State Building Code which are at issue, and an explanation of why the decision of the local appeals board or the local building official relative to those provisions is being contested.
- (5) The Board of Housing, Buildings and Construction shall serve to hear appeals from the decisions of local appeals boards, when these boards exist, or to hear appeals directly from the decisions of local building officials in cases where no local appeals board has jurisdiction. In no case shall the board hear an appeal directly from a party aggrieved by the decision of a local building official when there is a local appeals board with jurisdiction in the case.
- (6) The board shall hear appeals directly from a party aggrieved by the decision of an agent of the *department*~~{office}~~. These appeals shall include citations of those provisions of the Uniform State Building Code which are at issue, and an explanation of why the decision of the agent of the *department*~~{office}~~ relative to those provisions is being contested.
- (7) Appeals to the Board of Housing, Buildings and Construction shall be addressed to the *commissioner*,~~{executive director}~~ who shall immediately notify the board when an appeal is received. The *commissioner*~~{executive director}~~ or a designated employee of his or her *department*~~{office}~~ shall then investigate the evidence pertaining to the appeal and, based upon the results of the investigation, make recommendations to the board on the disposition of the case in question. No employee of the *department*~~{office}~~ shall investigate or make recommendations on an appeal to his or her own decision, but shall defer in such cases to employees who were not party to the decision which led to the appeal. In conducting an investigation, the *commissioner*~~{executive director}~~ or his or her designated representatives, acting for the *department*~~{office}~~, shall have the authority to administer oaths and affirmations, issue subpoenas authorized by law, rule upon offers of proof and receive relevant evidence, take or cause

depositions to be taken, regulate the course of any informal or fact-finding hearings they may schedule, and hold conferences for the settlement or simplification of the issues by consent of the parties. The ~~commissioner~~~~executive director~~ shall complete his or her investigations and forward a written report to the board within thirty (30) days after receiving an appeal.

- (8) If the matter is not settled by agreement of the parties through the procedure established in subsection (7) of this section, the board shall schedule an administrative hearing that shall be conducted in accordance with KRS Chapter 13B.
- (9) The board may appoint five (5) or more of its members, excluding the chairman of the board, to conduct the hearing, and those so appointed shall act in all matters concerning the appeal for the entire board.
- (10) The board may uphold, amend, or reverse the decision of a local appeals board, a local building official, or an agent of the ~~department~~~~office~~ by final order, and appeal from the board's final order shall be to the Circuit Court within whose jurisdiction the property in question is located in accordance with KRS Chapter 13B.

➔Section 252. KRS 198B.080 is amended to read as follows:

- (1) Any interested party may suggest amendments to the Uniform State Building Code to the ~~Department~~~~Office~~ of Housing, Buildings and Construction. The ~~department~~~~office~~ shall transmit all suggested amendments to the board with recommendations on the advisability of the suggested amendments.
- (2) The board may amend the Uniform State Building Code at any time, but only after notice in accordance with KRS Chapter 13A. Such amendments shall be effective statewide.
- (3) No amendment shall violate the performance orientation of the code, favor certain materials or suppliers, or weaken the life safety features of the Uniform State Building Code as specified in KRS 198B.050(3).

➔Section 253. KRS 198B.090 is amended to read as follows:

- (1) On or before July 1, 1983, the ~~department~~~~office~~ shall create and administer a certification program with sufficient testing procedures to certify the following professional classifications:
 - (a) Building inspector;
 - (b) Plans and specifications inspector; and
 - (c) Plumbing inspector.
- (2) The testing procedures shall be sufficient to reflect the ability of the person applying for certification to inspect in accordance with those local, state, and federal building codes, fire codes, plumbing codes, or health and safety codes, that are applicable to the inspection duties for which he or she requests certification.
- (3) The ~~department~~~~office~~ shall conduct or sponsor preentry and in-service education and training programs on the technical, legal, and administrative aspects of building code administration and enforcement. For this purpose it may cooperate and contract with educational institutions, area development districts, local, regional, state or national building officials' organizations, and any other appropriate organization.
- (4) On or before July 1, 1983, the ~~department~~~~office~~ shall create and administer an educational program designed to prepare building officials, code enforcement officers and other persons interested in obtaining from the ~~department~~~~office~~ a certification as a building inspector, plans and specifications inspector, or plumbing inspector. The program shall be so designed as to insure uniform statewide enforcement of the applicable state building and plumbing codes. Training material coverage shall be adequate to prepare the participants with a working knowledge of construction design, specification terms, and the state building codes applicable to the particular field in which the applicant requests certification.
- (5) Plumbing inspectors who are in compliance with KRS 318.090 as state inspectors and KRS 318.140 as city-county inspectors, shall be considered in accordance with subsections (1)(c) and (2) of this section and shall not be required to be retested by the ~~department~~~~office~~ prior to consideration for certification as a plumbing inspector. The ~~department~~~~office~~ shall review the plumbing inspector's qualifications and credentials for compliance with KRS 318.090 or 318.140 prior to issuing a certification to the inspector's certificate applicant.
- (6) Attendance at the training sessions shall not be mandatory prior to testing for certification if the applicant's previous education or experience qualifies the applicant to obtain a passing score on the required certification test.

- (7) Training sessions shall be held as frequently as is felt necessary by the *commissioner*~~{executive director}~~ to adequately provide for local and state building inspection needs.
- (8) The *department's*~~{office's}~~ plans and specifications review staff and the field inspection staff shall attend the training and become certified in accordance with the provisions of this section.
- (9) All building inspectors, plans and specification inspectors, and plumbing inspectors shall be certified or enrolled and actively pursuing *department*~~{office}~~ certification by October 1, 1983, or within ninety (90) days after employment as an inspector, whichever comes later.
- (10) The board shall establish a schedule of fees to cover the cost of the education, testing, and certification programs to be paid by the applicants for certification. The fees shall not exceed the actual cost of the services performed by the *department*~~{office}~~ to administer the programs listed in this section.
- (11) The *department*~~{office}~~ may reimburse building officials, code enforcement officers and other employees of the state and its subdivisions for related expenses incurred by them for attendance at in-service training programs approved by the *department*~~{office}~~.

➔Section 254. KRS 198B.095 is amended to read as follows:

- (1) The Board of Housing, Buildings and Construction may establish a building inspectors training program through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. The program shall provide training to encourage local governments to establish and improve building code enforcement programs and to encourage all building inspectors to upgrade their skills.
- (2) If the board chooses to establish the program authorized in subsection (1) of this section, there shall be created in the *Department*~~{Office}~~ of Housing, Buildings and Construction, under the Board of Housing, Buildings and Construction, a trust and agency fund to be known as the "Building Inspectors' Financial Incentive Training Program Fund". The fund shall be funded annually with a maximum of one hundred fifty thousand dollars (\$150,000) by increasing the *department's*~~{office's}~~ plan review fees collected for each occupancy classification under KRS 198B.060 by one-half cent (\$.005) per calculated square foot. Any funds collected annually in excess of one hundred fifty thousand dollars (\$150,000) shall be used solely for the administration of the *department's*~~{office's}~~ building inspection program. Any unused fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in the fund shall be available only for the purposes specified in this section.

➔Section 255. KRS 198B.110 is amended to read as follows:

- (1) In all local governments in a county containing a city of the first or second class, and in urban-county governments, the Uniform State Building Code shall become effective six (6) months after promulgation by the board. Any of said local governments may adopt the code prior to that time.
- (2) In all local governments in a county containing a city of the third or fourth class, but not a city of the first or second class, the Uniform State Building Code, as it pertains to buildings for which the *department*~~{office}~~ has the responsibility for plan reviews, shall become effective six (6) months after promulgation by the board and as it pertains to buildings for which local governments have responsibility for plan review shall become effective two (2) years after promulgation by the board. Any of said local governments may adopt the code prior to such times.
- (3) In all local governments in a county containing no city or a city of the fifth or sixth class, but not a city of the first through fourth classes, the Uniform State Building Code as it pertains to buildings for which the *department*~~{office}~~ has the responsibility for plan reviews shall become effective six (6) months after promulgation by the board and as it pertains to buildings for which local governments have responsibility for plan review shall become effective three (3) years after promulgation by the board. Any of said governments may adopt the code prior to such times.
- (4) Notwithstanding the provisions of KRS 198B.060(8) and (9), a building for which a permit was legally granted prior to the effective date of the Uniform State Building Code may be constructed and occupied under the provisions of relevant regulations in force at the time the permit was issued provided that substantial construction has commenced within one (1) year from the date the permit was issued.
- (5) A building for which plans were prepared at least three (3) months prior to the effective date of the Uniform State Building Code and upon which construction was begun prior to the effective date of the Uniform State

Building Code in a locality not then requiring a building permit may be completed and occupied without a building permit.

➔Section 256. KRS 198B.120 is amended to read as follows:

The ~~department~~~~office~~ or any local government agency enforcing the Uniform State Building Code may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy or construction of any building on which construction was begun after the effective date of said code, upon an affidavit of the ~~department~~~~office~~ or the local government agency specifying the manner in which the construction, or if a building existing prior to the effective date of said code, the reconstruction, alteration, repair or conversion does not conform to the requirements of this chapter or the Uniform State Building Code.

➔Section 257. KRS 198B.200 is amended to read as follows:

- (1) There is hereby created the Kentucky Single Family Dwellings Advisory Committee, which shall be attached to the ~~Department~~~~Office~~ of Housing, Buildings and Construction for administrative purposes.
- (2) The committee shall be composed of eight (8) members as follows:
 - (a) Three (3) members who shall be home builders appointed by the Governor from a list of six (6) nominees submitted by the Home Builders Association of Kentucky. Each nominee shall have been actively engaged in the home building business for not less than five (5) years immediately preceding the date of his or her appointment to the committee;
 - (b) Three (3) members who shall be certified code inspectors appointed by the Governor from a list of six (6) nominees submitted by the Code Administrators Association of Kentucky. Each nominee shall have been actively engaged as a certified code inspector for not less than five (5) years immediately preceding the date of his or her appointment to the committee;
 - (c) One (1) member who shall be an architect appointed by the Governor from a list of three (3) nominees submitted by the Kentucky Chapter of the American Society of Architects. Each nominee shall have been actively engaged as a licensed architect for not less than five (5) years immediately preceding the date of his or her appointment to the committee; and
 - (d) The ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Housing, Buildings and Construction, or his or her designee.
- (3) Each member of the committee shall be a citizen and resident of the Commonwealth of Kentucky.
- (4)
 - (a) Appointed members shall serve staggered terms of three (3) years that shall expire on June 30 of the final year of the term, except that, of the initial appointments, three (3) members shall serve for a term of three (3) years, two (2) members shall serve for a term of two (2) years, and two (2) members shall serve for a term of one (1) year.
 - (b) The ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Housing, Buildings and Construction shall serve on the committee for the duration of his or her term of appointment to that state government position.
 - (c) No member shall serve more than two (2) consecutive terms.
 - (d) Members may serve until their successors are appointed and qualified.
 - (e) A vacancy in an unexpired term shall be filled in the same manner as the original appointment.
- (5) The ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Housing, Buildings and Construction, or his or her designee, shall serve as chair of the committee.
- (6) A majority of the members of the committee shall constitute a quorum for conducting business.
- (7) The committee shall meet at least once each calendar quarter in a location designated by the chair. The committee may meet upon special call by the chair or by a majority of the committee.
- (8) Each appointed member listed in subsection (2)(a), (b), and (c) of this section shall receive twenty-five (\$25) dollars per diem for attending each meeting and shall be reimbursed for actual and necessary expenses incurred in the performance of his or her official duties. The ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Housing, Buildings and Construction shall not be eligible for a per diem.
- (9) The duties of the Kentucky Single Family Dwellings Advisory Committee shall be to:

- (a) Review and interpret the International Building Code and make recommendations to the Kentucky Board of Housing, Buildings and Construction as to which elements of the international code should be incorporated into the Kentucky State Residential Building Code; and
- (b) Perform any other duties and responsibilities relating to the topic of single family dwellings that may be assigned by the Kentucky Board of Housing, Buildings and Construction.

➔Section 258. KRS 198B.250 is amended to read as follows:

- (1) There is hereby created an Architectural Barriers Advisory Committee which shall be attached to the *Department*~~{Office}~~ of Housing, Buildings and Construction for administrative purposes. The committee members shall be appointed by the Governor to serve a term of two (2) years and shall be constituted as follows: three (3) persons having a physical disability, one (1) citizen at large, and the public advocate or his designee.
- (2) The committee shall meet at least quarterly or upon request of the board for the purposes of considering matters relating to accessibility and safety in facilities for persons with physical disabilities. The committee shall make recommendations to and otherwise advise the *department*~~{office}~~ and the board on these matters.
- (3) The committee members will receive no compensation for their services, but will be reimbursed for their necessary travel expenses.

➔Section 259. KRS 198B.300 is amended to read as follows:

As used in KRS 198B.310 to 198B.330:

- (1) "Safety glazing material" means any glazing material, such as tempered glass, laminated glass, wire glass or rigid plastic, which meets the test requirements of ANSI Standard Z-97.1-1966 and such further requirements as may be adopted by the *Department*~~{Office}~~ of Housing, Buildings and Construction and which is so constructed, treated, or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with the glazing material;
- (2) "Hazardous locations" means those installations, glazed or to be glazed, in residential, commercial and public buildings known as sliding glass doors, framed or unframed glass doors and adjacent fixed glazed panels which may be mistaken for means of ingress or egress, storm doors, shower doors, and tub inclosures, whether or not the glazing in such doors, panels or inclosures is transparent, and in any other area wherein the use of other than safety glazing materials would constitute a hazard.

➔Section 260. KRS 198B.310 is amended to read as follows:

- (1) Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in such a location within the Commonwealth of Kentucky shall be permanently labeled by such means as etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of ANSI Standard Z-97.1-1966 and such further requirements as may be adopted by the *Department*~~{Office}~~ of Housing, Buildings and Construction. The label must be legible and visible after installation.
- (2) Such safety glazing labeling shall not be used on other than safety glazing materials.

➔Section 261. KRS 198B.400 is amended to read as follows:

As used in KRS 198B.410 to 198B.540, unless the context otherwise requires:

- (1) "Elevator" means all the machinery, construction, apparatus, and equipment used in raising and lowering a car, cage, or platform vertically between permanent rails or guides, and includes all elevators, power dumbwaiters, escalators, gravity elevators, and other lifting or lowering apparatus permanently installed between rails or guides, but does not include hand operated dumbwaiters, manlifts of the platform type with a platform area not exceeding nine hundred square inches, construction hoists, or other similar temporary lifting or lowering apparatus.
- (2) "Passenger elevator" means an elevator that is designed to carry persons to its contract capacity.
- (3) "Freight elevator" means an elevator used for carrying freight and on which only the operator, by the permission of the employer, is allowed to ride.

- (4) "General inspector" means a state inspector examined and hired to inspect elevators for the **Department**~~{Office}~~ of Housing, Buildings and Construction.
- (5) "Special inspector" means an inspector examined and certified by the **department**~~{office}~~ to inspect elevators in the state.
- (6) "Inspector" means either a general or special inspector.
- (7) "**Department**~~{Office}~~" means the **Department**~~{Office}~~ of Housing, Buildings and Construction.
- (8) "Certificate of operation" is a certificate issued by the **department**~~{office}~~ authorizing the operation of an elevator which must be conspicuously posted on the elevator at all times.
- (9) "Escalator" means a moving stairway consisting of steps attached to a continuously circulating belt that is used to move persons from one (1) level to another.
- (10) "Moving sidewalk" means horizontal flat panels attached to a continuously circulating belt used to move people.
- (11) "Fixed guideway system" means any nonrail system, funicular, or automated people mover, either air-suspended or wheeled, that is not regulated by the Federal Transit Administration.

➔Section 262. KRS 198B.410 is amended to read as follows:

- (1) No person may act either as a general inspector or as a special inspector of elevators or fixed guideway systems unless he or she holds a certificate of competency from the **department**~~{office}~~.
- (2) Application for examination as an inspector of elevators shall be in writing, accompanied by a fee of ten dollars (\$10), upon a blank to be furnished by the **department**~~{office}~~, stating the school education of the applicant, a list of his or her employers, his or her period of employment, and the position held with each. An applicant shall also submit a letter from one (1) or more of his or her previous employers certifying as to his or her character and experience.
- (3) Applications shall be rejected which contain any willful falsification or untruthful statements. The applicant, if the **department**~~{office}~~ deems his or her history and experience sufficient, shall be tested by means of a written examination dealing with the construction, installation, operation, maintenance, and repair of elevators and their appurtenances, and the applicant shall be accepted or rejected on the merits of his or her application and examination.
- (4) The **department**~~{office}~~ shall promulgate administrative regulations establishing the training and certification requirements for inspectors of fixed guideway systems.
- (5) The **department**~~{office}~~ shall issue a certificate of competency in the inspection of elevators to any applicant found competent upon examination. A rejected applicant shall be entitled, after the expiration of ninety (90) days, and upon payment of an examination fee of ten dollars (\$10), to another examination. Should an applicant fail to pass the prescribed examination on second trial, he or she will not be permitted to be an applicant for another examination for a period of one (1) year after the second failure.

➔Section 263. KRS 198B.420 is amended to read as follows:

- (1) The **department**~~{office}~~ shall administer all aspects of the State Elevator and Fixed Guideway System Inspection Program.
- (2) The program shall be directed by a person with at least five (5) years' experience in the inspection or construction, installation, maintenance, and repair of elevators and their appurtenances.
- (3) The **commissioner**~~{executive director}~~ of housing, buildings and construction may appoint and hire, from the holders of certificates of competency, general inspectors of elevators.

➔Section 264. KRS 198B.440 is amended to read as follows:

A certificate to serve as an inspector issued under KRS 198B.410 may be suspended or revoked by the **department**~~{office}~~ for the incompetence or untrustworthiness of the holder thereof, or for the falsification of any matter or statement contained in his or her application or in a report of any inspection.

➔Section 265. KRS 198B.450 is amended to read as follows:

If a certificate is lost or destroyed a new one shall be issued in its place by the *department*{office} without another examination, upon the payment of a fee of one dollar (\$1).

➔Section 266. KRS 198B.460 is amended to read as follows:

The owner or user of any elevator or fixed guideway system shall register with the *department*{office} every elevator or fixed guideway system operated by him or her, giving the type, capacity, description, name of manufacturer, and purpose for which each is used. The registration shall be made on a form to be furnished by the *department*{office}.

➔Section 267. KRS 198B.480 is amended to read as follows:

- (1) Every inspector shall forward to the *department*{office} a full report of each inspection made of any passenger elevator or fixed guideway system, showing the exact condition of the elevator or fixed guideway system, and the inspector shall leave a copy of the report at the elevator or fixed guideway system on the day the inspection is completed.
- (2) If any passenger elevator or fixed guideway system requires certain changes or repairs to make it reasonably safe to operate, recommendations shall be made by the inspector upon his or her report and a copy of the report as approved by the *department*{office} shall be given to the owner or operator of the elevator or fixed guideway system, and, unless appealed, upon compliance therewith and upon the payment of the fees required by law, the *department*{office} shall issue a certificate of operation for a capacity not to exceed that named in the report of inspection, which certificate shall be valid for one (1) year after the date of inspection.
- (3) If construction plans or an application of specifications is not approved, the *department*{office} shall state in writing the necessary changes to obtain approval and the owner or operator shall be given a copy thereof, and, unless appealed, upon compliance therewith, the *department*{office} shall approve the plans or specifications and issue a permit for construction.
- (4) Any owner or operator, within twenty (20) days from receipt of the copy of the report or statement of changes in plans or specifications, may make written application to the *department*{office} upon forms to be furnished by the *department*{office} for a hearing on the report or the statement regarding changes in plans or specifications as to whether the elevator or fixed guideway system in question is reasonably safe, or whether the elevator or fixed guideway system, if constructed in accordance with the plans and specifications, would be reasonably safe. The *department*{office} shall promptly consider the application and schedule a hearing to be conducted consistent with the provisions of this section and KRS Chapter 13B.
- (5) If it appears from the evidence presented at the hearing that the elevator or fixed guideway system will be reasonably safe to operate without those changes or repairs shown in the report or by making only a part or all thereof, or if none or only a part of all the changes in the plans or specifications are found necessary to make the elevator reasonably safe, the *department*{office} shall issue its final order accordingly. If the final order requires changes or repairs to be made in the elevator or fixed guideway system or changes in the plans or specifications of either, the *department*{office} shall, upon the payment of the required fees, issue a certificate of operation when the order has been executed or issue its approval of the plans or specifications. If the final order of the *department*{office} has been affirmed or modified by appeal on the grounds of reasonable safety considered by the *department*{office}, then the *department*{office} shall, upon compliance with the final order and the payment of required fees, issue the certificate of operation or issue its approval of the plans and specifications; but, if the order of the *department*{office} has been vacated, the certificate of operation, upon the payment of fees or approval of plans and specifications, shall be issued forthwith. No elevator or fixed guideway system shall be operated after being inspected without having a certificate of operation conspicuously posted thereon, except pending a hearing on the issuance thereof.

➔Section 268. KRS 198B.490 is amended to read as follows:

The *commissioner*{executive director} of housing, buildings and construction shall make, alter, amend, and repeal rules and regulations exclusively for the safety and inspection of passenger elevators and fixed guideway systems. The *commissioner*{executive director} shall have the authority to prescribe, by regulation, the fee to be charged for each inspection. All fees established and regulated by this section shall be payable to the *department*{office} except as may be provided in a specific written agreement between the *commissioner*{executive director} and any agency authorized to inspect elevators or fixed guideway systems by the provisions of this chapter.

➔Section 269. KRS 198B.510 is amended to read as follows:

No certificate of operation for any passenger elevator or fixed guideway system shall be issued until the elevator or fixed guideway system has been inspected and the report thereof filed with the *department*{office}. The certificate of operation, when issued, shall bear the date of inspection, and shall be renewed as of the date of the subsequent inspection, provided the inspection is made at least one (1) year after the issuance of such certificate. If the inspection is made during the year the certificate is in force, the renewal date shall be one (1) year from the date of the certificate being renewed and the renewal certificate shall show the date of inspection.

→Section 270. KRS 198B.520 is amended to read as follows:

Before any new installation of an elevator or fixed guideway system of permanent nature shall be erected or before any existing elevator is removed to a different location, an application of specifications in duplicate shall be submitted to the *department*{office} giving such information concerning the construction, installation, and operation of said elevator or fixed guideway system as the *department*{office} may require on forms to be furnished by the *department*{office}, together with complete construction plans in duplicate. In all cases where any changes or repairs are made which alter its construction or classification, grade, or rated lifting capacity, except when made pursuant to a report of an inspector, an application of specifications in duplicate shall be submitted to the *department*{office} containing such information for approval, except for elevators in those municipal corporations which maintain their own elevator inspection departments, in which event the specifications shall be submitted to the elevator department of the municipal corporation for its approval and, if approved, a permit for the erection or repair of the elevator shall be issued by the municipal corporation. Upon approval of the application and construction plans, the *department*{office} shall issue a permit for the erection or repair of the elevator or fixed guideway system. No new elevator or fixed guideway system shall be operated until completion in accordance with the approved plans and specifications, unless a temporary permit is granted by the *department*{office}.

→Section 271. KRS 198B.530 is amended to read as follows:

No person shall violate any law relative to the operation, construction, maintenance, and repair of passenger elevators or fixed guideway systems. All fines collected for a violation of this section shall be forwarded to the *department*{office}, which shall pay the same into the State Treasury to the credit of the general revenue fund.

→Section 272. KRS 198B.540 is amended to read as follows:

- (1) If the *department's*{office's} inspector of elevators and fixed guideway systems or a general inspector of elevators or fixed guideway systems finds that a passenger elevator, fixed guideway system, or a part thereof does not afford reasonable safety, the *department*{office} or the general inspector may post a notice upon the elevator or fixed guideway system prohibiting further use of the elevator or fixed guideway system until the changes or alterations set forth in the notice have been made to the satisfaction of the *department*{office} or the inspector. Said notice shall contain a statement that operators or passengers are subject to injury by its continued use, a description of the alteration or other change necessary to be made in order to secure safety of operation, date of the notice, and name and signature of the *department*{office} or inspector issuing the notice.
- (2) If any inspector of elevators or fixed guideway systems finds a passenger elevator or fixed guideway system to be so unsafe as can be reasonably expected to offer imminent danger of death or physical injury, that unit shall be sealed out of service, a hazard notice posted thereon, and the *department*{office} shall be notified immediately as to the location and condition of the unit.
- (3) Any passenger elevator or fixed guideway system, once sealed, shall not be operated except for the purpose of effecting repairs and in the manner prescribed by the *department*{office}, until all defects are corrected and the unit has been inspected and certified as safe by the *department*{office}.
- (4) Sealing shall consist of rendering a passenger elevator unit or fixed guideway system inoperable by disconnecting power and/or by placing a sealing device on the operation switch and ordering additional measures to be effected by the owner, such as erection of barricades, as may be required to prevent use of or public access to the unit.
- (5) No seal, notice, or barricade placed on or around an elevator or fixed guideway system in accordance with the provisions of this chapter shall be removed, obstructed or in any way altered without the written consent of the *department*{office}.

→Section 273. KRS 198B.550 is amended to read as follows:

As used in KRS 198B.555 to 198B.630, unless the context requires otherwise:

- (1) "*Department*{Office}" means the *Department*{Office} of Housing, Buildings and Construction.

- (2) "**Commissioner**~~[Executive director]~~" means the **commissioner**~~[executive director]~~ of the **department**~~[office]~~.
- (3) A "fire protection sprinkler contractor" is a person engaged in the preparation of technical drawings, installation, repair, alteration, extension, maintenance or inspection of fire protection sprinkler systems and has in his or her employment a certificate holder.
- (4) A "fire protection sprinkler contractor's license" is the license issued by the **commissioner**~~[executive director]~~ to a fire protection sprinkler contractor upon application being approved, fee paid and the satisfactory completion of the requirements of KRS 198B.580. The license shall be issued in the name of the fire protection sprinkler contractor with the name or names of the certificate holder noted thereon.
- (5) A "certificate holder" is an individual who has satisfactorily met and has received a certificate from the **commissioner**~~[executive director]~~ under the provisions of KRS 198B.570.
- (6) A "fire protection sprinkler system" is a system of piping for which technical drawings have been prepared by or preparation supervised by a certificate holder in accordance with fire protection engineering standards. The system is supplied from a reliable, constant, and sufficient water, gas, or chemical supply, such as a gravity tank, fire pump, reservoir, or pressure tank, or connection by underground piping to a city, county, municipal water district, authorized water main, or both. The sprinkler system is considered the fire protection sprinkler system for purposes of KRS 198B.550 to 198B.630, and is a network of specially sized or hydraulically designed piping installed overhead and underground in a building, structure, or area, and to which sprinklers are connected in systematic pattern. The system includes a controlling valve and a device for actuating an alarm when a system is in operation. The system is usually activated by heat from a fire and causes the discharge of water, gas, or chemical over the fire area. Fire protection sprinkler systems shall include the following types: wet-pipe systems, dry-pipe systems, pre-action systems, deluge systems, combined dry-pipe and pre-action systems, antifreeze systems and circulating closed loop systems, systems utilizing gasses or chemicals, and any other fire suppression system approved by the state fire marshal or the chief building code official of the **department**~~[office]~~.

➔Section 274. KRS 198B.555 is amended to read as follows:

- (1) The administration of KRS 198B.550 to 198B.630 is vested in the **Department**~~[Office]~~ of Housing, Buildings and Construction.
- (2) The **commissioner**~~[executive director]~~ shall:
- (a) Promulgate reasonable administrative regulations necessary for the administration of KRS 198B.550 to 198B.630;
 - (b) Set or make reasonable changes in the fees charged for permits, testing, and other aspects of the administration of KRS 198B.550 to 198B.630;
 - (c) Enforce the provisions of KRS 198B.550 to 198B.630; and
 - (d) Conduct investigations of complaints and conduct administrative hearings as are required by KRS 198B.620 and 198B.625 and in accordance with the provisions of KRS Chapter 13B.
- (3) The **commissioner**~~[executive director]~~ may:
- (a) Secure the advice of the Board of Housing, **Buildings**~~[Building]~~ and Construction with regard to administrative regulations;
 - (b) Have the competency test prepared by a source other than the **commissioner**~~[executive director]~~.

➔Section 275. KRS 198B.565 is amended to read as follows:

- (1) The design for any fire protection sprinkler system for buildings and structures shall be prepared by a licensed professional engineer or, if the licensed, professional engineer chooses not to prepare the design, a licensed fire protection sprinkler contractor whose certificate holder is a certified engineering technician, NICET Level III or Level IV, may prepare the design.
- (2) When a fire protection sprinkler system is designed by a professional engineer in accordance with subsection (1) of this section, the licensed fire protection sprinkler contractor shall submit to the professional engineer, for his approval, technical drawings and, when required, hydraulic calculations for the installation of the fire protection sprinkler system. Such technical drawings, after approved by the professional engineer, shall be

submitted by the professional engineer to the **Department**~~{Office}~~ of Housing, Buildings and Construction, the insurance authority having jurisdiction, if any, and other authority when required by Kentucky law.

- (3) When a fire protection sprinkler system is designed by a licensed fire protection sprinkler contractor in accordance with subsection (1) of this section, the licensed fire protection sprinkler contractor shall submit such design and detailed plans to the **Department**~~{Office}~~ of Housing, Buildings and Construction, the insurance authority having jurisdiction, if any, and other authority when required by Kentucky law.

➔Section 276. KRS 198B.570 is amended to read as follows:

To become a certificate holder under KRS 198B.560, an applicant must satisfactorily pass a current examination prescribed and administered by the National Institute for Certification in Engineering Technologies entitled Fire Protection Engineering Technology Automatic Sprinkler System Design Level III, or the equivalent thereof, approved by the **commissioner**~~{executive director}~~.

➔Section 277. KRS 198B.580 is amended to read as follows:

To become a licensed fire protection sprinkler contractor under KRS 198B.560, a person must comply with the following:

- (1) Must have in his employ a certificate holder;
- (2) Comply with the minimum insurance requirements of KRS 198B.595; and
- (3) Make application to the **commissioner**~~{executive director}~~ for a license and pay the fees required.

➔Section 278. KRS 198B.585 is amended to read as follows:

- (1) Each certificate holder engaged in the activity described under KRS 198B.560 shall secure a seal with the design prescribed by regulation of the **commissioner**~~{executive director}~~.
- (2) All working drawings, specifications, and plans prepared by, or under the supervision of the certificate holder, must bear the imprint of this seal and shall bear the imprint of the seal of the licensed fire protection contractor.
- (3) No certificate holder shall assign or affix his or her seal to any drawings, specifications or plans which have not been prepared under his or her immediate supervision, and no licensed fire protection contractor shall affix his or her seal to such drawings, specifications, or plans unless same were prepared by certificate holder employee as provided for in KRS 198B.560 and 198B.580.

➔Section 279. KRS 198B.590 is amended to read as follows:

The license and certificate shall be signed by the **commissioner**~~{executive director}~~.

➔Section 280. KRS 198B.595 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall not issue a license under KRS 198B.560 and 198B.580, unless the fire protection sprinkler contractor applicant files with the **commissioner**~~{executive director}~~ proof of liability insurance coverage of not less than two hundred and fifty thousand dollars (\$250,000) one person/maximum and five hundred thousand dollars (\$500,000) one accident/maximum and workers' compensation insurance as provided for in KRS Chapter 342.
- (2) The workers' compensation insurance required by this section must be in the form of certificate of insurance executed by an insurer authorized to do business in this state. The liability insurance required by this section shall be liability insurance that covers the legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as a fire protection sprinkler contractor or system designer and shall be in the form of certificate of insurance executed by an insurer authorized to do business in this state or exported by a licensed surplus lines broker to an eligible carrier pursuant to KRS 304.10-020 to 304.10-210. Insurance certificates filed with the **commissioner**~~{executive director}~~ under this section shall remain in force until the insurer has terminated future liability by a thirty (30) day notice to the **commissioner**~~{executive director}~~.
- (3) Failure to maintain the insurance required hereunder constitutes grounds for denial, suspension or revocation of a license under KRS 198B.620 by the **commissioner**~~{executive director}~~.

➔Section 281. KRS 198B.600 is amended to read as follows:

In no case shall a certificate holder be allowed to obtain a fire protection sprinkler contractor's license for more than one (1) fire protection sprinkler contractor at a time. If the certificate holder should leave the employment of the fire protection sprinkler contractor, he or she must notify the **commissioner**~~{executive director}~~ within thirty (30) days.

The certificate holder shall not be eligible to obtain a fire protection sprinkler contractor's license for more than one (1) other fire protection sprinkler contractor for a period of twelve (12) months thereafter. If the certificate holder should leave the employment of the fire protection sprinkler contractor, or die, the contractor shall have six (6) months or until the expiration of the current license, whichever shall last occur, to submit a new application on another certificate holder and be issued a new license. If such application is not received and a new license issued within the allotted time, the **commissioner**~~[executive director]~~ shall revoke the license of the fire protection sprinkler contractor.

➔Section 282. KRS 198B.605 is amended to read as follows:

- (1) (a) All certificates issued under KRS 198B.570 shall expire on the last day of the certificate holder's birth month in the following year. The **department**~~[office]~~ may reduce the license fee on a pro rata basis for initial certificates issued for less than twelve (12) months. Renewed certificates shall expire on the last day of the certificate holder's birth month of each year after the date of issuance of the renewed certificate. Application for a renewal shall be upon such form as is prescribed by the **commissioner**~~[executive director]~~ and the certificate holder shall furnish the information required by such form.
- (b) Failure of any certificate holder to secure his or her renewal certificate within sixty (60) days after the last day of the certificate holder's birth month shall constitute sufficient cause for the **commissioner**~~[executive director]~~ to revoke his or her license.
- (c) The **commissioner**~~[executive director]~~ may restore a certificate that has been revoked for failure to pay the renewal fee, upon the receipt of payment of all delinquent fees.
- (2) A certificate holder may voluntarily surrender his or her certificate to the **commissioner**~~[executive director]~~ and thereby be relieved of the annual renewal fee. After surrendering of certificate, he or she shall not be known as a certificate holder and shall desist from the practice thereof. Within five (5) years from the time of surrender of the certificate, he or she may again qualify for a certificate without examination by the payment of the required fee. If five (5) years thereafter have lapsed, he or she shall return to the status of a new applicant.
- (3) (a) The initial license for a fire protection sprinkler contractor shall expire on the last day of the licensee's birth month in the following year. The **department**~~[office]~~ may reduce the license fee on a pro rata basis for initial licenses issued for less than twelve (12) months. Renewed licenses shall expire on the last day of the licensee's birth month of each year after the date of issuance of the renewed license. Application for a renewal shall be upon such form as is prescribed by the **commissioner**~~[executive director]~~ and license holder shall furnish the information required by such form.
- (b) Failure of any certificate holder to secure his renewal certificate within sixty (60) days after the last day of the certificate holder's birth month shall constitute sufficient cause for the **commissioner**~~[executive director]~~ to revoke his or her license.
- (c) The **commissioner**~~[executive director]~~ may restore a license that has been revoked for failure to pay the renewal fee, upon the receipt of payment of all delinquent fees.

➔Section 283. KRS 198B.615 is amended to read as follows:

All license and certificate fees and charges collected by the **commissioner**~~[executive director]~~ under the provisions of KRS 198B.550 to 198B.630 and the rules and regulations of the **commissioner**~~[executive director]~~ adopted hereunder, shall be paid to the State Treasury and credited to a trust and agency fund to be used by the **commissioner's**~~[executive director's]~~ office in carrying out the provisions of KRS 198B.550 to 198B.630. Any money in the trust and agency fund at the end of the fiscal year shall lapse to the general fund of the Commonwealth.

➔Section 284. KRS 198B.620 is amended to read as follows:

- (1) Subject to a hearing conducted in accordance with KRS Chapter 13B, the **commissioner**~~[executive director]~~ may refuse to renew or may suspend or revoke the license of a licensed fire protection sprinkler contractor or the certificate of a certificate holder to engage in the business of fire protection sprinkler systems or in lieu thereof establish an administrative fine not to exceed two thousand dollars (\$2,000) for any of the following reasons:
 - (a) Gross incompetency or gross negligence in the installation, repair, alteration, maintenance, inspection, or addition to fire protection sprinkler systems, as determined by the **commissioner**~~[executive director]~~;

- (b) Conviction of a felony;
 - (c) Fraudulent or dishonest practices while engaging in the business of fire protection sprinkler systems;
 - (d) Use of false evidence or misrepresentation in an application for a license or certificate;
 - (e) Signing or affixing his or her seal to any plans, prints, specifications or reports, which have not been prepared by him or her personally or under his or her immediate supervision, or in violation of KRS 198B.585;
 - (f) Knowingly violating any provisions of KRS 198B.550 to 198B.630 or the regulations issued thereunder.
- (2) The **commissioner**~~[executive director]~~ shall revoke, subject to a hearing in accordance with KRS Chapter 13B, the license of a licensed fire protection sprinkler contractor or a certificate holder who engages in the fire protection sprinkler system business while his or her or its license is suspended.
 - (3) Any person who engages in the drawings, installation, repair, alteration, extension, maintenance, or inspection of fire protection sprinkler systems or uses any title, sign, card, or device indicating or intending to indicate that he or she is a certified fire sprinkler contractor without having first obtained the requisite license or certificate shall be guilty of a Class A misdemeanor. Each violation shall be regarded as a separate offense.
 - (4) Any license or certificate holder who is aggrieved by a final order of the **commissioner**~~[executive director]~~ suspending or revoking a license may appeal to the Franklin Circuit Court or the Circuit Court of the county of the license or certificate holder's place of business in accordance with KRS Chapter 13B.

➔Section 285. KRS 198B.625 is amended to read as follows:

- (1) Whenever, in the judgment of the **commissioner**~~[executive director]~~, any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute a violation of the provisions of KRS 198B.560 and 198B.565, the **commissioner**~~[executive director]~~ may inform the Attorney General, who may make application to the Circuit Court of the county where the violation occurred for an order enjoining such acts or practices.
- (2) If a person is practicing without the requisite license or certificate required under KRS 198B.560 and 198B.565, the **commissioner**~~[executive director]~~ shall inform the Attorney General of the unlawful practice within seven (7) days of receiving notice of its occurrence. The Attorney General may apply to the Circuit Court of the county where the violation occurred for an order enjoining the acts or practices.
- (3) Additionally, the **commissioner**~~[executive director]~~ may issue a cease and desist order, the violation of which shall be cause for the imposition of an administrative fine, suspension, or revocation as provided for in KRS 198B.620. Upon showing via the **commissioner**~~[executive director]~~ that such person has engaged, or is about to engage, in any such acts or practices, an injunction or restraining order, or such other order as may be appropriate, shall be granted by the Circuit Court. Any order of the Circuit Court of the county where the violation occurred shall be enforceable and shall be valid anywhere in this Commonwealth and the order of that court shall be reviewable as provided for in the Rules of Civil Procedure, in the case of other injunctions and restraining orders.

➔Section 286. KRS 198B.650, in the version effective until July 1, 2010, is amended to read as follows:

As used in KRS 198B.650 to 198B.689, unless the context requires otherwise:

- (1) "Air conditioning or cooling system" means a system in which heat is removed from air, surrounding surfaces, or both;
- (2) "Apprentice heating, ventilation, and air conditioning mechanic" means an individual in the process of learning the heating, ventilation, and air conditioning trade who assists and is under the supervision of a master heating, ventilation, and air conditioning contractor and a journeyman heating, ventilation, and air conditioning mechanic;
- (3) "Board" means the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors;
- (4) "Burner service" means the servicing of oil or gas burners used for heating air or water for purposes other than the transmission of heat;
- (5) "Certificate" means a document issued by the board to an apprentice heating, ventilation, and air conditioning mechanic to assist a master heating, ventilation, and air conditioning contractor or a journeyman heating, ventilation, or air conditioning mechanic;

- (6) "~~Commissioner~~~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Housing, Buildings and Construction;
- (7) "~~Department~~~~{Office}~~" means the *Department*~~{Office}~~ of Housing, Buildings and Construction;
- (8) "Heating system" means a system in which heat is transmitted by radiation, conduction, convection, or a combination of any of these methods to air, surrounding surfaces, or both. "Heating system" does not include fireplaces and free-standing stoves not incorporated into a primary heating system, electric thermal storage units, electric ceiling cable heating systems, or electric baseboard heating units;
- (9) "Hydronic system" means a heating and cooling system using liquids to transmit or remove heat;
- (10) "Journeyman heating, ventilation, and air conditioning mechanic" means an individual who is licensed by the board to perform heating, ventilation, and air conditioning work under the supervision, direction, and responsibility of a master heating, ventilation, and air conditioning contractor;
- (11) "Maintenance person or maintenance engineer" means a person who is a regular and bona fide full-time employee or agent of a property owner, property lessor, property management company, or firm, not in the heating, ventilating, and air conditioning business that has jurisdiction of property where the routine maintenance of heating, ventilating, and air conditioning is being performed, provided the maintenance shall not include replacement of heating, ventilation, or air conditioning systems;
- (12) "Master heating, ventilation, and air conditioning contractor" means a heating, ventilation, and air conditioning contractor who is licensed by the board to advertise and practice heating, ventilation, and air conditioning contracting in this Commonwealth;
- (13) "Practice of heating, ventilation, and air conditioning contracting" means the installation, maintenance, altering, remodeling, or repair of heating systems, ventilation systems, hydronic systems, burner service, or cooling systems;
- (14) "Routine maintenance of heating, ventilation, or air conditioning" means the routine and periodic servicing of heating, ventilation, and air conditioning systems, including cleaning, inspection, and adjustments to insure the proper operation, and the removal and replacement of component parts. "Routine maintenance of heating, ventilation, or air conditioning" shall not include the installation of complete new heating, ventilation, or air conditioning systems; and
- (15) "Ventilation system" means a natural or mechanical system of supplying air to or removing air from any space.

➔Section 287. KRS 198B.650, in the version effective July 1, 2010, is amended to read as follows:

As used in KRS 198B.650 to 198B.689, unless the context requires otherwise:

- (1) "Air conditioning or cooling system" means a system in which heat is removed from air, surrounding surfaces, or both;
- (2) "Apprentice heating, ventilation, and air conditioning mechanic" means an individual in the process of learning the heating, ventilation, and air conditioning trade who assists and is under the supervision of a master heating, ventilation, and air conditioning contractor and a journeyman heating, ventilation, and air conditioning mechanic;
- (3) "Board" means the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors;
- (4) "Burner service" means the servicing of oil or gas burners used for heating air or water for purposes other than the transmission of heat;
- (5) "Certificate" means a document issued by the board to an apprentice heating, ventilation, and air conditioning mechanic to assist a master heating, ventilation, and air conditioning contractor or a journeyman heating, ventilation, or air conditioning mechanic;
- (6) "~~Commissioner~~~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Housing, Buildings and Construction;
- (7) "~~Department~~~~{Office}~~" means the *Department*~~{Office}~~ of Housing, Buildings and Construction;
- (8) "Heating system" means a system in which heat is transmitted by radiation, conduction, convection, or a combination of any of these methods to air, surrounding surfaces, or both. "Heating system" does not include

fireplaces and free-standing stoves not incorporated into a primary heating system, electric thermal storage units, electric ceiling cable heating systems, or electric baseboard heating units;

- (9) "Hydronic system" means a heating and cooling system using liquids to transmit or remove heat;
- (10) "Initial heating, ventilation, or air conditioning system" means the first or original heating, ventilation, or air conditioning system installed in a building;
- (11) "Journeyman heating, ventilation, and air conditioning mechanic" means an individual who is licensed by the board to perform heating, ventilation, and air conditioning work under the supervision, direction, and responsibility of a master heating, ventilation, and air conditioning contractor;
- (12) "Maintenance person or maintenance engineer" means a person who is a regular and bona fide full-time employee or agent of a property owner, property lessor, property management company, or firm, not in the heating, ventilating, and air conditioning business that has jurisdiction of property where the routine maintenance of heating, ventilating, and air conditioning is being performed, provided the maintenance shall not include replacement of heating, ventilation, or air conditioning systems;
- (13) "Major repair" means the complete replacement of any of the following heating, ventilation, or air conditioning equipment:
 - (a) Furnaces;
 - (b) Condensing units;
 - (c) Heat pumps;
 - (d) Fan coil units;
 - (e) Chiller systems; or
 - (f) Heating boiler systems not covered by KRS Chapter 236;
- (14) "Master heating, ventilation, and air conditioning contractor" means a heating, ventilation, and air conditioning contractor who is licensed by the board to advertise and practice heating, ventilation, and air conditioning contracting in this Commonwealth;
- (15) "Permit" means a document issued by the ~~department~~~~office~~ or its authorized agent allowing the installation of an original heating, ventilation, or air conditioning system;
- (16) "Practice of heating, ventilation, and air conditioning contracting" means the installation, maintenance, altering, remodeling, or repair of heating systems, ventilation systems, hydronic systems, burner service, or cooling systems;
- (17) "Routine maintenance of heating, ventilation, or air conditioning" means the routine and periodic servicing of heating, ventilation, and air conditioning systems, including cleaning, inspection, and adjustments to ensure the proper operation, and the removal and replacement of component parts. "Routine maintenance of heating, ventilation, or air conditioning" shall not include the installation of complete new heating, ventilation, or air conditioning systems; and
- (18) "Ventilation system" means a natural or mechanical system of supplying air to or removing air from any space.

➔Section 288. KRS 198B.652 is amended to read as follows:

- (1) The Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors is hereby created, which shall be attached to the ~~Department~~~~Office~~ of Housing, Buildings and Construction for administrative purposes. The board shall consist of eight (8) members, one (1) of whom shall be a member of the Home Builders Association of Kentucky; one (1) of whom shall be a member of the Kentucky Society of Professional Engineers; one (1) of whom shall be a member of the Kentucky Association of Plumbing-Heating-Cooling Contractors; one (1) of whom shall be a member of the Mechanical Contractors Association of Kentucky; one (1) of whom shall be a heating, ventilation, or air conditioning contractor; one (1) of whom shall represent the public and shall not be associated with or financially interested in heating, ventilation, and air conditioning contracting; one (1) of whom shall be the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Housing, Buildings and Construction or his or her designee; and one (1) of whom shall be a local government official or employee, who shall have a background in the heating, ventilation, or air conditioning industry. Each member of the board shall be a citizen and resident of the Commonwealth of Kentucky.

- (2) All members of the board, except those who represent the public, local government, the *Department*~~{Office}~~ of Housing, Buildings and Construction, and the Kentucky Society of Professional Engineers, shall:
- (a) ~~For initial appointments to these positions, have been actively engaged in the heating, ventilation, and air conditioning contracting business for not less than five (5) years immediately preceding the date of the appointment to the board;~~
 - (b) ~~For subsequent appointments to these positions for terms beginning prior to July 1, 2000, have been actively engaged in the heating, ventilation, and air conditioning contracting business for not less than five (5) years immediately preceding the date of the appointment to the board and hold a valid license or certificate as a master heating, ventilation, and air conditioning contractor; and~~
 - (c) ~~For subsequent appointments to these positions for terms beginning on or after July 1, 2000, have been actively engaged in the heating, ventilation, and air conditioning contracting business as a master heating, ventilation, and air conditioning contractor for not less than five (5) years immediately preceding the date of the appointment to the board and shall hold a valid license or certificate for that status.~~
- (3) Except for the *commissioner*~~{executive director}~~, who shall serve for so long as he or she holds his or her appointment as *commissioner*~~{executive director}~~, the terms of the board members shall be as follows. The remaining seven (7) board members shall be appointed by the Governor with initial appointments for three (3) members for terms of three (3) years, two (2) members for terms of two (2) years, and two (2) members for terms of one (1) year. All appointments shall expire on June 30 of the last year of the terms. Thereafter, these members shall be appointed by the Governor for terms of three (3) years. No person shall serve more than two (2) full consecutive terms. Members shall serve until their successors are appointed.
- (4) The *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Housing, Buildings and Construction, or his or her designee, shall serve as chairman of the board. A majority of the board shall constitute a quorum to conduct business. The board shall meet at least once each calendar quarter in a location designated by the chairman or *commissioner*~~{executive director}~~. The board may meet upon special call by the chairman, the *commissioner*~~{executive director}~~, or a majority of the board.
- (5) Each member of the board, except the *commissioner*~~{executive director}~~, shall receive twenty-five dollars (\$25) per day for attending each meeting and shall be reimbursed for all necessary expenses incurred in the performance of his or her official duties.
- (6) Vacancies in the membership of the board for any cause shall be filled by appointment by the Governor for the balance of the unexpired term.

➔Section 289. KRS 198B.658 is amended to read as follows:

- (1) The board shall issue a master heating, ventilation, and air conditioning contractor's license to any person who:
- (a) Is at least eighteen (18) years of age;
 - (b) Has been regularly and principally employed or engaged in the heating, ventilation, and air conditioning trades as a journeyman heating, ventilation, and air conditioning mechanic for not less than two (2) years, under the direction and supervision of a master heating, ventilation, and air conditioning contractor; and
 - (c) Has passed an examination prescribed by the board to determine competency to practice heating, ventilation, and air conditioning contracting.
- (2) The board shall issue a journeyman heating, ventilation, and air conditioning mechanic's license to any person who:
- (a) Is at least eighteen (18) years of age;
 - (b) Has been regularly and principally employed or engaged in the heating, ventilation, and air conditioning trades for not less than two (2) years, under the direction and supervision of a master heating, ventilation, and air conditioning contractor, or who prior to July 1, 1995, under the direction and supervision of a person who qualifies under KRS 198B.662; and

- (c) Has passed an examination prescribed by the board to determine competency to install, maintain, and repair heating and cooling systems, heating and cooling service, burner service, and hydronic systems.
- (3) The board shall issue an apprentice heating, ventilation, and air conditioning mechanic's certificate to any person who is registered with the board.
 - (a) The board shall establish by administrative regulation the minimum number of hours of experience required by apprentices and shall maintain an apprentice register to credit an apprentice for hours worked under the supervision of a master heating, ventilation, and air conditioning contractor and journeyman heating, ventilation, and air conditioning mechanic. Experience gained under the supervision of a Kentucky licensed master heating, ventilation, and air conditioning contractor while registered as an apprentice with the Kentucky ~~Department of Labor~~ **Cabinet, Department**~~Office~~ of Workplace Standards, in cooperation with the United States Department of Labor, Bureau of Apprenticeship and Training shall be accepted toward the two (2) year experience requirement for a journeyman heating, ventilation, and air conditioning mechanic license.
 - (b) The apprentice register shall include the name, address, Social Security number, employer, and dates of employment of the apprentice.
 - (c) The apprentice shall notify the board in writing of any change in address or employer.
 - (d) Apprentices and pre-apprentices shall not be required to pay fees for a certificate of registration or a registration renewal fee.
 - (4) The satisfactory completion of one (1) academic year of a board-approved curriculum or one (1) year of professional training in heating, ventilation, and air conditioning work may be considered as equivalent to one (1) year of employment required by subsection (2)(b) of this section, not to exceed one (1) year.
 - (5) The satisfactory completion of one (1) academic year of teaching experience in a board-approved or state-approved technical education program in heating, ventilation, and air conditioning shall be considered as equivalent to one (1) year of employment, as required by subsection (1)(b) or (2)(b) of this section. No more than one (1) year of approved teaching experience may be used in meeting the requirements of subsection (1)(b) or (2)(b) of this section.

➔Section 290. KRS 198B.6673 is amended to read as follows:

- (1) The board shall promulgate administrative regulations to establish a reasonable schedule of fees to implement the program. The fees shall not exceed the actual costs for the administration of the program. The board shall also establish heating, ventilation, and air conditioning inspection protocols that ensure timely inspections and minimal interruption to the construction process.
- (2) The ~~department~~~~office~~, with the approval of the board, upon the request of any individual local governing entity or combination of entities with existing heating, ventilation, and air conditioning permitting and inspection programs as of January 1, 2007, shall authorize them to administer, carry out, and enforce the rules and regulations of the ~~department~~~~office~~ relating to heating, ventilation, and air conditioning installations, issue permits, and make inspections within their respective boundaries, or perform any portion of these functions. Nothing in KRS 198B.6671 to 198B.6678 shall prohibit these entities from continuing to include major repairs or substantial alterations to a heating, ventilation, or air conditioning system within their permitting and inspection program in the absence of a state requirement, if major repairs or substantial alterations were included in the entities' inspection program prior to January 1, 2007. The ~~department~~~~office~~, with the approval of the board, may authorize any other individual local government entities or combination of entities to administer, carry out, and enforce the rules and regulations of the ~~department~~~~office~~ relating to heating, ventilation, and air conditioning installations, issue permits, and make inspections within their respective boundaries, or perform any portion of those functions. When authorization is granted, the ~~department~~~~office~~ shall enter into contractual arrangements with the local governing entities, which shall remain in effect as long as the local entity continues to operate its program pursuant to guidelines adopted by the board. A heating, ventilation, and air conditioning permit issued by an authorized local governing entity shall be considered a permit issued by the ~~department~~~~office~~, and all fees collected by the authorized local government related to the same shall be retained by that local government.
- (3) Any local governing entity enforcing the permitting and inspection requirements of KRS 198B.650 to 198B.689 pursuant to subsection (2) of this section may appoint and fix the compensation of the local governing entity's heating, ventilation, and air conditioning inspectors. No person shall perform the duties of a

heating, ventilation, and air conditioning inspector unless he or she has at least six (6) years' experience as a licensed heating, ventilation, and air conditioning journeyman mechanic or a licensed master heating, ventilation, and air conditioning contractor, unless he or she is a certified building inspector who has successfully passed the examinations relating to heating, ventilation, and air conditioning systems. At the time of employment, the heating, ventilation, and air conditioning inspector shall be licensed or certified in accordance with the provisions of KRS 198B.650 to 198B.689.

- (4) No local governing entity may impose any other additional heating, ventilation, and air conditioning inspection or permit requirements, or establish any local inspection or permitting program, unless those provisions were in place before January 1, 2007.

➔Section 291. KRS 198B.6674 is amended to read as follows:

All fees and fines collected and paid into the State Treasury shall be credited to a revolving trust and agency account and shall be used only for the administration and enforcement of KRS 198B.650 to 198B.689 and the repayment of moneys borrowed from surplus trust and agency accounts of the *department{office}*. The moneys in the account are hereby appropriated by the General Assembly for the purposes set forth in KRS 198B.650 to 198B.689, and shall not lapse at the close of the fiscal year.

➔Section 292. KRS 198B.6675 is amended to read as follows:

- (1) For the purpose of enforcing the provisions of KRS 198B.650 to 198B.689, officers, agents, and inspectors of the *department{office}* or an authorized local government shall have the power and authority to enter upon permitted premises at all reasonable times with the consent of the property owner in order to make inspections, interview all persons, and request proof of heating, ventilation, and air conditioning licenses, installation permits, and other evidence of compliance. Officers, agents, and inspectors of the *department{office}* or an authorized local government shall have the authority to issue a stop-work order to any owner, agent, or occupant of real property whenever the heating, ventilation, and air conditioning system under inspection is found to be in violation of KRS 198B.650 to 198B.689 or the Uniform State Building Code's heating, ventilation, and air conditioning mechanical sections.
- (2) Notwithstanding the existence or pursuit of any other civil or criminal penalties, the *department{office}* and its officers, agents, and inspectors are authorized to institute and maintain actions to restrain and enjoin any violation of KRS 198B.650 to 198B.689, the Uniform State Building Code, the Uniform State Residential Code, or the rules or the administrative regulations of the *department{office}* relating thereto.
- (3) City and county attorneys, Commonwealth's attorneys, and the Attorney General may, within their respective jurisdictions, represent the *department{office}* and its officers, agents, and inspectors in the enforcement of provisions of KRS 198B.650 to 198B.689, the Uniform State Residential Code, and the Uniform State Building Code.

➔Section 293. KRS 198B.6676 is amended to read as follows:

- (1) The Circuit Court where a violation occurs shall have jurisdiction and venue in all civil and injunctive actions instituted by the *department{office}* for the enforcement of the provisions of KRS 198B.650 to 198B.689 and orders issued thereunder.
- (2) The District Court where a violation occurs shall have jurisdiction and venue in all criminal actions for the enforcement of the provisions of KRS 198B.650 to 198B.689, the Uniform State Building Code, the Uniform State Residential Code, and orders issued thereunder.

➔Section 294. KRS 198B.6677 is amended to read as follows:

- (1) If an installation for which a permit is required does not meet the requirements of the Uniform State Building Code or the Uniform State Residential Code, whichever is applicable, or if the property owner refuses to allow an inspection, the inspector shall refuse to approve the work covered by the permit. The *department{office}* or authorized local government may prohibit the continued use of a heating, ventilation, and air conditioning system that an authorized inspector determines was improperly installed or altered if continued use threatens human life or if the property owner refused to allow an inspection.
- (2) An applicant aggrieved by an action of an inspector or the *department{office}* may request a hearing in accordance with KRS Chapter 13B.

➔Section 295. KRS 198B.6678 is amended to read as follows:

- (1) The ~~Department~~~~Office~~ shall appoint and assign heating, ventilation, and air conditioning inspectors to each county subject to the provisions of KRS 198B.650 to 198B.689 and in numbers sufficient to implement the provisions of KRS 198B.650 to 198B.689.
- (2) No person shall be appointed as a heating, ventilation, and air conditioning inspector unless he or she has at least six (6) years' experience as a licensed heating ventilation, and air conditioning journeyman mechanic or a licensed master heating, ventilation, and air conditioning contractor, unless he or she is a certified building inspector who has successfully passed the examinations relating to heating, ventilation, and air conditioning systems. At the time of his or her appointment, the inspector shall be licensed or certified in accordance with the provisions of KRS 198B.650 to 198B.689.

➔Section 296. KRS 198B.668 is amended to read as follows:

- (1) No person, firm, or corporation shall practice heating, ventilation, and air conditioning contracting unless that person, firm, or corporation maintains general liability insurance in an amount not less than five hundred thousand dollars (\$500,000) and property damage insurance in an amount not less than three hundred thousand dollars (\$300,000) underwritten by an insurance carrier licensed and approved by the Kentucky ~~Department~~~~Office~~ of Insurance.
- (2) Proof of insurance shall be submitted to the board prior to issuance or renewal of a license.
- (3) Proof of insurance, as required by subsection (1) of this section, shall exempt licensees from the requirement of obtaining separate insurance in local jurisdictions under any local licensing laws.
- (4) No license shall be valid without insurance as provided in this section. Insurance carriers shall notify the board upon cancellation of the insurance of any licensee required to maintain insurance.

➔Section 297. KRS 198B.700 is amended to read as follows:

As used in KRS 198B.700 to 198B.738, unless otherwise provided:

- (1) "Applicant" means an individual who applies for a license as a home inspector;
- (2) "Board" means the Kentucky Board of Home Inspectors established in KRS 198B.704;
- (3) "Client" means a person who contracts with a licensed home inspector to obtain a home inspection and subsequent written home inspection report;
- (4) "~~Department~~~~Office~~" means the Kentucky ~~Department~~~~Office~~ of Housing, Buildings and Construction;
- (5) "Home inspection" means a visual analysis for the purpose of providing a professional opinion by a licensed home inspector, of the condition of a residential dwelling and the dwelling's attached garages and carports, any reasonable accessible installed components, and the operation of the dwelling's systems, including any controls normally operated by the owner of the dwelling, for systems and components in the standards of practice established by the board. Home inspection shall not include a code compliance inspection, or an inspection required under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. secs. 5401 et seq., as amended, and rules and regulations issued thereunder, or KRS 227.600 regarding manufactured homes;
- (6) "Home inspection report" means a written report prepared by a licensed home inspector for compensation and issued after a home inspection. The report shall include the following:
 - (a) A report on any system or component inspected that, in the professional opinion of the inspector, is significantly deficient;
 - (b) The inspector's recommendation to repair or monitor deficiencies reported under paragraph (a) of this subsection;
 - (c) A list of any systems or components that were designated for inspection in the standards of practice adopted by the board but that were not inspected; and
 - (d) The reason a system or component listed under paragraph (c) of this subsection was not inspected;
- (7) "Home inspector" means an individual who performs home inspections for compensation;

- (8) "Licensee" means a person who performs home inspections and who is licensed under KRS 198B.700 to 198B.738 as a home inspector; and
- (9) "Residential dwelling" means a structure consisting of at least one (1) but not more than four (4) units, each designed for occupancy by a single family, whether the units are occupied or unoccupied.

➔Section 298. KRS 198B.702 is amended to read as follows:

KRS 198B.700 to 198B.738 shall apply to an individual who conducts home inspections for compensation, but shall not apply to the following:

- (1) An individual who is acting within the scope of the individual's employment as:
 - (a) A code enforcement official for the state or a political subdivision of the state; or
 - (b) A representative of a state or local housing agency or an individual acting under the authority of the United States Department of Housing and Urban Development;
- (2) An individual who is acting within the scope of the individual's license as a licensed:
 - (a) Architect under KRS Chapter 323;
 - (b) Professional engineer under KRS Chapter 322;
 - (c) Plumbing contractor or journeyman plumber under KRS Chapter 318;
 - (d) Electrician, master electrician, or electrical contractor under KRS Chapter 227A;
 - (e) Liquefied petroleum gas dealers under KRS Chapter 234; or
 - (f) Master heating, ventilation, and air conditioning contractor, journeyman heating, ventilation, and air conditioning mechanic, or an apprentice heating, ventilation, and air conditioning mechanic under this chapter;
- (3) An individual licensed under KRS Chapter 324 as a real estate broker, broker-salesperson, or salesperson and is acting within the scope of the individual's license;
- (4) An individual who is licensed under KRS Chapter 324A as a real estate appraiser and is acting within the scope of the individual's license;
- (5) An individual who holds a license under KRS Chapter 304 as an insurance adjuster and is acting within the scope of the individual's license;
- (6) An individual who holds a permit, certificate, or license to:
 - (a) Use and apply pesticides; or
 - (b) Make diagnostic inspections and reports for wood destroying pests and fungi under KRS Chapter 217B and is acting within the scope of the individual's certificate or license;
- (7) An individual who holds a license from a political subdivision as a tradesperson or home builder and is acting within the scope of the individual's license;
- (8) An individual who holds a current and valid license, certificate, or permit under KRS 227.550 to 227.660 and is acting within the scope of the individual's license, certificate, or permit as a:
 - (a) Manufactured home retailer;
 - (b) Manufactured home certified retailer; or
 - (c) Manufactured home certified installer; or
- (9) Employees of the ~~Department~~ *Office* of Housing, Buildings and Construction or the State Fire Marshall's Office acting in their official capacities as inspectors of buildings and manufactured housing.

➔Section 299. KRS 198B.704 is amended to read as follows:

- (1) There is created a board to be known as the Kentucky Board of Home Inspectors.
- (2) The board shall be composed of ten (10) members appointed by the Governor.

- (a) Five (5) of the members shall:
1. Have been actively engaged in performing home inspections in Kentucky for at least five (5) years immediately before the member's appointment to the board, or have completed one hundred (100) fee paid inspections per year over the last five (5) years;
 2. Be licensed by the board as a home inspector; and
 3. Be selected from a list of fifteen (15) names submitted to the Governor, and compiled by a selection committee composed of eight (8) members, two (2) each from the American Society of Home Inspectors, the Kentucky Real Estate Inspectors Association, the National Association of Certified Home Inspectors, and the National Association of Home Inspectors, respectively.
- (b) The other five (5) board members shall be qualified as follows:
1. One (1) person shall be a home builder who has been actively engaged in home building in Kentucky for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Home Builders Association of Kentucky;
 2. One (1) person shall be a licensed real estate salesperson or broker under KRS Chapter 324 who has been actively engaged in selling, trading, exchanging, optioning, leasing, renting, managing, or listing residential real estate in Kentucky for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Kentucky Association of Realtors;
 3. One (1) person shall represent the public at large and shall not be associated with the home inspection, home building, or real estate business other than as a consumer. This member shall be appointed by the Governor, but shall not be selected from a submitted list of names;
 4. One (1) person shall be a licensed manufactured home retailer, certified retailer, or certified installer who has been actively engaged in such an occupation for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Kentucky Manufactured Housing Institute; and
 5. The *commissioner*~~Executive Director~~ of the *Department*~~Office~~ of Housing, Buildings,~~[-]~~ and Construction, or his or her designee shall be a member of the board.
- (3) A board member required to have a license in accordance with subsection (2)(a)3. of this section, shall obtain the requisite license in accordance with KRS 198B.712, on or before July 1, 2006. If a board member does not obtain the requisite license on or before July 1, 2006, the board member shall be considered to have resigned from the board on July 1, 2006, and the Governor shall fill the vacancy in accordance with this section. If a board member resigns for failure to obtain a home inspectors license, the actions of the board member and board before July 1, 2006, shall be valid and viable.
- (4) The members of the board shall be residents of Kentucky.
- (5) The initial terms of office for the nine (9) members appointed to the board by the Governor are as follows:
- (a) Three (3) members for a term of three (3) years;
 - (b) Three (3) members for a term of two (2) years; and
 - (c) Three (3) members for a term of one (1) year.
- Thereafter, all members shall serve a term of three (3) years, or until a successor has been duly appointed.
- (6) The initial terms begin July 15, 2004.
- (7) The Governor may remove a board member at any time for incompetence, neglect of duty, or unprofessional conduct.
- (8) If a vacancy occurs in the membership of the board, the Governor shall appoint an individual to serve for the remainder of the unexpired term who has like qualifications required of the member who created the vacancy.
- (9) A member shall not serve on the board for more than six (6) consecutive years.

- (10) Each year the board shall elect a member as chairperson and a member as vice chairperson.
- (11) The chairperson and vice chairperson shall serve in their respective capacities for no more than one (1) year consecutively and until a successor is elected.
- (12) The chairperson shall preside at all meetings at which the chairperson is present. The vice chairperson shall preside at meetings in the absence of the chairperson and shall perform other duties as the chairperson directs.
- (13) If the chairperson and vice chairperson are absent from a meeting of the board when a quorum exists, the members who are present may elect a presiding officer who shall serve as acting chairperson until the conclusion of the meeting or until the arrival of the chairperson or vice chairperson.
- (14) The board shall meet at least quarterly each calendar year upon the call of the chairperson or the written request of a majority of the members of the board.
- (15) The chairperson shall establish the date, time, and place for each meeting.
- (16) A majority of the current members of the board constitutes a quorum.
- (17) The affirmative vote of a majority of the members in attendance at a duly constituted meeting of the board is necessary for the board to take official action.
- (18) Each member of the board is entitled to a minimum salary of thirty-five dollars (\$35) per diem. Each member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as established under KRS 45.101.
- (19) A member shall be automatically removed from the board and a vacancy shall be created if a member fails to adhere to a duly adopted code of ethics of the board. Failure to adhere to such a code shall be determined by official action of the board.

➔Section 300. KRS 198B.708 is amended to read as follows:

The ~~department office~~ shall provide the board with:

- (1) Clerical or other assistants, including investigators, necessary for the proper performance of the board's duties;
- (2) A place to hold board meetings and hearings; and
- (3) Office equipment and office space for board records, staff, and other effects necessary to carry out the requirements of KRS 198B.700 to 198B.738.

➔Section 301. KRS 198B.732 is amended to read as follows:

- (1) An individual is guilty of a Class B misdemeanor if the individual:
 - (a) Performs or offers to perform home inspections for compensation without being licensed as a home inspector and without being exempt from licensing;
 - (b) Presents as the individual's own the license of another;
 - (c) Intentionally gives false or materially misleading information to the board or to a board member in connection with a licensing matter;
 - (d) Impersonates another licensee; or
 - (e) Uses an expired, suspended, revoked, or otherwise restricted license.
- (2) An individual is guilty of a Class A misdemeanor if the individual is convicted of a second or subsequent offense under this section within five (5) years after a prior conviction of an offense under this section.
- (3) When entering a judgment for an offense under this section, the court shall impose a service fee of an amount equal to any fee or other compensation earned by the individual in the commission of the offense.
- (4) Each transaction involving unauthorized activities as described in this section shall constitute a separate offense.
- (5) In all actions for the collection of a fee or other compensation for performing home inspections, the party seeking relief shall allege and prove that, at the time that the cause of action arose, the party seeking relief was not in violation of KRS 198B.712.

- (6) The *Housing, Buildings and Construction Legal Division within the Office of Legal Services in the Public Protection Cabinet*~~{general counsel for the Office of Housing, Buildings and Construction}~~ shall act as the legal adviser for the board and provide any legal assistance necessary to carry out this section.

➔ Section 302. KRS 200.658 is amended to read as follows:

- (1) There is hereby created the Kentucky Early Intervention System Interagency Coordinating Council to be comprised of twenty-five (25) members to be appointed by the Governor to serve a term of three (3) years. The members of the council shall be geographically and culturally representative of the population of the Commonwealth and conform to the requirements of federal law and regulations. For administrative purposes, the council shall be attached to the Early Childhood Development Authority. Pursuant to federal law and regulations, the membership shall be as follows:
- (a) At least five (5) members shall be the parents, including minority parents, of a child with a disability who is twelve (12) years of age or less, with at least one (1) being the parent of a child six (6) years of age or less. Each parent shall have knowledge of or experience with programs for infants and toddlers with disabilities;
 - (b) At least five (5) members shall be public or private providers of early intervention services to infants and toddlers with disabilities;
 - (c) At least one (1) member shall be a member of the Kentucky General Assembly;
 - (d) At least one (1) member shall be representative of an entity responsible for personnel preparation and may include personnel from an institution of higher education or preservice training organization;
 - (e) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Public Health;
 - (f) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Medicaid Services;
 - (g) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Mental Health and Mental Retardation Services;
 - (h) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Community Based Services;
 - (i) At least one (1) member shall be the commissioner or designee of the Department of Education;
 - (j) At least one (1) member shall be the *commissioner*~~{executive director}~~ or designee of the *Department*~~{Office}~~ of Insurance;
 - (k) At least one (1) member shall be a representative of the Commission for Children with Special Health Care Needs;
 - (l) At least one (1) member shall be a representative for the Head Start program; and
 - (m) At least one (1) member shall be a representative of the Education of Homeless Children and Youth program.
- (2) In matters concerning the Kentucky Early Intervention System, the council shall advise and assist the cabinet in areas, including but not limited to the following:
- (a) Development and implementation of the statewide system and the administrative regulations promulgated pursuant to KRS 200.650 to 200.676;
 - (b) Achieving the full participation, coordination, and cooperation of all appropriate entities in the state, including, but not limited to, individuals, departments, and agencies, through the promotion of interagency agreements;
 - (c) Establishing a process to seek information from service providers, service coordinators, parents, and others concerning the identification of service delivery problems and the resolution of those problems;
 - (d) Resolution of disputes, to the extent deemed appropriate by the cabinet;
 - (e) Provision of appropriate services for children from birth to three (3) years of age;
 - (f) Identifying sources of fiscal and other support services for early intervention programs;

- (g) Preparing applications to Part C of the Federal Individuals with Disabilities Education Act (IDEA) and any amendments to the applications;
 - (h) Transitioning of infants and toddlers with disabilities and their families from the early intervention system to appropriate services provided under Part B of the Federal Individuals with Disabilities Education Act (IDEA) operated by the state Department of Education; and
 - (i) Developing performance measures to assess the outcomes for children receiving services.
- (3) The council shall prepare no later than December 30 of each year an annual report on the progress toward and any barriers to full implementation of the Kentucky Early Intervention System for infants and toddlers with disabilities and their families. The report shall include recommendations concerning the Kentucky Early Intervention System, including recommendations of ways to improve quality and cost effectiveness, and shall be submitted to the Governor, Legislative Research Commission, and the Secretary of the United States Department of Education.
- (4) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of the existence of a conflict of interest.

➔Section 303. KRS 205.619 is amended to read as follows:

- (1) By October 30, 2008, the Cabinet for Health and Family Services shall submit to the Center for Medicare and Medicaid Services an amendment to the State Medicaid Plan to permit the establishment of a Kentucky Long-Term Care Partnership Insurance Program that provides for the disregard of any assets or resources in an amount equal to the insurance benefit payments made to or on behalf of an individual who is a beneficiary of the partnership insurance program that meets the requirements of KRS 304.14-640 and 304.14-642.
- (2) The secretary of the cabinet shall notify in writing the executive director of the **Department**~~{Office}~~ of Insurance and the co-chairs of the Interim Joint Committee on Health and Welfare and the Interim Joint Committee on Banking and Insurance within two (2) business days of the submission of the plan amendment and of the receipt of the response by the federal agency.
- (3) Upon approval by the federal government of the state plan amendment, the Department for Medicaid Services, in conjunction with the **Department**~~{Office}~~ of Insurance, shall establish the Kentucky Long-Term Care Partnership Insurance Program in accordance with KRS 304.14-640 and 304.14-642.
- (4) The department shall:
 - (a) Provide consultation, information, and materials to the **Department**~~{Office}~~ of Insurance to assist in the development and issuance of uniform training materials in accordance with KRS 304.14-642(4); and
 - (b) Collaborate in the preparation of the report required in KRS 304.14-642(6).

➔Section 304. KRS 207.130 is amended to read as follows:

As used in KRS 207.140 to 207.240 unless the context otherwise requires:

- (1) "Persons" means one (1) or more individuals, partnerships, municipalities, the state, or other political subdivisions within the state, associations, labor organizations, or corporations.
- (2) "Physical disability" means the physical condition of a person whether congenital or acquired, which constitutes a substantial disability to that person and is demonstrable by medically accepted clinical or laboratory diagnostic techniques.
- (3) "Employer" means a person or governmental unit or officer in this state having in his or its employ eight (8) or more individuals; and any person acting in the interest of an employer, directly or indirectly.
- (4) "Labor organization" means a labor organization and an agent of such an organization, and includes an organization of any kind, an agency or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and a conference, general committee, joint system or board, or joint council so engaged which is subordinate to a national or international labor organization.
- (5) "Unfair employment practice" means an act that is prohibited under KRS 207.150, 207.160 or 207.170.

(6) "**Commissioner**" means ~~Executive director~~ shall mean the **commissioner** ~~executive director~~ of the **Department** ~~Office~~ of Workplace Standards, under the direction and supervision of the **secretary** ~~commissioner~~ of the ~~Department of~~ Labor **Cabinet**.

(7) "**Department**" means ~~Office~~ shall mean the **Department** ~~Office~~ of Workplace Standards in the ~~Department of~~ Labor **Cabinet**.

➔ Section 305. KRS 207.200 is amended to read as follows:

(1) The Kentucky **Department** ~~Office~~ of Workplace Standards is authorized to enforce the employment provisions of KRS 207.130 to 207.240 in conjunction with the State Attorney General's office and the state and local courts.

(2) Any individual with a disability requesting the intervention of the Kentucky **Department** ~~Office~~ of Workplace Standards under this section shall, within one hundred and eighty (180) days of the alleged incident, submit with his request a signed, sworn statement specifying and describing the disability or disabilities which affect him. This statement may be used by the **commissioner** ~~executive director~~ of workplace standards or his representative to determine if the individual does, or does not, have a "physical disability" as defined in KRS 207.130(2). If the **commissioner** ~~executive director~~ of workplace standards or his representative determines that the aggrieved individual does have a disability which falls under the definition in KRS 207.130(2), the **Department** ~~Office~~ of Workplace Standards shall provide a copy of the aggrieved individual's signed statement to the employer for his inspection.

(3) In the event the employer wishes to challenge the validity of the statement, he shall so notify the **commissioner** ~~executive director~~ of workplace standards, who shall in turn notify the aggrieved individual. If the aggrieved individual wishes the **Department** ~~Office~~ of Workplace Standards to continue its involvement with the case, he shall be required to submit to the **commissioner** ~~executive director~~ of workplace standards, within thirty (30) days of such notice, a signed, sworn statement from a licensed physician of his choice, or from one of the state or federal agencies serving individuals with disabilities:

(a) Specifying and describing the disability or disabilities affecting the individual; and

(b) Indicating any specific type of employment for which such disability should be considered a bona fide or necessary reason for limitation or exclusion.

(4) (a) The state agencies which may be consulted under subsection (3) of this section may include, but are not limited to, the following:

1. Department of Education, Office of Vocational Rehabilitation Services;

2. Cabinet for Health and Family Services, Department for Public Health;

3. Cabinet for Health and Family Services, Department for Disability Determination Services.

(b) The **commissioner** ~~executive director~~ of workplace standards, in conjunction with the agencies designated in this subsection, is authorized to adopt appropriate regulations governing the issuance and setting the standards of determinations of ability or disability;

(c) The agencies designated in this subsection, and any other state agency which serves individuals with disabilities and which the **commissioner** ~~executive director~~ of workplace standards deems proper, shall cooperate to the fullest with the **Department** ~~Office~~ of Workplace Standards in issuing a statement of disability and limitations as specified in subsection (3) of this section within twenty (20) days of the date the individual with a disability presents himself before such agency for examination.

(5) (a) For the purposes of KRS 207.130 to 207.240, the **commissioner** ~~executive director~~ of workplace standards, or his authorized representative, shall have the power to enter the place of employment of any employer, labor organization, or employment agency to inspect and copy employment records, to compare character of work and operations on which persons employed by him are engaged, to question such persons, and to obtain such other information as is reasonably necessary to make a preliminary determination that the aggrieved individual is, or is not, fully capable of carrying out the duties of the job which he or she had been denied;

(b) In the event that a preliminary determination is made that the aggrieved individual is not fully capable of carrying out the duties of the job which he or she had been denied, the aggrieved individual and the employer shall both be so advised;

- (c) The aggrieved individual, within ten (10) days of receiving such notification, may file with the **Department**~~{Office}~~ of Workplace Standards an application for reconsideration of the determination. Upon such application, the **commissioner**~~{executive director}~~ of workplace standards or his representative shall make a new determination within ten (10) days whether the aggrieved individual is, or is not, fully capable of carrying out the duties of the job which he or she had been denied. If the determination is again made that the aggrieved individual is not fully capable of carrying out these duties, the aggrieved individual and the employer shall both be so advised;
- (d) In the event that a preliminary determination has been made that the aggrieved individual is fully capable of carrying out the duties of the job which he or she had been denied, the employer, labor organization, or employment agency shall be so advised and encouraged to make an immediate offer to the aggrieved individual of the position which he or she had been denied. In the event the position has already been filled, the employer, labor organization, or employment agency shall be encouraged to make an offer to the aggrieved individual of the next available position for which he or she is qualified.

➔Section 306. KRS 207.210 is amended to read as follows:

- (1) If the employer, labor organization, or employment agency continues to refuse employment to the aggrieved individual, the aggrieved individual may file a formal administrative complaint with the **Department**~~{Office}~~ of Workplace Standards and, upon that filing, the **commissioner**~~{executive director}~~ of workplace standards or his representative shall conduct an administrative hearing in accordance with KRS Chapter 13B.
- (2) If the **Department**~~{Office}~~ of Workplace Standards determines that the employer, labor organization, or employment agency has not engaged in an unfair employment practice, it shall after the hearing issue a final order dismissing the complaint.
- (3) If the **Department**~~{Office}~~ of Workplace Standards determines that the employer, labor organization, or employment agency has engaged in an unfair employment practice, the department shall issue a final order requiring the employer, labor organization, or employment agency to cease and desist from the unlawful practice and to take affirmative action as in the judgment of the department will carry out the purposes KRS 207.130 to 207.240.
- (4) Affirmative action ordered under this section may include, but is not limited to:
 - (a) Hiring, reinstatement, or upgrading of employees with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the aggrieved individual shall operate to reduce the back pay otherwise allowable;
 - (b) Admission or restoration of the aggrieved individual to union membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining program, and the utilization of objective criteria in the admission of individuals to these programs;
 - (c) The extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the employer;
 - (d) Reporting as to the manner of compliance;
 - (e) Posting notices in conspicuous places in the employer's place of business in form prescribed by the **Department**~~{Office}~~ of Workplace Standards.

➔Section 307. KRS 207.230 is amended to read as follows:

Notwithstanding the provisions of KRS 207.200 and 207.210, citizen suits may be commenced under the following terms and conditions:

- (1) Any person deeming himself injured by any act in violation of the provisions of this chapter shall have a civil cause of action in Circuit Court to enjoin further violations, and to recover the actual damages sustained by him, and upon judicial finding of any violation of KRS 207.150 to 207.190, shall recover the costs of the law suit, including a reasonable fee for his attorney of record, all of which shall be in addition to any other remedies contained in KRS 207.130 to 207.240.
- (2) Notice. No action may be commenced:

- (a) Prior to thirty (30) days after the plaintiff has given notice of the violation to the **commissioner**~~[executive director]~~ of workplace standards.
- (b) If the **commissioner**~~[executive director]~~ of workplace standards has commenced and is diligently prosecuting a civil action to require compliance with KRS 207.130 to 207.240; however, the aforementioned conditions do not prohibit citizen-initiated civil enforcement action contemporaneously with criminal enforcement efforts by the state.
- (c) In any civil action under this section, the **commissioner**~~[executive director]~~ of workplace standards, under the direction of the **secretary**~~[commissioner]~~ of the ~~[Department of]~~Labor **Cabinet**, if not a party, may intervene only with consent of the person bringing the action. If the administrator is allowed to intervene, he may not alter the cause of action, delay the proceedings, or make any decisions, settlement agreements, or agree to any consent orders or enforcement proceeding without the informed consent of the person initiating the citizens enforcement action.

➔Section 308. KRS 211.285 is amended to read as follows:

- (1) There is hereby created the "Malt Beverage Educational Fund" which shall provide moneys on a matching basis for educational information and materials that deter or eliminate underage drinking. The fund shall consist of moneys generated from one percent (1%) of the excise tax collected from the sale and distribution of malt beverages under KRS 243.720 and one percent (1%) of the wholesale tax collected from distributors of malt beverages under KRS 243.884.
- (2) The "Malt Beverage Educational Fund" shall be established in the State Treasury as a trust and revolving account under KRS 45.253. Moneys in the account shall be distributed by the State Treasurer to the Malt Beverage Educational Corporation, a nonprofit organization that is organized under the laws of this state, upon the authorization of the secretary of the Cabinet for Health and Family Services. The moneys shall be awarded to the corporation solely to fund educational programs to deter or eliminate underage drinking.
- (3) The secretary of the Cabinet for Health and Family Services shall authorize that moneys from the fund be disbursed to the corporation upon the secretary's receipt of a certification from the corporation showing the moneys the corporation has received from malt beverage distributors and other private sources since the last certification. The moneys disbursed from the fund shall be equal to the contributions that the corporation has received from its members and other private sources during that period. The moneys in the fund shall be disbursed in accordance with a schedule established by the secretary, and shall be disbursed until the moneys in the fund are exhausted or until the moneys in the fund lapse in accordance with subsection (4) of this section, whichever comes first.
- (4) Moneys that are credited to the fund and not issued to the corporation shall lapse at the end of the fiscal year and shall be returned to the general fund.
- (5) As a condition of receiving the governmental funds, the corporation's board of directors shall include the following among its directors:
 - (a) The Governor or his or her designee;
 - (b) The Attorney General or his or her designee;
 - (c) The President of the Senate or his or her designee;
 - (d) The Speaker of the House or his or her designee;
 - (e) The secretary of the Cabinet for Health and Family Services or his or her designee; and
 - (f) The **commissioner**~~[executive director]~~ of the **Department**~~[Office]~~ of Alcoholic Beverage Control or his or her designee.
- (6) All expenditures of moneys from the fund shall be approved by a majority of those persons set out in subsection (5)(a) to (f) of this section. If the moneys from the fund are not expended in their entirety, any moneys that remain unused by the corporation at the end of the fiscal year shall be returned to the general fund.
- (7) Any moneys from the fund that are not expended shall be returned to the general fund upon the dissolution of the corporation.
- (8) Any high school in the Commonwealth of Kentucky that was registered with the Department of Education as of July 1, 1997, may make an application to the Malt Beverage Education Corporation by February 28 of each

year and shall be granted a minimum of five hundred dollars (\$500) annually from the funds contributed by the Malt Beverage Educational Fund for the single purpose of supporting "Project Graduation" events.

➔Section 309. KRS 211.345 is amended to read as follows:

The Department for Public Health in the Cabinet for Health and Family Services shall establish a program for testing, upon request of the owner or user of the water supply, private water supplies for bacterial and chemical contamination, and for educating the public about proper siting and drilling of wells and treatment of wells and other private water supplies. The program shall consist of the following elements:

- (1) The development of policies, in conjunction with the *Energy and Environment*~~(Environmental and Public Protection)~~ Cabinet, for testing private water supplies and using relevant information in a groundwater database;
- (2) The development of a data collection system, in conjunction with the *Energy and Environment*~~(Environmental and Public Protection)~~ Cabinet, which shall contain the results of water sample tests and information on well location sufficient to locate the wells on an official map;
- (3) The development of a private water supply user's manual to be made available to the public; and
- (4) The development of a technical assistance program for private water supply users.

➔Section 310. KRS 211.350 is amended to read as follows:

- (1) The cabinet shall regulate the construction, installation, or alteration of on-site sewage disposal systems except for systems that have a surface discharge. The cabinet shall create and maintain an electronic database for Kentucky on-site wastewater systems information, which for each system shall include but not be limited to permit application date, permit application status, system installation date, system type, latitude and longitude of system, records of system plan and site evaluations, inspection dates, and the condition of system at time of inspection. The cabinet shall within twenty-four (24) months of July 12, 2006, annually report to the Governor and the Legislative Research Commission on the status of on-site systems statewide, including numbers and types of systems, summaries of conditions of systems, geographic distribution, observations of trends, and recommendation for future protection of public health and safety with on-site sewage disposal systems.
- (2) The Department for Public Health shall maintain a current list of approved and experimental on-site wastewater treatment technologies and shall make this list available, and guidance and expertise, to local health departments, which will provide it to on-site wastewater professionals and permit applicants.
- (3) Site evaluations shall be completed by the local health department within fifteen (15) working days of receipt of the application. If further information is required, the local health department shall promptly notify the applicant and shall have an additional ten (10) working days after that submittal of additional information in which to evaluate and issue or deny the permit. It shall be the responsibility of the property owner or owner's agent to protect and maintain the suitability of an approved site and to notify the local health department for a reinspection if site conditions substantively change. If a site previously determined to be suitable is thereafter declared unsuitable by the local health department, remedial measures shall be provided in writing to the property owner or owner's agent within fifteen (15) working days.
- (4) After the conclusion of the site evaluation, the local health department shall, upon request, provide a list of all options that may be approved for the property, including new and emerging technologies. It shall be the responsibility of the owner of advanced treatment, alternative, experimental, or new and emerging technology systems to contract with a management entity, certified system operator, or trained system operator to develop and implement an approved operations and maintenance plan specific to, and appropriate for, the approved system.
- (5) No person, firm, or corporation shall construct, install, alter, or cause to be constructed, installed, or altered, any on-site sewage disposal system subject to regulation by the cabinet without having first obtained an on-site sewage disposal permit from the local health department. In lieu of inspection and certification by the local health department a licensed professional engineer in private practice licensed by the Commonwealth of Kentucky may perform site evaluations and approve system designs for an on-site sewage disposal system for the person, firm, or corporation and apply for the permit from the local health department. The final systems installation inspection shall be performed by the local health department as soon as practicable. All applicable provisions of KRS Chapter 322 shall govern the licensed professional engineer. A professional engineer shall not perform site evaluations, approve system designs, or certify system installations of an on-site sewage

disposal system on property owned by himself, an employee, or a partner of an engineering firm by which he is employed, or on property owned by the engineering firm. Nothing in this section shall be construed to deny a farmstead owner the right to obtain a permit. Except for farmstead owners on their own property, the construction, installation, or alteration shall be performed only by a person certified by the cabinet pursuant to KRS 211.357.

- (6) A local health department that issues a permit for an on-site sewage disposal system based on the site evaluation or system design of a licensed professional engineer in private practice licensed by the Commonwealth of Kentucky shall not be held liable for any defects or failures of the on-site sewage disposal system due to the site evaluation or system design.
- (7) No person, firm, or corporation shall use or continue to use or permit the use or continued use of any on-site sewage disposal system that is constructed, installed, or altered under an on-site sewage disposal permit if the cabinet or local health department through a duly authorized inspector, employee, agent, or licensed professional engineer in private practice licensed by the Commonwealth of Kentucky finds that the system was not constructed, installed, or altered in conformance with the permit and regulations issued by the cabinet.
- (8) No certified electrical inspector acting under authority of KRS 227.491 shall issue the certificates of approval of temporary or permanent electrical wiring unless the inspector has in his or her possession a notice of release as described in paragraphs (a) and (b) of this subsection. The inspector shall record the number of the notice of release on the certificate of approval. The person requesting approval of electrical wiring shall be responsible for obtaining the release from the local health department and providing it to the electrical inspector. This requirement shall only apply to dwellings, mobile homes, manufactured housing, buildings, or other structures that are constructed or installed after July 15, 1998. This requirement shall not apply to structures that do not have sewage waste fixtures or to those that are connected to a sewage waste disposal system approved by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet. Nothing in this section shall be construed to deny the continued use of any electrical service connected to wiring approved prior to July 15, 1998.
 - (a) An initial notice of release to allow temporary electrical power for construction shall be issued to the property owner or owner's agent by the local health department upon the application for a site evaluation.
 - (b) A final notice of release to allow for permanent electrical power shall be issued to the property owner or owner's agent by the local health department upon approval of an on-site sewage disposal plan.
 - (c) This section shall not apply to any county that has adopted the Uniform State Building Code and has and enforces on-site sewage disposal permitting.
- (9) All applications for on-site sewage disposal permits shall be accompanied by plans and specifications for the proposed system, including results of soils tests and other information as directed by the cabinet by regulation. If the site evaluation or approval of the system design is performed by a licensed professional engineer in private practice licensed by the Commonwealth of Kentucky, the application shall be accompanied by a statement by the engineer that he has met the requirements of the regulations issued by the cabinet for site evaluation and system design. Any action to deny an application shall be subject to appeal, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (10) The cabinet shall fix a schedule of fees for the functions performed by the cabinet relating to the regulation of on-site sewage disposal systems. The fees shall be designed to fully cover the cost of the service performed but shall not exceed the cost of the service performed. Fees payable to the cabinet shall be paid into the State Treasury and credited to a trust and agency fund to be used by the cabinet in carrying out its responsibilities relating to the regulation of on-site sewage disposal systems. No part of the fund shall revert to the general fund of the Commonwealth.
- (11) Any regulation relating to on-site sewage disposal that is in effect on July 15, 1992, shall remain in effect until altered by the secretary. The secretary may issue additional regulations necessary to carry out the purposes of this section.
- (12) Nothing in this section shall authorize or allow the cabinet to inspect or take enforcement action against on-site sewage disposal systems installed on farmsteads prior to July 15, 1992, or modifications to those systems unless the actions are determined in writing by the cabinet, upon a written, verified complaint, to be necessary to prevent imminent harm or damage to the safety, life, or health of a person. In this instance, the cabinet shall

deliver to the landowner a copy of the written determination and the verified complaint prior to the commencement of the inspection or enforcement action.

➔Section 311. KRS 211.365 is amended to read as follows:

In order to provide for the issuance of plumbing installation permits pursuant to KRS Chapter 318 and on-site sewage disposal permits pursuant to this chapter in a manner convenient to the public, the Cabinet for Health and Family Services shall provide office space in the local departments of health for the district plumbing inspector without fee or charge to the **Department**~~{Office}~~ of Housing, Buildings and Construction.

➔Section 312. KRS 211.481 is amended to read as follows:

- (1) The Kentucky Cardiovascular Disease Initiative (KCDI) is hereby created with the program goals that include but are not limited to:
 - (a) Preventing and reducing the prevalence of cardiovascular disease in Kentucky through early detection and education;
 - (b) Reducing the incidence of deaths from cardiovascular disease in Kentucky;
 - (c) Measurably reducing health-care costs associated with cardiovascular disease in Kentucky;
 - (d) Conducting research and developing new intellectual property and ancillary health businesses that create new knowledge-based businesses in Kentucky;
 - (e) Improving access to best practices and protocols for cardiovascular disease for all Kentuckians through an e-health network; and
 - (f) Assisting in securing state, federal, and private funding to stimulate health information capacities.
- (2) The KCDI shall be governed by a board that shall be appointed by the secretary of the Cabinet for Health and Family Services, except as provided in paragraphs (q) to (s) of this subsection, no later than August 1, 2007, and composed of:
 - (a) One (1) member shall be appointed by the secretary of the Cabinet for Health and Family Services who shall serve as chair of the KCDI during the first year, and this individual shall remain as a board member for two (2) additional years. The board shall elect its chair after the first year and may reelect the current chair;
 - (b) The president of the University of Louisville, or a designee;
 - (c) The president of the University of Kentucky, or a designee;
 - (d) The secretary or designee of the Cabinet for Health and Family Services;
 - (e) The commissioner or designee of the Department of Commercialization and Innovation;
 - (f) The commissioner or designee of the Department for Public Health;
 - (g) The **commissioner**~~{executive director}~~ or designee of the **Department**~~{Office}~~ of Insurance;
 - (h) The chair of the Kentucky e-Health Network Board, or a designee;
 - (i) One (1) representative of a Kentucky comprehensive university and one (1) representative of the Kentucky Community and Technical College System;
 - (j) Two (2) physicians with experience in research and treatment of cardiovascular disease, one (1) recommended by the dean of the medical school at the University of Louisville and one (1) recommended by the dean of the medical school at the University of Kentucky;
 - (k) The executive director of the Kentucky Primary Care Association;
 - (l) The president of the Kentucky Academy of Family Physicians;
 - (m) One (1) member of a Kentucky chapter of the American Heart Association;
 - (n) Four (4) members representing the business community, from a list of eight (8) persons recommended by the Kentucky Chamber of Commerce;

- (o) Four (4) members representing private sector hospitals that treat the greatest number of cardiology patients as measured by the number of MDC 5 discharges and as reported by COMPdata or its successor;
 - (p) One (1) representative from a freestanding pediatric teaching hospital;
 - (q) One (1) at-large member appointed by the Governor;
 - (r) Two (2) members of the Senate, one (1) representing each major political party, appointed by the President of the Senate; and
 - (s) Two (2) members of the House of Representatives, one (1) representing each major political party appointed by the Speaker of the House.
- (3) (a) Members serving under paragraphs (b) to (h), (k), and (l) of subsection (2) of this section shall serve by virtue of their positions and shall not be subject to term limits.
 - (b) Members appointed under paragraphs (i) and (j) of subsection (2) of this section shall serve three (3) year terms and may be reappointed to no more than two (2) consecutive terms. Members shall continue to serve until a successor is appointed.
 - (c) Members appointed under paragraphs (m) to (p) of subsection (2) of this section shall serve staggered terms that shall not exceed three (3) year terms. Members shall continue to serve until a successor is appointed.
 - (d) Members appointed under paragraphs (q), (r), and (s) of subsection (2) of this section shall serve three (3) year terms.
- (4) The KCDI board shall meet at least quarterly or upon the call of the chair. All members may receive reimbursement for expenses related to attendance at meetings and official functions of the board in accordance with state administrative regulations relating to travel reimbursement but shall not be otherwise compensated for duties associated with the board.
 - (5) The KCDI board may appoint committees, subcommittees, advisory councils, or other groups to assist in the furtherance of the goals of the KCDI. Members appointed under this subsection need not be members of the KCDI board and may receive reimbursement for expenses related to attendance at meetings and official functions of the board in accordance with state administrative regulations relating to travel reimbursement but shall not be otherwise compensated for duties associated with the board.
 - (6) No member of the board shall be subject to personal liability for a loss sustained or damage suffered as a result of board action or inaction.
 - (7) The KCDI board shall be attached to the Cabinet for Health and Family Services for administrative purposes.
- ➔Section 313. KRS 211.852 is amended to read as follows:
- (1) The location of a nuclear waste disposal facility in the Commonwealth of Kentucky shall require prior approval by a majority of the members of the Kentucky House of Representatives, a majority of the members of the Kentucky Senate, and the approval of the Governor of Kentucky.
 - (2) Before an application to locate a nuclear waste disposal facility in Kentucky can be submitted for approval to the Kentucky General Assembly, it must first receive the approval of the secretary of the Cabinet for Health and Family Services and the secretary of the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet. It shall be the responsibility of the Cabinet for Health and Family Services and the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet to ensure that a comprehensive environmental impact statement is submitted and that public hearings are held in the county in which it is proposed to locate a nuclear waste disposal facility.
 - (3) This section shall not apply to nuclear waste disposal facilities in existence prior to June 17, 1978.
- ➔Section 314. KRS 211.894 is amended to read as follows:
- (1) The Governor, the secretary of the Cabinet for Health and Family Services, the secretary of the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet or any other state agency shall not enter into a contract or an agreement of any kind with the federal government relinquishing ownership of a low-level nuclear waste disposal site located in the Commonwealth without prior approval of a majority of the members of the Kentucky House of Representatives and a majority of the members of the Kentucky Senate.

- (2) It shall be the policy of the Commonwealth to retain final authority for approving or disapproving the locating, opening, closing, or reopening of a nuclear waste disposal site or facility within its borders.
- (3) The Governor or appropriate state agencies may enter into contracts and agreements with the federal government relating to nuclear waste disposal sites located in the Commonwealth on July 15, 1980, that do not violate the provisions of subsections (1) and (2) of this section.

➔Section 315. KRS 211.896 is amended to read as follows:

- (1) Any nuclear waste disposal facility, licensed and regulated by the Kentucky Cabinet for Health and Family Services, which is closed either because there is doubt as to the public safety of the site, the integrity of the site, the economic feasibility of financing perpetual care and maintenance and decommissioning of the site, or compliance with cabinet regulations, shall not reopen without:
 - (a) A finding of fact by the secretary of the Cabinet for Health and Family Services and the secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet that all reasons for site closure have been addressed and resolved such that there is no longer any doubt as to the public safety or integrity of the site or the ability to adequately finance the perpetual care and maintenance and decommissioning of the site or the compliance of the site with cabinet regulations; and
 - (b) A public hearing and the taking of public comment on such findings of fact; and
 - (c) Approval of a majority of the members of the House of Representatives and a majority of the members of the Senate; and
 - (d) Approval of the Governor.
- (2) The Cabinet for Health and Family Services shall be responsible for organizing the public hearings, which shall be held in the county in which the nuclear waste disposal facility is located and shall be at a time and place convenient for public participation. Adequate notification shall be given to the public of the intention to reopen a nuclear waste disposal site and the cabinet shall make available to the public the data and information upon which its decision to recommend approval of reopening of the site is based.

➔Section 316. KRS 211.898 is amended to read as follows:

The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall proceed toward the stabilization and decommissioning of any nuclear waste facility owned by the Commonwealth on July 15, 1980, as expeditiously as is reasonably possible in order to place the facility in such a condition that active ongoing maintenance is eliminated and only surveillance and monitoring are required.

➔Section 317. KRS 216.265 is amended to read as follows:

- (1) The Kentucky e-Health Network Board is created and is attached to the Cabinet for Health and Family Services for administrative and technical support purposes.
- (2) The board shall consist of the following voting members:
 - (a) President, or a designee, of the University of Kentucky, who shall serve as co-chair of the board;
 - (b) President, or a designee, of the University of Louisville, who shall serve as co-chair of the board;
 - (c) Commissioner, or a designee, of the Department for Public Health;
 - (d) Commissioner, or a designee, of the Department for Medicaid Services;
 - (e) Executive director, or a designee, of the Commonwealth Office of Technology; and
 - (f) Nine (9) at-large members appointed by the Governor as follows:
 1. One (1) member engaged in the business of large-scale e-strategy and computer information technology;
 2. One (1) member engaged in the business of health insurance who is employed by a company that has its headquarters in Kentucky;
 3. Two (2) members from a list of four (4) individuals recommended by the Kentucky Hospital Association, one (1) representing rural hospitals, and one (1) representing urban hospitals;

4. Two (2) physicians actively engaged in the practice of medicine in the Commonwealth from a list of four (4) physicians recommended by the Kentucky Medical Association, or self-nominated;
 5. One (1) member from a company with at least one thousand (1,000) employees selected from a list of four (4) individuals submitted by the Associated Industries of Kentucky;
 6. One (1) member with experience as a physician practice manager; and
 7. One (1) member at large.
- (3) The board shall consist of the following ex officio members who may vote, but shall not be counted toward a quorum:
- (a) Commissioner, or a designee, of the Department of Commercialization and Innovation;
 - (b) President, or a designee, of the Council on Postsecondary Education;
 - (c) Secretary, or a designee, of the Cabinet for Health and Family Services;
 - (d) **Commissioner**~~Executive director~~, or a designee, of the **Department**~~Office~~ of Insurance;
 - (e) Two (2) members of the Senate who are members of the Interim Joint Committee on Health and Welfare or the Interim Joint Committee on Banking and Insurance, appointed by the President of the Senate; and
 - (f) Two (2) members of the House of Representatives who are members of the Interim Joint Committee on Health and Welfare or the Interim Joint Committee on Banking and Insurance, appointed by the Speaker of the House.
- (4) Members of the board shall serve a term of four (4) years and may serve two (2) consecutive terms.
- (5) At the end of a term, a member of the board shall continue to serve until a successor is appointed. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed. A member of the board who serves two (2) consecutive full four (4) year terms shall not be reappointed for four (4) years after completion of those terms. Members designated in subsection (2)(a) to (e) of this section and members designated in subsection (3) of this section shall serve on the board only while holding their respective titles.
- (6) A majority of the full membership of the board shall constitute a quorum.
- (7) The board may employ staff or contract with consultants necessary for the performance of the duties of the board, subject to the appropriation of funds.
- (8) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.
- (9) Members of the board and all committees, except the advisory group created in KRS 216.267(2), shall be entitled to reimbursement for actual and necessary expenses when carrying out official duties of the board in accordance with state administrative regulations relating to travel reimbursements. The board shall meet at least monthly.
- (10) The board may appoint committees or subcommittees with the charge of investigating and making recommendations to the board on specific aspects of the Ke-HN, including but not limited to evidence-based clinical decision support, security of protected information, electronic data interchange, and clinical practice software packages, including the feasibility of developing a software purchasing alliance to decrease the cost of software and tax incentives to encourage members of the network to purchase software deemed by the board to meet the standards of KRS 216.267. The board may appoint the following committees:
- (a) Clinical Decision Support Committee;
 - (b) Privacy and Security of Protected Health Information Committee;
 - (c) Electronic Data Interchange Committee; and
 - (d) Clinical Software Review Committee.
- (11) The members of committees or subcommittees appointed by the board do not need to be members of the board. The chairs of committees or subcommittees shall be appointed by the board. The frequency of committee or subcommittee meetings shall be established by the board.

- (12) The Clinical Decision Support Committee membership shall include at least the following members:
- (a) One (1) physician with expertise in health informatics;
 - (b) Two (2) physicians actively engaged in the practice of medicine in this Commonwealth from a list of four (4) physicians recommended by the Kentucky Medical Association, or self-nominated;
 - (c) One (1) representative of a rural hospital and one (1) representative of an urban hospital;
 - (d) One (1) pharmacist;
 - (e) One (1) representative engaged in the business of health-care information technology;
 - (f) Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice; and
 - (g) One (1) member engaged in the business of health insurance who is recommended by the Kentucky Association of Health Plans, Incorporated.
- (13) The Privacy and Security of Protected Health Information Committee shall include at least the following members:
- (a) One (1) physician actively engaged in the practice of medicine in this Commonwealth;
 - (b) Two (2) members with expertise in HIPAA regulations;
 - (c) Two (2) members engaged in the business of large-scale e-strategy and computer information technology;
 - (d) One (1) member who serves as a computer information officer within the health-care industry;
 - (e) Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice;
 - (f) One (1) member engaged in the business of health insurance who is recommended by the Kentucky Association of Health Plans, Incorporated; and
 - (g) One (1) representative of a hospital.
- (14) The Electronic Data Interchange Committee shall include at least the following members:
- (a) Two (2) members engaged in the business of large-scale e-strategy and computer information technology;
 - (b) Two (2) members engaged in the business of health insurance who are recommended by the Kentucky Association of Health Plans, Incorporated;
 - (c) Chief information officer, or a designee, of the Office of Technology within the Cabinet for Health and Family Services;
 - (d) Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice; and
 - (e) One (1) representative of a hospital.
- (15) The Clinical Software Review Committee shall include at least the following members:
- (a) One (1) member from a company that develops computer software for physician practices;
 - (b) One (1) member engaged in the business of large-scale e-strategy and computer information technology;
 - (c) Three (3) physicians, with one (1) having experience in electronic information technology;
 - (d) Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice;
 - (e) One (1) member engaged in the business of health insurance who is recommended by the Kentucky Association of Health Plans, Incorporated or employed by a company which has its headquarters in Kentucky; and

(f) One (1) representative of a hospital.

- (16) The Governor of the Commonwealth of Kentucky may reorganize the Kentucky e-Health Network Board to include the Kentucky Telehealth Board and to reorganize the Telehealth Board under the Cabinet for Health and Family Services. If the Governor deems it appropriate, the reorganization shall create a new Telehealth Committee of the Ke-HN board with the membership and responsibilities as described under KRS 194A.125 and shall be subject to confirmation by the General Assembly under the requirements of KRS 12.028.

➔Section 318. KRS 216.2923 is amended to read as follows:

- (1) For the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary may:
- (a) Appoint temporary volunteer advisory committees, which may include individuals and representatives of interested public or private entities or organizations;
 - (b) Apply for and accept any funds, property, or services from any person or government agency;
 - (c) Make agreements with a grantor of funds or services, including an agreement to make any study allowed or required under KRS 216.2920 to 216.2929; and
 - (d) Contract with a qualified, independent third party for any service necessary to carry out the provisions of KRS 216.2920 to 216.2929; however, unless permission is granted specifically by the secretary a third party hired by the secretary shall not release, publish, or otherwise use any information to which the third party has access under its contract.
- (2) For the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary shall:
- (a) Publish and make available information that relates to the health-care financing and delivery system, information on charges for health-care services and the quality and outcomes of health-care services, the cost of workers' compensation health benefits, motor vehicle health insurance benefits, and health insurance premiums and benefits that is in the public interest;
 - (b) Periodically participate in or conduct analyses and studies that relate to:
 1. Health-care costs;
 2. Health-care quality and outcomes;
 3. Health-care providers and health services; and
 4. Health insurance costs;
 - (c) Promulgate administrative regulations pursuant to KRS Chapter 13A that relate to its meetings, minutes, and transactions related to KRS 216.2920 to 216.2929;
 - (d) Prepare annually a budget proposal that includes the estimated income and proposed expenditures for the administration and operation of KRS 216.2920 to 216.2929; and
 - (e) No later than thirty (30) days after July 15, 2005, appoint and convene a permanent cabinet advisory committee. The committee shall advise the secretary on the collection, analysis, and distribution of consumer-oriented information related to the health-care system, the cost of treatment and procedures, outcomes and quality indicators, and policies and regulations to implement the electronic collection and transmission of patient information (e-health) and other cost-saving patient record systems. At a minimum, the committee shall be composed of the following:
 1. Commissioner of the Department for Public Health;
 2. Commissioner of the Department for Mental Health and Mental Retardation Services;
 3. Commissioner of the Department for Medicaid Services;
 4. **Commissioner**~~[Executive director]~~ of the **Department**~~[Office]~~ of Insurance;
 5. Physician representatives;
 6. Hospital representatives;
 7. Health insurer representatives;
 8. Consumers; and

9. Nonphysician health-care providers.

- (f) The cabinet advisory committee shall utilize the Health Services Data Advisory Committee as a subcommittee, which shall include a member of the Division of Women's Physical and Mental Health, to define quality outcome measurements and to advise the cabinet on technical matters, including a review of administrative regulations promulgated pursuant to KRS Chapter 13A, proper interpretation of the data, and the most cost-efficient manner in which it should be published and disseminated to the public, state and local leaders in health policy, health facilities, and health-care providers. The Health Services Data Advisory Committee shall review and make recommendations to the cabinet advisory committee regarding exploration of technical matters related to data from other health-care providers and shall make recommendations on methods for risk-adjusting any data prepared and published by the cabinet.

- (3) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A that impose civil fines not to exceed five hundred dollars (\$500) for each violation for knowingly failing to file a report as required under KRS 216.2920 to 216.2929. The amount of any fine imposed shall not be included in the allowed costs of a facility for Medicare or Medicaid reimbursement.

➔Section 319. KRS 216.2925 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall establish by promulgation of administrative regulations pursuant to KRS Chapter 13A, no later than January 1, 1995, those data elements required to be submitted to the cabinet by all licensed hospitals and ambulatory facilities, including a timetable for submission and acceptable data forms. Thereafter, every hospital and ambulatory facility shall be required to report on a quarterly basis information regarding the charge for and quality of the procedures and health-care services performed therein, and as stipulated by administrative regulations promulgated pursuant to KRS Chapter 13A. The cabinet shall accept data which, at the option of the provider is submitted through a third party, including but not limited to organizations involved in the processing of claims for payment, so long as the data elements conform to the requirements established by the cabinet. The cabinet may conduct statistical surveys of a sample of hospitals, ambulatory facilities, or other providers in lieu of requiring the submission of information by all hospitals, ambulatory facilities, or providers. On at least a biennial basis, the cabinet shall conduct a statistical survey that addresses the status of women's health, specifically including data on patient age, ethnicity, geographic region, and payor sources. The cabinet shall rely on data from readily available reports and statistics whenever possible.
- (2) The cabinet shall require for submission to the cabinet by any group of providers, except for physicians providing services or dispensaries, first aid stations, or clinics located within business or industrial establishments maintained solely for the use of their employees, including those categories within the definition of provider contained in KRS 216.2920 and any further categories determined by the cabinet, at the beginning of each fiscal year after January 1, 1995, and within the limits of the state, federal, and other funds made available to the cabinet for that year, and as provided by cabinet promulgation of administrative regulations pursuant to KRS Chapter 13A, the following:
- (a) A list of medical conditions, health services, and procedures for which data on charge, quality, and outcome shall be collected and published;
 - (b) A timetable for filing information provided for under paragraph (a) of this subsection on a quarterly basis;
 - (c) A list of data elements that are necessary to enable the cabinet to analyze and disseminate risk-adjusted charge, quality, and outcome information, including mortality and morbidity data;
 - (d) An acceptable format for data submission which shall include use of the uniform:
 1. Health claim form pursuant to KRS 304.14-135 or any other universal health claim form to be determined by the cabinet if in the form of hard copy; or
 2. Electronic submission formats as required under the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. sec. 300gg et seq., in the form of magnetic computer tape, computer diskettes, or other electronic media through an electronic network;

- (e) Procedures to allow health-care providers at least thirty (30) days to review information generated from any data required to be submitted by them, with any reports generated by the cabinet to reflect valid corrections by the provider before the information is released to the public; and
 - (f) Procedures pertaining to the confidentiality of data collected.
- (3) The cabinet shall coordinate but not duplicate its data-gathering activities with other data-collection activities conducted by the **Department**~~{Office}~~ of Insurance, as well as other state and national agencies which collect health-related service, utilization, quality, outcome, financial, and health-care personnel data, and shall review all administrative regulations promulgated pursuant to KRS 216.2920 to 216.2929 to prevent duplicate filing requirements. The cabinet shall periodically review the use of all data collected under KRS 216.2920 to 216.2929 to assure its use is consistent with legislative intent.
 - (4) The cabinet shall conduct outcome analyses and effectiveness studies and prepare other reports pertaining to issues involving health-care charges and quality.
 - (5) The cabinet may independently audit any data required to be submitted by providers as needed to corroborate the accuracy of the submitted data. Any audit may be at the expense of the cabinet and shall, to the extent practicable, be coordinated with other audits performed by state agencies.
 - (6) The cabinet may initiate activities set forth in subsection (1) or (2) of this section at any time after July 15, 1996.
 - (7) The Cabinet for Health and Family Services shall collect all data elements under this section using only the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services.

➔Section 320. KRS 216.2960 is amended to read as follows:

- (1) By January 1, 1995, the **Department**~~{Office}~~ of Insurance shall promulgate administrative regulations pursuant to KRS Chapter 13A authorizing the establishment by March 1, 1995, of pilot projects for twenty-four (24) hour health coverage. The total number of participants in the pilot projects cannot exceed five percent (5%) of all insured persons who are covered both by workers' compensation and general health insurance. The administrative regulations for the pilot projects shall provide that:
 - (a) A twenty-four (24) hour policy may cover general health care for purposes of general health insurance, auto insurance, workers' compensation, or health care normally covered by any line of insurance written in the Commonwealth;
 - (b) A twenty-four (24) hour coverage policy shall not contain deductibles or copayments for medical services or treatment for work-related injuries or diseases; and
 - (c) There shall be no transfer of liabilities or expenses between or among particular lines of insurance whose medical or health components have been combined into a twenty-four (24) hour coverage for health care.
- (2) No policy for twenty-four (24) hour coverage shall become effective until it is reviewed and approved by the **Department**~~{Office}~~ of Insurance.
- (3) Notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, each insurer authorized or licensed to write insurance in the Commonwealth shall provide any information requested by the **department**~~{office}~~ for the purpose of developing a twenty-four (24) hour health policy.
- (4) The purchase of a twenty-four (24) hour health policy shall not constitute an exemption from statutory provisions which require other nonmedical insurance coverage. However, an insurance carrier shall reduce its premium for insurance coverage written without the medical or health care component. Notwithstanding the provisions of Subtitle 13 of KRS Chapter 304, the premium reduction required in this subsection shall be subject to the approval of the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance.
- (5) If an employer obtains a twenty-four (24) hour health insurance policy, pursuant to this section, to secure payment of compensation for medical care and treatment under KRS Chapter 342, the employer shall also procure an insurance policy which shall provide indemnity benefits to ensure that the total coverage afforded by both the twenty-four (24) hour insurance policy and the policy providing indemnity benefits, shall provide the total compensation required by KRS Chapter 342.

- (6) The participants in a pilot project for twenty-four (24) hour health coverage shall comply with periodic reporting requirements of the **Department**~~{Office}~~ of Insurance.
- (7) Each insurer authorized or licensed to write insurance in the Commonwealth shall cooperate with the **department**~~{office}~~ and shall provide any information requested by the **department**~~{office}~~ for the purpose of studying twenty-four (24) hour health policy.
- (8) Each agency of state government shall cooperate with the **department**~~{office}~~ if requested to provide information for the purposes of this section.

➔Section 321. KRS 217.127 is amended to read as follows:

- (1) The secretary shall adopt regulations for the effective administration and enforcement of KRS 217.005 to 217.215.
- (2) The secretary shall adopt a state retail food code which shall include, among other things, provisions for regulating the issuance, suspension, and revocation of permits to operate; submission of plans for construction and equipment layout including plumbing, lighting, ventilation, water supply, sewage disposal, and other facilities; food supply source and protection; health, disease control and cleanliness of personnel; design, construction, installation, and cleanliness of equipment and utensils; toilet and hand-washing facilities; solid waste disposal and vermin control; and any other matters deemed necessary to insure a safe and sanitary operation of a retail food establishment. Standards for construction, plumbing, lighting, and ventilation of fixed retail food establishments shall be effective only if they are approved by the Board of Housing, Buildings and Construction and are included in the Uniform State Building Code, or if they conform to the State Plumbing Code in the case of plumbing fixtures. Any review of plans for construction, plumbing, lighting, and ventilation required before construction of a fixed retail food establishment shall be conducted by the **Department**~~{Office}~~ of Housing, Buildings and Construction or authorized local building official pursuant to KRS Chapter 198B.
- (3) The donation of safe and apparently wholesome food by a retail food establishment or any other entity regulated under subsections (1) and (2) of this section shall be exempt from any further inspection or regulation if the donated food has been inspected under subsections (1) and (2) of this section.

➔Section 322. KRS 217.128 is amended to read as follows:

The state fire marshal or other duly authorized agents or representatives or other authorized agents pursuant to KRS Chapter 227 shall administer and enforce all state fire regulations, laws, standards of safety, and regulations adopted by the **commissioner**~~{executive director}~~ of housing, buildings and construction relating to retail food establishments.

➔Section 323. KRS 217.544 is amended to read as follows:

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

- (1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, or desiccant, or as a functioning agent in a spray adjuvant;
- (2) "Adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted;
- (3) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish;
- (4) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment;
- (5) "Board" means the Pesticide Advisory Board;
- (6) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;
- (7) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue;
- (8) "Device" means any instrument or contrivance other than a firearm which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life other than man and other bacteria,

virus, or other microorganisms on or in living man or other living animals; but not including equipment used for the application of pesticides when sold separately therefrom;

- (9) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and, having received, deliver or offer to deliver pesticides in this state;
- (10) "Environment" includes water, air, land, and all plants and man and other animals living therein and the interrelationships which exist among these;
- (11) "EPA" means the United States Environmental Protection Agency;
- (12) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended;
- (13) "Fungi" means all nonchlorophyll-bearing thallophytes; that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;
- (14) "Highly toxic pesticide" means any pesticide determined to be highly toxic under the authority of sec. 25(c)(2) of FIFRA or by the department under this chapter;
- (15) "Imminent hazard" means a situation which exists when the continued use of a pesticide would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the secretary of the United States Department of Interior under Pub. L. 91-135 of the United States Congress;
- (16) "Inert ingredient" means an ingredient which is not an active ingredient;
- (17) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide and, when the pesticide contains arsenic in any form, a statement of the percentage of total and water-soluble arsenic, each stated as elemental arsenic;
- (18) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six (6) legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as, for example, spiders, mites, ticks, centipedes, and wood lice, also nematodes and other invertebrates which are destructive, constitute a liability, and may be classed as pests;
- (19) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or to any of its containers or wrappers;
- (20) "Labeling" means the label and other written, printed, or graphic matter:
 - (a) On the pesticide or device, or any of its containers or wrappers;
 - (b) Accompanying the pesticide or device at any time or referring to it in any other media used to disseminate information to the public; and
 - (c) To which reference is made on the label or in the literature accompanying the pesticide or device, except when accurate nonmisleading reference is made to current official publications of the United States Environmental Protection Agency, the Departments of Agriculture and Interior, the Department of Health, Education and Welfare, and other similar federal institutions, the College of Agriculture, University of Kentucky, Kentucky Agricultural Experiment Station, Cabinet for Health and Family Services, **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, or other agencies of this state or other states when such agencies are authorized by law to conduct research in the field of pesticides;
- (21) "Land" means all land and water areas, including air space and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto, or situated thereon, fixed or mobile, including any used for transportation;
- (22) "Misbranded" means a pesticide is misbranded if:
 - (a) Its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

- (b) It is an imitation of or is distributed under the name of another pesticide;
 - (c) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and, if complied with, together with any requirements imposed under section 3(d) of FIFRA are adequate to protect health and the environment;
 - (d) The labeling does not contain a statement of the use classification under which the product is registered by EPA;
 - (e) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of FIFRA, is adequate to protect health and the environment;
 - (f) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of the purchase; provided, that the ingredient statement may appear prominently on another part of the container pursuant to section 2(q) 2(A) (i) (ii) of FIFRA if the size and form of the container makes it impractical to place it on that part of the retail package which is presented or displayed under customary conditions of purchase;
 - (g) Any word, statement, or other information required by KRS 217.542 to 217.630 or FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared to other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
 - (h) The label does not bear the name, brand, or trademark under which the pesticide is distributed;
 - (i) The label does not bear the net weight or measure of the content;
 - (j) The label does not bear the name and address of the manufacturer, registrant, or person for whom manufactured; and
 - (k) The label does not bear the EPA registration number assigned to each establishment in which the product is produced and the EPA number assigned to the pesticide, if required by regulation under FIFRA;
- (23) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms;
- (24) "Person" means any individual, partnership, association, or any organized group of persons whether incorporated or not;
- (25) "Pest" means any insect, snail, slug, rodent, nematode, fungus, weed, and any other form of plant or animal life, or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which is normally considered to be a pest, or which the department may declare to be a pest;
- (26) "Pesticide" means any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest; any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and any substance or mixture of substances intended to be used as a spray adjuvant;
- (27) "Plant regulator" means any substance or mixture of substances, intended through physiological actions, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;
- (28) "Protect health and the environment" means protection against any unreasonable adverse effects on the environment;
- (29) "Registrant" means a person who has registered any pesticide pursuant to the provisions of KRS 217.542 to 217.630;

- (30) "Restricted-use pesticide" means any pesticide classified for restricted use by the administrator, EPA, or by regulation of the department;
- (31) "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a package or container separate from that of the other pesticide with which it is to be used;
- (32) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide;
- (33) "Weed" means any plant which grows where not wanted; and
- (34) "Wildlife" means all living things that are neither human, domesticated, nor as defined in KRS 217.542 to 217.630, pests, including but not limited to mammals, birds, and aquatic life.

➔Section 324. KRS 217.570 is amended to read as follows:

- (1) (a) Except as provided by paragraph (b) of this subsection, every pesticide distributed within the state or delivered for transportation or transported in intrastate commerce or between points within the state through points outside the state shall be registered with the department.
 - (b) Registration is not required if:
 - 1. A pesticide is shipped from one (1) plant or warehouse to another plant or warehouse operated by the same person and used solely at the plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of KRS 217.542 to 217.630; or
 - 2. If the pesticide is distributed under the provisions of an experimental use permit issued under the provisions of KRS 217.542 to 217.630 or an experimental use permit issued by EPA.
 - (c) All registrations shall expire on the thirty-first day of December of the calendar year for which they were issued.
- (2) The applicant for registration shall file with the department, a statement containing:
 - (a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;
 - (b) The name of the pesticide and its EPA registration number;
 - (c) A complete copy of the labeling accompanying the pesticide and a statement of all claims made or to be made for it including directions for use and a request that the pesticide be classified for nonrestricted use, for restricted use, or for both as provided for in FIFRA. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered, unless the department requests a copy of the labeling; and
 - (d) Other necessary information as specified by the department on the application for registration form.
 - (3) The department may require a full description of the tests made and results of the tests upon which the claims are based on any pesticide not registered in accordance with Section 3 of FIFRA, or on any pesticide on which restrictions are being considered.
 - (4) (a) The applicant desiring to register a pesticide in this state shall make application on forms furnished by the department, and, for the purposes identified in paragraph (b) of this subsection, shall pay to the department an annual fee of two hundred fifty dollars (\$250) for each and every brand or grade to be offered for sale in this state. There shall be issued to the registrant by the department a license entitling the registrant to sell all duly registered brands in this state until the expiration of the license.
 - (b) The annual fees received by the department shall be used to fund:
 - 1. The Kentucky Agriculture and Environment in the Classroom program, a program administered by the department;
 - 2. The farm chemical and container disposal program, a program administered by the department;

3. The cost-sharing program through the department and the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet, Division of Conservation, for the use of farmers in implementing agricultural production practices that protect the quality of soil and water resources; and
 4. Expenses incurred in the enforcement of KRS 217.542 to 217.630.
- (5) The department, when necessary in the administration of KRS 217.542 to 247.630, may require the submission of the complete formula of any pesticide, including the active and inert ingredients.
 - (6) The department may refuse to register, or to cancel the registration of, any brand of pesticide upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in evasions or attempted evasions of the provisions of KRS 217.542 to 217.630 or any administrative regulations promulgated under KRS 217.542 to 217.630. No registration shall be revoked or refused until the registrant has been given a hearing by the department.
 - (7) Registrants desiring to renew registrations shall file with the department an application for renewal prior to January 1. Any registration in effect on the thirty-first day of December and for which a renewal application has been made and the proper fee paid shall continue in full force and effect until the department has notified the applicant that the registration has been renewed, or denied.
 - (8) If the renewal of a pesticide registration is not filed prior to January 15 of any year, or if a new product is sold or offered for sale prior to registration, an additional fee of ten dollars (\$10) shall be assessed and added to the original fee before the registration of that pesticide is renewed or a new registration is accepted. The additional fee shall not apply if the applicant furnishes an affidavit certifying that he did not distribute any unregistered pesticides during the period of nonregistration. The payment of the additional fee is not a bar to any prosecution for doing business without proper registry.
 - (9) Upon certification by the administrator of EPA to register pesticides in accordance with Section 24(c) of FIFRA, the department may register the pesticides if it determines that:
 - (a) Its composition warrants the proposed claims for it;
 - (b) Its labeling and other material required to be submitted meet with the requirements of KRS 217.542 to 217.630;
 - (c) It will perform its intended function, and when used in accordance with widespread and commonly recognized practice, will not cause unreasonable adverse effects on the environment; and
 - (d) The registration is not disapproved by the administrator of EPA.

➔Section 325. KRS 219.041 is amended to read as follows:

- (1) The secretary shall adopt regulations for the effective administration and enforcement of KRS 219.011 to 219.081.
- (2) The secretary shall adopt a state hotel code which shall include, among other things, requirements for the issuance, suspension, and revocation of permits to operate; submission of plans for construction and equipment layout; plumbing; lighting; ventilation; water supply; sewage disposal; sanitary standards for operation; and such other matters deemed necessary to insure a safe and sanitary operation of a hotel. Standards for construction, plumbing, lighting, and ventilation shall be effective only if they are approved by the Board of Housing, Buildings and Construction and are included in the Uniform State Building Code, or if they conform to the State Plumbing Code in the case of plumbing fixtures. Any review of plans for construction, plumbing, lighting, and ventilation required before construction of a hotel shall be conducted by the ***Department***~~{Office}~~ of Housing, Buildings and Construction.

➔Section 326. KRS 219.051 is amended to read as follows:

The state fire marshal or his duly authorized agents or representatives shall administer and enforce all state fire regulations, laws, standards of safety, and regulations adopted by the ***commissioner***~~{executive director}~~ of housing, buildings and construction relating to hotels and food service establishments.

➔Section 327. KRS 219.350 is amended to read as follows:

No community shall be constructed or altered without a permit as provided in KRS 219.310 to 219.410. An application for a permit to construct or alter a community shall be made to the cabinet upon forms provided by it. The application shall include plans for construction or alteration of the community and shall contain such information in regard to the proposed community as the cabinet may reasonably require, which may include affirmative evidence of ability to comply with requirements of KRS 219.310 to 219.410 and regulations adopted by the secretary. All plans for the construction, installation, or alteration of buildings shall be forwarded by the cabinet to the ~~Department~~~~Office~~ of Housing, Buildings and Construction. Only the ~~Department~~~~Office~~ of Housing, Buildings and Construction shall review such plans for conformance with the Uniform State Building Code. The ~~Department~~~~Office~~ of Housing, Buildings and Construction shall expedite the review of such plans and return them to the Cabinet for Health and Family Services for completion of the application process. Each application for a permit to construct or alter a community shall be accompanied by a permit fee of forty-seven dollars (\$47). The cabinet may, by administrative regulation, increase this fee by no more than five percent (5%) per year, not to exceed a maximum fee of seventy dollars (\$70). Each permit to construct shall be issued only for the person and premises, including the number of spaces named in the application and shall not be transferable. Each permit to construct shall expire one (1) year from date of issuance.

➔Section 328. KRS 219.390 is amended to read as follows:

- (1) For the purpose of assisting in the developing and review of standards and regulations for the administration of KRS 219.310 to 219.410, there is hereby created a State Advisory Committee on Manufactured, Mobile Home, and Recreational Vehicle Communities. The committee shall be composed of twelve (12) members. The secretary for health and family services or his designee shall be an ex officio member. The other members shall be appointed by the secretary for health and family services, three (3) of whom shall represent manufactured and mobile home community owners, two (2) of whom shall represent manufactured and mobile home dealers, two (2) of whom shall represent recreational vehicle dealers or community owners, two (2) of whom shall represent local health departments, one (1) of whom shall represent the ~~Office of the~~ state fire marshal, and one (1) member who shall be a citizen at large.
- (2) All appointed members shall serve for a term of four (4) years except that, of the original appointees, two (2) shall serve for one (1) year, two (2) shall serve for two (2) years, two (2) shall serve for three (3) years, and two (2) shall serve for four (4) years. All vacancies shall be filled in the manner of original appointment for the unexpired portion of the term only.
- (3) Members of the committee shall receive no compensation for their services, but may be reimbursed for necessary travel expenses.

➔Section 329. KRS 220.020 is amended to read as follows:

The secretary of the ~~Energy and Environment~~~~Environmental and Public Protection~~ Cabinet shall, in addition to his other duties, act as commissioner of sanitation districts, and is vested with jurisdiction, power and authority, when the conditions set forth in KRS 220.010 to 220.520 and certified to by the county board of health are found to exist, to establish sanitation districts within any county of the Commonwealth.

➔Section 330. KRS 220.135 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 220.080, the jurisdictional boundaries of a sanitation district organized or operating under KRS Chapter 220 shall be coextensive with the jurisdictional boundaries of the counties it was organized to serve if the district was organized to serve two (2) or more counties, and no other district has been organized to serve the counties. All cities of the second through sixth class located in a county which is part of a sanitation district as described in this section shall be included in the jurisdictional boundaries of the sanitation district.
- (2)
 - (a) Effective July 1, 1995, the operational sewer and drainage system of each city located within the jurisdictional boundaries of the district, together with all assets, other than cash accounts, and liabilities of the system, as of January 1, 1994, including but not limited to, sewers, easements, manholes, pumping stations, force mains, and real property, shall become the property, personal and real, of the sanitation district.
 - (b) If funds in a cash account are in escrow or otherwise contractually connected to a certificate of indebtedness related to the sewer and drainage system, the funds shall become the property of the district. If funds in a cash account are derived from a sewer user fee or sanitation bill surcharge, the city may use them to reduce its obligation to the district created by subsection (5)(a) of this section, or the city may return the funds to the citizens. If the funds in a cash account were generated from a general

fund source and are not in escrow or otherwise obligated, the city may retain the funds for its own purposes.

- (3) Any city within the jurisdictional boundaries of the district may, before September 1, 1994, state by ordinance its intention not to become a part of the district. In this case, the provisions of subsection (2) of this section shall not apply, and the city shall retain ownership and control of and responsibility for its sewer and drainage system. The city shall be solely responsible for compliance with applicable regulations promulgated by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet.
- (4) Any municipal subdistrict established prior to July 15, 1994, shall be dissolved effective July 1, 1995, and the assets and liabilities of the subdistrict, as of January 1, 1994, shall become the property, personal and real, of the sanitation district, unless the city, no later than September 1, 1994, provides by ordinance that the municipal subdistrict shall revert to the city. If the city provides for the reversion of the subdistrict to the city, the assets and liabilities of the subdistrict shall become the property, personal and real, of the city. The city shall be solely responsible thereafter for compliance with applicable regulations promulgated by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet.
 - (a) When a municipal subdistrict is dissolved pursuant to subsection (4) of this section, or a city sewer and drainage system is transferred pursuant to subsection (2) of this section, and its assets are transferred to the district, the city, or municipal subdistrict, shall pay the district fifty percent (50%) of the cost of necessary repairs to its facilities as identified through the district's sanitary sewer inspection program. These costs shall be payable upon completion of the repairs identified by the district, and may be paid by lump sum or in installments over a period of time agreeable to the city or the municipal subdistrict and the district.
 - (b) A city may continue its sewer maintenance surcharge until the accumulated principal plus interest thereon is sufficient to pay the charges levied by the district pursuant to paragraph (a) of this subsection.
 - (c) Any county that joins the district after July 15, 1994, may levy sewer surcharges or other fees, which shall be added to the customers' district bill for the purpose of enabling the county to pay pre-existing obligations to the district.
 - (d) For a period of ten (10) years, the district may grant to each city or county a credit for each new residential customer added which shall not exceed three hundred dollars (\$300) against the debt created by subsection (5)(a) of this section, or any other contractual liability pre-existing on June 30, 1994. The district may adopt a general policy establishing a credit of a different amount for each new nonresidential customer added.
- (6)
 - (a) After July 15, 1994, no new package sewage treatment plant shall be constructed or begin operation within the jurisdictional boundaries of the district unless the district, after review of the plans for construction and operation of the plant, approves the plans.
 - (b) After January 1, 1995, no privately owned package sewage treatment plant shall operate within the jurisdictional boundaries of the district unless it has been issued a permit by the district or by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet.
 - (c) On or before January 1, 2000, the district shall assume ownership of all publicly owned package sewage treatment plants within its jurisdictional boundaries, including all assets and liabilities as of January 1, 1994, and all property, real and personal.
 - (d) The district shall plan for, and when economically feasible, transfer the function of sewage treatment from package plants to central treatment facilities.
- (7)
 - (a) Effective July 1, 1995, the district shall be responsible for the planning, construction, improvement, operation, and maintenance of all sewer and drainage facilities under its ownership, including combined sewer overflows, and for compliance with all applicable regulations promulgated by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet.
 - (b) The district shall establish uniform rates for its services throughout its jurisdiction, and district rates shall vary only on the basis of consumption.

➔Section 331. KRS 220.240 is amended to read as follows:

Upon the completion of the plan the board of directors shall submit it to the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet for approval. If the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet refers the plan back for amendment, the board of directors shall prepare and submit an amended plan. If the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet rejects the plan, the board of directors shall proceed as provided in KRS 220.220 to prepare another plan. If the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet approves the plan, a copy of the action of the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet shall be filed with the secretary of the board of directors and by him incorporated into the records of the district.

➔Section 332. KRS 220.260 is amended to read as follows:

After the establishment of the district and the organization of the board of directors, no person or public corporation shall install within the district any laterals, trunk lines, interceptors for the collection or discharge of sewage or other liquid waste, treatment or disposal works, until the plans therefor have been submitted to and approved by the board of directors of the district and the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet. Any installation contrary to the provisions of this section shall constitute a nuisance and shall be abated by injunction upon proper application by anyone aggrieved, including the district, the commissioner, or the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet.

➔Section 333. KRS 220.320 is amended to read as follows:

Where necessary in order to secure the best results from the construction, operation and maintenance of the works and improvements of the district or construction subdistricts and to prevent their damage from misuse, the board of directors may make and enforce regulations pertaining to the use by persons and public corporations of the works and improvements of the district or construction subdistricts. Such regulations may prescribe the design, construction and use of sewers within the district or construction subdistricts and the manner in which connections to laterals, trunk sewers, intercepting sewers and to other works of the district or construction subdistricts shall be made, may prevent the unnecessary pollution of any watercourse or supply within the district or construction subdistricts and may prohibit the discharge into such sewers of any wastes deemed detrimental to the works and improvements of the district or construction subdistricts. Such regulations shall have no effect until approved by the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet. The board may recover by civil action from any person or public corporation violating such regulations, a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense, together with costs. The directors may enforce by mandamus or otherwise all necessary and authorized regulations made by them, and may remove any improper construction or close any connections made improperly or in violation of the regulations. Any person or public corporation willfully failing to comply with the regulations shall be liable for damages caused by such failure and for the cost of renewing any construction damaged or destroyed.

➔Section 334. KRS 220.510 is amended to read as follows:

- (1) The board of directors shall, by resolution, determine the rates and compensation or rentals to be charged for the use of the sanitary works. The board of directors may provide for a sewer service charge to be imposed and collected, beginning at the time the plan for the improvement has been approved by the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet and work is begun on plans and specifications for the improvement. The rates shall at all times be reasonable, taking into account the cost of the works, the cost of operation and maintenance, and the amount necessary for the amortization of the bonds issued to finance the works. The same schedule of rates and charges shall apply to all users of the same class. The rates shall be binding upon all users of the system. The board may alter and revise the rates in its discretion. In case of failure of any user to pay for services rendered, the board may compel payment and may enjoin further use until the payment is made, or it may institute an action in any court having jurisdiction for the recovery of charges for services rendered, or the board may, by a notice in writing, signed by its chairman or any member of said board, notify the municipality, or person, firm, or corporation, which furnishes water to the user's premises, to shut off the water service to said user's premises, until such time as all delinquent charges, plus a reasonable charge for turning off and on the water service, against said user, are paid in full. Upon receipt of such notice in writing, the municipality, or the person, firm, or corporation, which furnishes water to the said user's premises shall immediately shut off and discontinue the water service to the said user's premises. Upon full payment of such account, plus a reasonable charge for turning off and on the water service, the chairman, or any member of said board, shall notify the said municipality, person, firm, or corporation, which furnishes water to said user, that the account is paid in full, including such reasonable charge for turning off and on the water service, and that the said water service can again be provided to said user's premises. The board of directors shall promptly pay to such municipality, person, firm, or corporation, such fee or charge collected for

turning off and on such water service. The board may enter into contracts with public corporations or other large users of sewer services. The board may provide by resolution any provisions and stipulations it deems necessary for the administration of the revenue of the district, and for the security of the bondholders.

- (2) No moneys received on account of the existence or operation of construction subdistricts shall be used for the payment of district obligations, and no other moneys received by the district shall be used for the payment of construction subdistrict bonds or obligations. Except as provided in the preceding sentence the use of all moneys of the district received from any and all sources is hereby limited exclusively and shall be devoted solely to the payment of all obligations of the district and board created by KRS 220.010 to 220.540, and no funds from any sources authorized by KRS 220.010 to 220.540 shall be diverted to any other purposes than those in KRS 220.010 to 220.540 set forth, except that the district shall pay from district area revenues an equitably allocable share of the cost of constructing and operating any nondistrict area facilities to which sewage from the district area is diverted in order to relieve district facilities from excessive sewage and costs described in KRS 220.561 but otherwise paid for.

➔Section 335. KRS 221.030 is amended to read as follows:

- (1) The cabinet, through its secretary or his or her authorized agents, shall have the authority of supervising and enforcing the provisions of KRS 221.010 to 221.100.
- (2) The secretary may promulgate and enforce administrative regulations deemed necessary to carry into effect the full intent and meaning of KRS 221.010 to 221.100. Construction standards for buildings used as frozen food locker plants shall be effective only if approved by the Board of Housing, Buildings and Construction and included in the Uniform State Building Code. Any construction plan reviews for such buildings required prior to approval for construction shall be conducted by the *Department*~~{Office}~~ of Housing, Buildings and Construction.
- (3) In any administrative hearing conducted under KRS 221.010 to 221.100, the provisions of KRS Chapter 13B shall be followed.

➔Section 336. KRS 223.160 is amended to read as follows:

- (1) It is the intent of KRS 223.160 to 223.220 and 223.991 that every operator in responsible charge of a water treatment plant or water distribution system be required to hold a valid and effective certificate of competency issued by the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet in a class equal to or higher than the class of the particular treatment plant or distribution system where he is currently employed in order to protect the public health. Operators other than those in responsible charge of such facilities shall also be eligible to apply for certification.
- (2) An operator of a water treatment facility for a school and for a semipublic water supply shall be entitled to a limited certificate of competency for his particular facility provided he has demonstrated that he has the knowledge and experience required to operate properly the particular water treatment facility for which he is responsible. A limited certificate of competency so issued is not transferable to any other water treatment facility, nor is the period of operation under such a limited certificate eligible for consideration toward the experience requirements for a certificate of competency as provided in subsection (1) of this section.

➔Section 337. KRS 223.170 is amended to read as follows:

The *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet shall certify persons as to their qualifications to supervise successfully the operation of water treatment plants or water distribution systems after considering the recommendations of a board of certification which shall be appointed by the secretary of the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet or his designee. The board shall consist of the following: two (2) members who are currently employed as waterworks operators holding valid certificates; one (1) member employed by a municipality who holds the position of either city manager, city engineer, director of public works, or the equivalent thereof; one (1) member who is a faculty member of a college, university, or professional school whose major field is related to water supply; and one (1) ex officio member representing the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet. Board members shall serve for a four (4) year term or until their successors are appointed and qualify. The *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet representative shall serve as executive secretary and treasurer of the board and be responsible for maintaining records. The members of the board shall serve without compensation, but may be reimbursed for all actual and necessary expenses incurred while discharging their official duties.

→Section 338. KRS 223.180 is amended to read as follows:

The ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet shall classify all water treatment plants and water distribution systems with due regard to size, type, physical conditions affecting such treatment plants and distribution systems, and according to the skill, knowledge and experience that the operator must have to supervise successfully the operation of such water treatment plants and water distribution systems so as to protect the public health.

→Section 339. KRS 223.190 is amended to read as follows:

All water treatment plants and water distribution systems, whether publicly or privately owned, shall be under the supervision of an operator whose competency is certified to by the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet in a grade corresponding to the classification of the water supply system to be supervised. All operators holding valid and effective certificates issued under existing regulations of the State Board of Health on June 16, 1966, may, within the discretion of the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet, be issued new certificates without examination for any appropriate new classifications that may be established by the regulations adopted hereunder or such certificates may be continued in effect.

→Section 340. KRS 223.200 is amended to read as follows:

The secretary of the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet, with the advice of the board of certification, shall adopt rules and regulations as are reasonably necessary to carry out the intent of KRS 223.160 to 223.220 and 223.991. The rules and regulations may include, but are not limited to, provisions establishing standards for classification of water treatment plants and water distribution systems, provisions establishing qualifications of applicants and procedures for examination of candidates, membership, and duties of the board of certification, provisions relating to the renewal, cancellation or revocation of certificates, including the specifications of the grounds therefor, and such other provisions as are necessary for the administration of KRS 223.160 to 223.220 and 223.991.

→Section 341. KRS 223.210 is amended to read as follows:

It shall be unlawful for any person, firm, or corporation (municipal or private) to operate a water treatment plant or water distribution system unless the competency of the operator who is in direct responsible charge is duly certified to by the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet under the provisions of KRS 223.160 to 223.220 and 223.991. It shall be unlawful for any person to perform the duties of an operator, in direct responsible charge, without being duly certified under the provisions of KRS 223.160 to 223.220 and 223.991. The ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet may, however, issue provisional certificates for emergency situations.

→Section 342. KRS 223.220 is amended to read as follows:

The ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet is authorized to fix a reasonable schedule of fees and charges by regulation to be paid by applicants for examinations, certificates, and renewal certificates. All such fees and charges and other moneys collected by the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet under the provisions of KRS 223.160 to 223.220 and 223.991 or the rules and regulations of the cabinet shall be paid into the State Treasury and credited to a trust and agency fund to be used by the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet in carrying out the provisions of KRS 223.160 to 223.220 and 223.991.

→Section 343. KRS 223.400 is amended to read as follows:

As used in KRS 223.405 to 223.460, unless the context requires otherwise:

- (1) "Alteration or repair of a water well" means any maintenance, addition, or change of well or pitless adapter, but does not include replacement or repair of a water pump or associated piping.
- (2) "Board" means the Kentucky Water Well Certification Board;
- (3) "Cabinet" means the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet;
- (4) "Certificate" means a certificate of competency issued by the secretary stating that the water well driller has met all the requirements for the appropriate classification set forth in KRS 223.405 to 223.460 or by regulation;

- (5) "Person" means an individual, corporation, partnership, association, municipality, state and federal government, or other public body or other legal entity, or any officer, employee, or agent of any of the foregoing.
- (6) "Secretary" means the secretary of the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet;
- (7) "Water well" or "well" means any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed when the actual or intended use in whole or part of an excavation is the removal of water for any purpose, including but not limited to culinary and household purposes, animal consumption, food manufacture, use of geothermal resources for domestic heating purposes and industrial, irrigation, and dewatering purposes, but not including wells to be used for watering stock or for general farmstead use if the wells do not provide water for human consumption;
- (8) "Water well driller" means a person who is qualified to engage in the drilling, alteration, or repair of a water well as defined in this chapter.

➔Section 344. KRS 224.01-010 is amended to read as follows:

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

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

- (10) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;
- (11) "District" means an air pollution control district as provided for in KRS Chapter 77;
- (12) "Effluent limitations" means any restrictions or prohibitions established under state law which include, but are not limited to, effluent limitations, standards of performance for new sources, and toxic effluent standards on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into waters;
- (13) "Generator" means any person, by site, whose act or process produces waste;
- (14) "Materials recovery facility" means a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of those materials;
- (15) "Municipal solid waste disposal facility" means any type of waste site or facility where the final deposition of any amount of municipal solid waste occurs, whether or not mixed with or including other waste allowed under Subtitle D of the Federal Resource Conservation and Recovery Act of 1976, as amended, and includes, but is not limited to, incinerators and waste-to-energy facilities that burn municipal solid waste, and contained and residential landfills, but does not include a waste site or facility which is operated exclusively by a solid waste generator on property owned by the solid waste generator which accepts only industrial solid waste from the solid waste generator or industrial solid waste generated at another facility owned and operated by the generator or wholly-owned subsidiary, or a medical waste incinerator which is owned, operated, and located on the property of a hospital or university which is regulated by the cabinet and used for the purpose of treatment, prior to landfill, of medical waste received from the generator exclusively or in combination with medical waste generated by professionals or facilities licensed or regulated or operated by the Commonwealth;
- (16) "Municipal solid waste reduction" means source reduction, waste minimization, reuse, recycling, composting, and materials recovery;
- (17) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (18) "Post-closure monitoring and maintenance" means the routine care, maintenance, and monitoring of a solid waste or hazardous waste treatment, storage, or disposal facility following closure of the facility;
- (19) "Publicly owned treatment works" means any device or system used in the treatment (including recycling and recovery) of municipal sewage or industrial wastes of a liquid nature which is owned by the Commonwealth or a political subdivision of the Commonwealth;
- (20) "Recovered material" means those materials, including but not limited to compost, which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing, but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis. Notwithstanding any provision of law to the contrary, tire-derived fuel, as defined in subsection (54) of this section, shall be considered a recovered material;
- (21) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material, but does not mean a solid waste management facility if solid waste generated by a recovered material processing facility is managed pursuant to this chapter and administrative regulations adopted by the cabinet;
- (22) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products, including refuse-derived fuel when processed in accordance with administrative regulations established by the cabinet, but does not include the incineration or combustion of materials for the recovery of energy;

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

clay, and concrete products; textile manufacturing; transportation equipment; and water treatment; and

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

corporation and its officers, directors, or shareholders of five percent (5%) or more of stock or financial interest;

- (45) "Universal collection" means a municipal solid waste collection system which is established by ordinance and approved by the cabinet and requires access for each household or solid waste generator in a county. A commercial or industrial entity which transports or contracts for the transport of the municipal solid waste it generates or which operates a solid waste management facility for its exclusive use may be excluded from participation;
- (46) "Governing body" means a county, a waste management district, an entity created pursuant to the Interlocal Cooperation Act, a taxing district created pursuant to the provisions of KRS 65.180 to 65.192, a special district created pursuant to the provisions of KRS 65.160 to 65.176, or counties acting under contract pursuant to KRS 109.082;
- (47) "Convenience center" means a facility that is manned during operating hours for the collection and subsequent transportation of municipal solid wastes;
- (48) "Transfer facility" means any transportation related facility including loading docks, parking areas, and other similar areas where shipments of solid waste are held or transferred during the normal course of transportation;
- (49) "Collection box" means an unmanned receptacle utilized to collect municipal solid waste;
- (50) "Newsprint" means that class or kind of paper chiefly used for printing newspapers and weighing more than twenty-four and one-half (24 1/2) pounds, but less than thirty-five (35) pounds for five hundred (500) sheets of paper two (2) feet by three (3) feet in size, on rolls that are not less than thirteen (13) inches wide and twenty-eight (28) inches in diameter and having a brightness of less than sixty (60);
- (51) "Postconsumer waste paper" means discarded paper after it has served its intended use by a publisher;
- (52) "Publisher" means a person engaged in the business of publishing newspapers, advertisement flyers, telephone books, and other printed material;
- (53) "Recycled content" means the proportion of fiber in newsprint that is derived from postconsumer waste paper;
- (54) "Tire-derived fuel" or "TDF" means a product made from waste tires to the exact specifications of a system designed to accept tire-derived fuel as a primary or supplemental fuel source, that have been reduced to particle sizes not greater than two (2) inches by two (2) inches and that is destined for transportation from the waste tire processor for use as a fuel. "Tire-derived fuel" shall not mean refuse-derived fuel; and
- (55) "Industrial energy facility" means a facility that produces transportation fuels, synthetic natural gas, chemicals, or electricity through a gasification process using coal, coal waste, or biomass resources, and costing in excess of seven hundred fifty million dollars (\$750,000,000) at the time of construction.

➔Section 345. KRS 224.01-205 is amended to read as follows:

- (1) The environmental trust fund may be used to support scientific, technical, or environmental research needed to develop and guide environmental protection and natural resource management policies. Research topics may include but shall not be limited to air quality; water quality, including groundwater protection; water resource management; environmental impacts of natural resource extractions, including surface mining and oil and gas production; waste management, including solid and hazardous waste; environmental impact of noise; soil conservation; and forest resource management. Research activities may include collecting baseline environmental data and studying environmental problems existing in or of concern to the Commonwealth.
- (2) The environmental trust fund may be used to finance research and development projects that promote the use of innovative solutions to environmental problems existing in or of concern to the Commonwealth. Research and development projects shall have cosponsors who will cooperate in the gathering and sharing of research data. Cosponsors may include but shall not be limited to local governments, universities, state agencies, nonprofit organizations, and private persons.
- (3) The environmental trust fund may be used to collect and disseminate information derived from any activities conducted pursuant to KRS 224.01-200 to 224.01-220.
- (4) The environmental trust fund may be used to support educational and training programs relating to the protection of the environment.

- (5) The board created in KRS 224.01-210 shall take into consideration state and federal moneys available for projects prior to expending money in the environmental trust fund.
- (6) The environmental trust fund shall not be used to support or finance the routine day-to-day activities and responsibilities of the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet.

➔Section 346. KRS 224.01-210 is amended to read as follows:

- (1) The Environmental Board is established, which shall control and manage the environmental trust fund. The board shall be composed of eight (8) members as follows: the secretary of the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet, the chairman of the Environmental Quality Commission, and six (6) members at large to be appointed by the Governor. The board members shall elect the chairman.
- (2) The six (6) members at large shall be appointed for terms of four (4) years. The remaining members shall be permanent members. The six (6) members at large shall be appointed from the following: two (2) from manufacturers, mineral extraction industry, or agribusiness; two (2) from the state-supported university system; one (1) from public health or environmental citizen groups; and one (1) an educator specializing in environmental education. Vacancies in the members at large appointments shall be filled in the same manner as originally appointed, and appointments to fill these vacancies shall be for the remainder of the unexpired term.
- (3) The board shall meet at least once each calendar quarter or more often on the call of the chairman.
- (4) No member of the board shall receive any salary, fee, or other remuneration for services as a member of the board but each member shall be reimbursed for travel expenses incurred in the performance of duties as a board member.
- (5) The secretary and the staff of the cabinet shall serve as staff for the board.
- (6) The cabinet may provide legal representation to the board or the board may enter into personal service contracts pursuant to KRS Chapter 45 to obtain legal counsel.
- (7) Five (5) members of the board shall constitute a quorum for conducting business. Each member shall have one (1) vote and a majority vote of the members present shall control on all questions.
- (8) The cabinet shall annually prepare a proposed program and a list of projects for public comment and review for the board's consideration.

➔Section 347. KRS 224.01-300 is amended to read as follows:

- (1) For purposes of KRS 224.01-300 and 224.01-310 only, "pollution control facility" shall mean and include:
 - (a) Any property designed, constructed, or installed as a component part of any commercial or industrial premises for the primary purpose of eliminating or reducing the emission of, or ground level concentration of, particulate matter, dust, fumes, gas, mist, smoke, vapor, or odorous substances, or any combination thereof which renders air harmful or inimical to the health of persons or to property within this Commonwealth;
 - (b) Any disposal system or any treatment works, pretreatment works, appliance, equipment, machinery, or installation constructed, used, or placed in operation primarily for the purpose of reducing, controlling, or eliminating thermal pollution or water pollution caused by industrial waste, or what would be industrial waste, if discharged into the waters of the Commonwealth;
 - (c) Any disposal system or any appliance, equipment, machinery or installation constructed, used or placed in operation primarily for disposing of waste, converting waste into an item of real economic value or converting hazardous waste to nonhazardous waste;
 - (d) Any property designed, constructed, or installed as a component part of any commercial or industrial premises for the primary purpose of eliminating or reducing the emission of sound which is harmful or inimical to the health of persons or to property, or materially reduces the quality of the environment in this Commonwealth;
 - (e) Any property designed, constructed, or installed for the primary purpose of removing substances from raw materials, which substances, if permitted to become a component part of the finished product, would have a deleterious effect on the environment when the finished product was utilized.

- (2) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present, which pollutes the waters of the Commonwealth.
- (3) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining waste), and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).
- (4) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding sewage, industrial waste, or other wastes.
- (5) "Water pollution" shall mean the placing of any noxious or deleterious substances in any waters of the Commonwealth which render such waters harmful or inimical to aquatic life, or to the use of such waters for domestic water supply, or industrial or agricultural purposes or for recreation.
- (6) "Waters of the Commonwealth" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this Commonwealth, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters.
- (7) "Cabinet" shall mean the Kentucky *Energy and Environment* ~~Environmental and Public Protection~~ Cabinet.
- (8) "Pollution control tax exemption certificate" shall mean that certificate issued by the cabinet pursuant to KRS 224.01-310.

➔Section 348. KRS 224.01-410 is amended to read as follows:

- (1) The General Assembly finds that properties contaminated with hazardous chemical residues created by the manufacture of methamphetamine endanger innocent members of the public due to exposure to these residues where properties are not properly decontaminated prior to the subsequent rental, sale, or use of the properties. Remediation of properties has been frustrated by a lack of comprehensive standards and procedures for decontamination of properties found to have been involved with methamphetamine production. The purpose of this section where law enforcement has found evidence of the manufacture of methamphetamine is to protect the public health, safety, and welfare by providing specific cleanup standards and procedures.
- (2) As used in this section, the following definitions shall apply:
 - (a) "Clandestine methamphetamine lab" means any inhabitable property used for the manufacture of methamphetamine as defined by KRS 218A.1431;
 - (b) "Contaminated property" means any inhabitable property that has been used to manufacture methamphetamine and has been assessed as containing methamphetamine contamination;
 - (c) "Decontamination standards" means standards used to determine that a contaminated property has become decontaminated;
 - (d) "Inhabitable property" means any building or structure and any related curtilage, water, water system, or sewer system used as a clandestine methamphetamine drug lab that is intended to be primarily occupied by people, including a mobile home or an individual unit of a multifamily housing unit, that may be sold, leased, or rented for any length of time. "Inhabitable property" shall not include a hotel, as defined in KRS 219.011;
 - (e) "Surface material" means any porous or nonporous substance common to the interior of a building or structure, including but not limited to ceilings and walls, window coverings, floor and floor coverings, counters, furniture, heating and cooling duct work, and any other surface to which inhabitants of the building or structure may be exposed; and

- (f) "Related hazardous material or hazardous waste" means any hazardous waste as defined in this chapter or hazardous material as defined in KRS 174.405 that is related to the clandestine production of methamphetamine.
- (3) (a) The cabinet shall promulgate administrative regulations providing for decontamination standards for contaminated property, including:
1. Decontamination standards for methamphetamine and methamphetamine precursors;
 2. Decontamination standards for materials used in methamphetamine production, including related hazardous material or hazardous waste; and
 3. Sampling and testing standards for contaminated properties with a tiered response system for decontamination services.
- (b) Absent administrative regulations described in this subsection, the decontamination standard for methamphetamine inside inhabitable property is less than or equal to one-tenth of one (0.1) microgram of methamphetamine per one hundred (100) square centimeters of surface material.
- (4) The Department of Kentucky State Police shall promulgate administrative regulations establishing assessment procedures for determining if an inhabitable property is a contaminated property.
- (5) Upon a determination that an inhabitable property is a contaminated property under subsection (4) of this section, the state or local law enforcement agency shall notify the cabinet of its findings and results of assessment.
- (6) (a) The cabinet shall promulgate administrative regulations to establish a reasonable, appropriate, and protective tiered response system to address the level of decontamination services required for a contaminated property based upon the degree of methamphetamine production and the degree of potential contamination resulting from methamphetamine production as indicated by the results of assessment by responding state or local law enforcement.
- (b) Tier 1 shall be for a transient contaminated property where the manufacturing of methamphetamine with anhydrous ammonia was initiated but only limited amounts of reagents or precursors are present and open, and where minimal spill and staining may be observed.
- (c) Tier 2 shall be for a transient contaminated property where the manufacturing of methamphetamine with moderate activity or the use of red phosphorous is evident but only limited amounts of methamphetamine, reagents, or precursors were produced over a relatively short period of time, and where spills and staining may be observed.
- (d) Tier 3 shall be for an entrenched contaminated property where precursors and reagent production has occurred over an extended period of time, from many weeks to several months, and where spills, staining, and burn pits may be observed. This tier designation shall be considered as the default tier designation for homes and rental property with recurring methamphetamine production.
- (e) Tier 4 shall be for a mass production contaminated property where large quantities, such as multiple pounds, of methamphetamine, reagents, or precursors are present, and where potentially severe environmental effects may be indicated because of the large quantities of drummed or buried waste is discovered. Due to the potential for significant releases of hazardous substances, pollutants, or contaminants, law enforcement agencies shall consult with the cabinet prior to making this tier recommendation.
- (7) Any contaminated property, regardless of the initial level of methamphetamine contamination, shall meet the decontamination standard set forth in subsection (3) of this section and, regardless of the results of testing or assessment, shall require at least a Tier 1 cleanup response. A property owner shall certify to the cabinet that the property has been cleaned to the standard set forth in subsection (3) of this section.
- (8) (a) Only contractors certified by the cabinet shall be authorized to conduct the decontamination services for inhabitable properties following the protocols of the tiered response system. The cabinet shall maintain a list of vendors and contractors with current certification to provide decontamination services. In order to become a certified contractor, a contractor shall:
1. Register with the cabinet;

2. Post a surety bond or obtain other financial assurance, which shall include but is not limited to a corporate guarantee, financial test-based self-insurance, irrevocable letter of credit, or any combination of assurances, in the amount of one hundred thousand dollars (\$100,000) for a Tier 1, 2, or 3 cleanup and two hundred fifty thousand dollars (\$250,000) for a Tier 4 cleanup, which may be aggregated;
 3. Provide a certificate issued by an insurance company licensed to do business in Kentucky, certifying that the contractor has a public liability insurance policy in an amount deemed sufficient by the cabinet for any personal or property damages that might occur to third parties arising from the performance of decontamination services for inhabitable properties by the contractor or his or her employees or agents;
 4. Certify that decontamination will be performed safely and in accordance with 803 KAR 2:403; and
 5. Certify that each cleanup conducted meets the decontamination standard required by subsection (3) of this section.
- (b) Any contractor who is certified by the cabinet, and whose certification is in good standing, prior to July 15, 2008, shall retain that certification without having to be recertified.
- (c) Upon registration, the cabinet shall either accept or deny the contractor's certification. The cabinet may revoke the certification of any contractor for cause and may collect the forfeited financial assurance of any contractor found to be in violation of this section. Forfeited financial assurance may be used by the cabinet to decontaminate inhabitable properties.
- (d) The cabinet shall promulgate administrative regulations to establish standards and procedures for contractor certification and to establish reasonable fees to implement this section.
- (9) When a state or local law enforcement agency investigates an inhabitable property that it has reason to believe has been used as a clandestine methamphetamine drug lab, the state or local law enforcement agency shall, at the request of the state or local health department under its respective authority pursuant to KRS Chapter 211 or 212, post a methamphetamine contamination notice on each exterior door of the inhabitable property, except that in the case of a multifamily housing unit, it shall post the notice on each entrance door to the individual unit. The Department for Public Health shall promulgate administrative regulations establishing the notice requirements and the process for removing the notice from inhabitable properties. Any homeowner listed on the deed of the dwelling may request an administrative hearing pursuant to KRS Chapter 13B to determine whether the methamphetamine contamination notice is proper by filing a request for appeal with the Department for Public Health within thirty (30) days of the methamphetamine contamination notice having been posted on the property. The responding state or local law enforcement agency shall, within three (3) business days of when the notice is posted, report it by fax or e-mail to the local health department.
- (10) Any owner of contaminated property who leases, rents, or sells contaminated property upon which a methamphetamine contamination notice has been posted under subsection (9) of this section shall disclose in writing to any potential lessee, tenant, or buyer that the property is contaminated with methamphetamine and has not been decontaminated pursuant to the requirements set forth in this section. If the property has been decontaminated and released by the cabinet from the need for further action, notice under this subsection shall not be required. The Department for Public Health shall promulgate administrative regulations setting forth the disclosure requirements.
- (11) Once contaminated property has been decontaminated in accordance with standards set forth in subsection (3) of this section, the cabinet shall make available to owners of contaminated property who lease or rent the inhabitable property information about federal income tax deductions or credits available to compensate for damage done to the property in commission of a crime, including methamphetamine production done by someone other than the owner.
- (12) To effect the provisions and promote the purposes of this section, the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet, the Cabinet for Health and Family Services, and the Justice and Public Safety Cabinet shall integrate their efforts with other state agencies to provide information and training to the public about the health hazards associated with methamphetamine laboratories.

- (13) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, the Cabinet for Health and Family Services, and the Justice and Public Safety Cabinet shall pursue funds from the federal government, through grants or any other funding source, to help pay for the cost of assessment and decontamination of inhabitable properties.

➔ Section 349. KRS 224.10-020 is amended to read as follows:

- (1) There is established within the cabinet a Department for Natural Resources, a Department for Environmental Protection, **and** a Department ***for Energy Development and Independence***~~[of Labor, and a Department of Public Protection]~~. Each department shall be headed by a commissioner appointed by the secretary with the approval of the Governor as required by KRS 12.050. The commissioners shall be directly responsible to the secretary and shall perform such functions, powers, and duties as provided by law and as the secretary may prescribe.
- (2) There is established within the Department for Natural Resources a Division of Forestry, a Division of Conservation, **a Division**~~[an Office]~~ of Technical and Administrative Support, a Division of Mine Reclamation and Enforcement, a Division of Mine Permits, a Division of Abandoned Mine Lands, a Division of Oil and Gas~~Conservation~~, and an Office of Mine Safety and Licensing. There shall be established within the Office of Mine Safety and Licensing a Division of Safety Inspection and Licensing~~], a Division of Explosives and Blasting, a Division of Investigation,~~ and a Division of Safety Analysis, Training, and Certification. ***The Kentucky Mining Board is attached to the Office of Mine Safety and Licensing for administrative purposes.*** Each division shall be headed by a director and each office shall be headed by an executive director. Directors and executive directors shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050 ~~and, as appropriate, KRS 353.530~~, except for the director of the Division of Conservation, who shall be appointed in accordance with KRS 146.100. Both directors and executive directors shall be directly responsible to the commissioner and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.
- (3) ***There is established within the Department for Environmental Protection a Division of Water, a Division for Air Quality, a Division of Waste Management, a Division of Enforcement, a Division of Compliance Assistance, and a Division of Environmental Program Support. Each division shall be headed by a director appointed by the secretary with the approval of the Governor as required by KRS 12.050. Directors shall be directly responsible to the commissioner and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.***

~~[(a) There is established within the Department of Labor an Office of Occupational Safety and Health, an Office of Labor Management Relations and Mediation, an Office of Workplace Standards, and a Division of Administrative Services. Each division shall be headed by a director and each office shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050. The directors and the executive directors shall be directly responsible to the commissioner and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.]~~

~~(b) The following agencies are attached to the Department of Labor for administrative purposes only:~~

- ~~1. — Kentucky Labor Management Advisory Council;~~
- ~~2. — Kentucky Employees' Insurance Association;~~
- ~~3. — State Labor Relations Board;~~
- ~~4. — Workers' Compensation Funding Commission;~~
- ~~5. — Workers' Compensation Advisory Council;~~
- ~~6. — Occupational Safety and Health Standards Board;~~
- ~~7. — Prevailing Wage Review Board;~~
- ~~8. — Apprenticeship and Training Council;~~
- ~~9. — Employers' Mutual Insurance Authority;~~
- ~~10. — Workers' Compensation Nominating Commission; and~~
- ~~11. — Office of Workers' Claims.]~~

- (4) *There is established within the Department for Energy Development and Independence a Division of Energy Efficiency and Conservation, a Division of Renewable Energy, a Division of Biofuels, a Division of Energy Generation, Transmission and Distribution, a Division of Carbon Management, and a Division of Fossil Energy Development. Each division shall be headed by a director. Directors shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050.*

~~{(a) There is established within the Department of Public Protection a Division of Administrative Services, an Office of Financial Institutions, an Office of Insurance, an Office of Housing, Buildings and Construction, an Office of Charitable Gaming, and an Office of Alcoholic Beverage Control. Each division shall be headed by a division director and each office shall be headed by an executive director. Division directors and executive directors shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050. Division directors and executive directors shall be directly responsible to the commissioner and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.~~

~~(b) The following agencies are attached to the Department of Public Protection for administrative purposes only:~~

- ~~1. Kentucky Public Service Commission;~~
- ~~2. Crime Victims Compensation Board;~~
- ~~3. Board of Claims;~~
- ~~4. Board of Tax Appeals;~~
- ~~5. Kentucky Boxing and Wrestling Authority; and~~
- ~~6. Kentucky Horse Racing Authority.~~

➔Section 350. KRS 224.10-022 is amended to read as follows:

There is established in the Office of the Secretary an Office of ~~{Communications and Public Outreach, an Office of Administrative Hearings, an Office of Regulatory Affairs,}~~ **and** an Office of Legislative and Intergovernmental Affairs~~, an Office of Inspector General, an Office of Legal Services, and an Office of Administrative and Information Services~~. Each *of these offices*~~{office}~~ shall be headed by an executive director appointed by the secretary with the approval of the Governor as required by KRS 12.050. ***There is also established in the Office of the Secretary an Office of General Counsel, headed by a general counsel appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210.*** The executive directors ***and the general counsel*** shall be directly responsible to the secretary and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.~~{The Workers' Compensation Board and the Kentucky Occupational Safety and Health Review Commission shall be attached to the Office of the Secretary.}~~ The Environmental Quality Commission, which shall be headed by an executive director appointed by the secretary with the approval of the Governor, shall be attached to the Office of the Secretary. The Kentucky State Nature Preserves Commission, which shall be headed by a director, and the Mine Safety Review Commission, whose members shall be appointed by the Governor with the consent of the General Assembly, shall be attached to the Office of the Secretary. ***The Kentucky Public Service Commission, which shall be headed by an executive director appointed by the commission in accordance with KRS 278.100, shall be attached to the Office of the Secretary for administrative purposes.***

➔Section 351. KRS 224.10-052 is amended to read as follows:

- (1) The ~~Office~~~~{Division}~~ of Occupations and Professions ***in the Public Protection Cabinet*** shall provide administrative services, technical assistance, and advice to the following boards and commissions at the request of the individual boards or commissions, all of which maintain their identity and their full authority for making policy decisions in the fields that they regulate: the State Board of Accountancy, the Kentucky Board of Architects, the Kentucky Board of Barbering, the Kentucky Board of Hairdressers and Cosmetologists, the State Board of Podiatry, the Kentucky State Board of Chiropractic Examiners, the Kentucky Board of Dentistry, the State Board of Embalmers and Funeral Directors, the State Board of Registration for Professional Engineers and Land Surveyors, the Kentucky Board of Nursing, the Kentucky Board of Ophthalmic Dispensers, the Kentucky Board of Optometric Examiners, the Kentucky Board of Pharmacy, the State Board of Physical Therapy, the State Board of Examiners of Psychologists, the Kentucky Real Estate Commission, the Kentucky Board of Veterinary Examiners, the Board of Auctioneers, the State Board for Proprietary Education, the State Board of Examiners and Registration of Landscape Architects, the State Board

of Medical Licensure, the Board of Speech-Language Pathology and Audiology, the Kentucky Board of Licensure for Nursing Home Administrators, the Kentucky Licensing Board for Specialists in Hearing Instruments, the Kentucky Board of Social Work, and such other boards and commissions as are created to license, certify, register, or otherwise regulate any occupational or professional category.

- (2) To the extent that the *office*~~[division]~~ provides administrative services, the respective boards and commissions are relieved of the power and duty to provide the services for themselves. The *office*~~[division]~~ shall charge each board or commission a reasonable amount for administrative services provided pursuant to subsection (1) of this section. The *office*~~[division]~~ may employ persons previously employed by boards or commissions.
- (3) The *office*~~[division]~~ may receive complaints against the conduct of licensees granted licensure by the boards and commissions assigned to the *office*~~[division]~~ for administrative purposes. The *office*~~[division]~~ shall cause such complaints to be reduced to writing and forwarded to the appropriate board or commission for investigation and a determination of the validity of the complaint. The *office*~~[division]~~ shall keep a record of all complaints received by it and forwarded to a board or commission.
- (4) Any board or commission listed in subsection (1) of this section, shall accept personal checks in payment of license renewal fees.

➔Section 352. KRS 224.10-110 is amended to read as follows:

The *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet shall enforce the rules and regulations adopted by the secretary of the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet for the regulation and control of the matters set out below and shall formulate, promote, establish and execute policies, plans and programs relating to natural resources and environmental protection, including but not limited to the following matters:

- (1) The proper disposal of waste;
- (2) The purification of water for public and semipublic use;
- (3) The proper construction and operation of public water distribution systems and water treatment systems in public water purification plants and swimming pools;
- (4) The review, approval or disapproval of plans for construction, modification or extension of water purification and distribution systems and water treatment systems in swimming pools; and
- (5) The certification of water and sewage plant operators.

➔Section 353. KRS 224.10-220 is amended to read as follows:

- (1) The *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet shall adopt administrative regulations establishing reasonable timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is set out by statute. The timetables shall set specific time periods for actions to be taken in the consideration of permit applications.
- (2) The timetables adopted pursuant to subsection (1) of this section shall be proposed for adoption and filed with the Legislative Research Commission no later than January 1, 1993. In the event that the timetables required by subsection (1) of this section are not proposed for adoption and filed with the Legislative Research Commission by the January 1, 1993 deadline, the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet shall cease the collection of permit fees for all permits for which timetables have not been established until the required timetables have been proposed for adoption.
- (3) The cabinet shall waive the permit fee for any permit not acted upon, either favorably or unfavorably, in accordance with the established timetables. The approach of an impending deadline for action on a permit pursuant to the established timetables shall not be a reason for denial of a permit. However, nothing in this section shall require the cabinet to issue a permit which would violate this chapter or the administrative regulations adopted pursuant thereto.

➔Section 354. KRS 224.10-225 is amended to read as follows:

- (1) The secretary of the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet shall facilitate the permitting of coal-fired electric generation plants or industrial energy facilities in the Commonwealth by developing procedures for one (1) stop shopping for environmental permits.

- (2) Upon request by an applicant for environmental permits for an industrial energy facility, the secretary, in consultation with the applicant, shall establish specific time periods for actions to be taken in the consideration of its permit applications. The time periods established shall not exceed those adopted by administrative regulations promulgated pursuant to KRS 224.10-220.

➔Section 355. KRS 224.10-470 is amended to read as follows:

- (1) Appeals may be taken from all final orders of the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet. Except as provided in subsection (3) of this section, the appeal shall be taken to the Franklin Circuit Court within thirty (30) days from entry of the final order. The party or parties affected by the final order shall file in the Circuit Court a petition which states fully the grounds upon which a review is sought and assign all errors relied on. The cabinet shall be named respondent, and service shall be had on the secretary. Summons shall issue upon the petition directing the cabinet to send its entire record, properly bound, to the clerk of the Circuit Court after certifying that such record is its entire original record or a true copy thereof, which shall be filed by the clerk of the Circuit Court and such record shall then become official and be considered by the Circuit Court on the review. After the case has been properly docketed in the Circuit Court, any party directly affected by the issues on appeal, may, upon notice to the parties and upon proper showing and in the discretion of the court be permitted to intervene. Upon hearing of the appeal the findings of the cabinet shall be prima facie evidence of the facts found therein. The court shall review the entire record and the findings and final order of the cabinet.
- (2) Appeals to the Court of Appeals from orders of the Circuit Court, shall be taken in the manner provided in the Kentucky Rules of Civil Procedure.
- (3) Final orders of the cabinet regarding environmental permits for an industrial energy facility as defined in KRS 224.01-010 shall be subject to expedited review by the Circuit Court located in the county where the industrial energy facility is proposed to be located.

➔Section 356. KRS 224.10-620 is amended to read as follows:

The Kentucky Environmental Education Council, the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet, and the Department of Education shall establish a program to educate the citizens of the Commonwealth of the importance of reducing and managing waste effectively, the need for individual action to reduce the amount and toxicity of solid waste being disposed, the need for alternative disposal methods to landfilling for toxic materials commonly used in or around households such as cleaners, solvents, pesticides, and automotive and paint products, and the necessity of implementing environmentally protective management and disposal mechanisms for the solid waste that is generated. In helping develop the educational programs, the Department of Education shall identify and adopt mechanisms to inform students throughout the Commonwealth of the importance of reducing and managing solid waste effectively.

➔Section 357. KRS 224.10-650 is amended to read as follows:

- (1) The secretary of the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall assume the primary responsibility in state government for implementing a source separation and collection program for waste materials generated as a result of state agency operations, including, at a minimum, aluminum, high grade office paper, and corrugated paper.
- (2) The cabinet shall establish procedures for collection and storage of recovered material and contractual or other arrangements for transportation and purchase of recovered materials. Every state agency of the executive, legislative, and judicial branches of state government and all state-supported institutions of higher education, in cooperation with the cabinet, shall develop a plan to conduct source separation and collection activities for recovered materials.
- (3) A state agency or institution may elect to operate its own source separation program upon review and approval by the cabinet.
- (4) The secretary of the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall take or cause to be taken such actions as may be necessary to:
- (a) Identify the geographical location of existing or potential markets for recovered materials and energy generated;
 - (b) Identify the economic and technical barriers to the use of recovered materials and energy generated;

- (c) Identify sound technologies, techniques, and processes for resource recovery and energy generated applicable to both urban and rural areas of Kentucky;
 - (d) Encourage the development of new uses for recovered materials; and
 - (e) Encourage and promote the development of new markets for recovered materials.
- (5) Funds received by the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet from the source separation and collection program as described in this section shall be utilized by the cabinet to defray the cost of conducting the activities outlined in this section. Funds received by any other state agency or institution from an approved source separation collection program may be used to offset costs of the program. Any moneys generated by the cabinet or other state agencies or institutions in excess of the amounts needed to conduct these activities shall be placed in the resource conservation and recovery fund and be used for other litter abatement activities.
- (6) There is created within the State Treasury a trust and agency fund, which shall not lapse, to be known as the resource conservation and recovery fund. Any appropriations, gifts, grants or program revenues received by the cabinet relating to resource recovery and litter abatement shall be deposited in the fund. Moneys in the fund shall be used for resource recovery and litter abatement activities.

➔Section 358. KRS 224.10-660 is amended to read as follows:

- (1) The Kentucky Recycling and Marketing Assistance Program, referred to in this section as the "program," is created to develop a recycling infrastructure within the Commonwealth. The program shall:
- (a) Encourage the collection, processing, and marketing of recovered materials;
 - (b) Provide assistance for the development of community and regional recycling;
 - (c) Identify resources to help market recyclables; and
 - (d) Promote the development of the market for recyclables.
- (2) The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall administer the program and assist local governments and commercial businesses seeking to recycle materials.
- (3) The secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall create a Kentucky Recycling and Marketing Assistance Advisory Committee to act in an advisory capacity to the cabinet. In addition to its other duties, this committee shall develop and submit an annual report by October 1 to the Interim Committee on Agriculture and Natural Resources.

➔Section 359. KRS 224.18-210 is amended to read as follows:

Pursuant to Article III of the compact set forth in KRS 224.18-200, the Governor shall appoint four (4) commissioners in addition to the secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet as members of the Interstate Air Pollution Control Commission. The commissioners shall promulgate rules and regulations to carry out more effectively the terms of the compact. The commissioners shall cooperate with all cabinets, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact and all such cabinets, agencies, and officers shall cooperate with the commissioners.

➔Section 360. KRS 224.18-220 is amended to read as follows:

Any payments necessary to discharge any financial obligations imposed upon the State of Kentucky by the compact, as provided in KRS 224.18-200, shall be made from the general fund appropriations to the Interstate Air Pollution Control Commission upon presentation to the Finance and Administration Cabinet of itemized vouchers signed by the secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet.

➔Section 361. KRS 224.18-710 is amended to read as follows:

- (1) A three (3) member Interstate Water Sanitation Board is established. The members of the board shall serve as Kentucky's members of interstate water sanitation control commissions created by compacts to which Kentucky is a party, which compacts are composed of states forming a river basin, and which compacts require a three (3) member representation from each state. The Governor shall appoint one (1) of the board members, who shall be a resident and citizen of this state. The member shall be appointed for a term of four (4) years, and shall hold office until his successor is appointed and qualified, subject to removal at the pleasure of the Governor. The Lieutenant Governor and the secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall, ex officio, be the second and third members of the board. Except as otherwise

provided by the respective compacts, an ex officio member may delegate to any deputy or other subordinate in his cabinet the power to be present and participate, including the right to vote, as his representative or substitute at any meeting, hearing or other proceeding of the commissions.

- (2) The membership of the first Interstate Water Sanitation Board shall be composed of the membership of the Ohio River Valley Water Sanitation Commission existing on June 19, 1958, and the terms of the appointed members shall be effective from the date of their appointment to the Ohio River Valley Water Sanitation Commission.

➔Section 362. KRS 224.20-120 is amended to read as follows:

In exercising the power conferred upon it by this chapter the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall give due recognition to the policy as heretofore expressed in KRS 224.20-100. The cabinet, in fixing standards, shall require the use of all available, practical, and reasonable methods to prevent and control air pollution in the Commonwealth of Kentucky. It shall give due recognition to the quantity of characteristics of air contaminants or the duration of their presence in the atmosphere. It shall take into consideration in this connection such factors, among others, found by it to be proper and just, existing physical conditions, public benefit, that the degree of conformance therewith that may be proper as to an essentially residential area of the state may not be proper as to a highly industrial area of the state, and, further, the relationship between the intensity and composition of air pollution and the health of the public and damage to or interference with enjoyment of property. It shall give reasonable consideration to the interests of all parties concerned.

➔Section 363. KRS 224.20-510 is amended to read as follows:

- (1) There is hereby established the Small Business Stationary Source Compliance Advisory Panel, referred to hereafter as "the panel," to determine the overall effectiveness of Kentucky's Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The panel shall be attached to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet for administrative purposes.
- (2) The eleven (11) member panel shall be appointed as follows:
- (a) Two (2) members, who are not owners, or representatives of owners, of small business stationary sources, shall be selected by the Governor to represent the general public;
 - (b) Two (2) members, who are owners, or representatives of owners, of small business stationary sources, shall be selected by the Governor to represent small business stationary sources;
 - (c) Two (2) members shall be selected by the secretary of the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet to represent that agency;
 - (d) One (1) member shall be selected by the secretary of the Cabinet for Economic Development; and
 - (e) Four (4) members who are owners, or representatives of owners of small business stationary sources, shall be selected by the Kentucky General Assembly as follows:
 1. One (1) member selected by the minority leadership and one (1) member selected by the majority leadership of the Senate, and
 2. One (1) member selected by the minority leadership and one (1) member selected by the majority leadership of the House of Representatives.
- (3) Members who were appointed before July 15, 1998, shall continue in office until October 30, 1998. The Governor shall then designate the members who have been appointed in accordance with subsection (2) of this section to serve initial terms as follows:
- (a) Three (3) members shall serve in office for four (4) years;
 - (b) Three (3) members shall serve in office for three (3) years;
 - (c) Three (3) members shall serve in office for two (2) years; and
 - (d) Two (2) members shall serve in office for one (1) year.

When those initial terms expire, members shall serve in office for four (4) year terms.

- (4) Any vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term.
- (5) Members of the panel shall receive no compensation, but shall be reimbursed for actual expenses incurred in accordance with Kentucky statutes and administrative regulations while performing official duties.
- (6) The panel shall select one (1) of its members as chair and another as vice chair.
- (7) Staff services for the panel shall be performed, insofar as practicable, by personnel of the cabinet.

➔Section 364. KRS 224.30-105 is amended to read as follows:

- (1) "Secretary" means the secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
- (2) "Cabinet" means the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
- (3) "Local government" means any county or city.
- (4) "Environmental noise" and "ambient noise" means the intensity, duration, and character of sounds from all sources.
- (5) "Ultimate purchaser" means the first person who in good faith purchases a product for purposes other than resale.
- (6) "Person" means an individual, corporation, partnership, or association, and includes any officer, employee, department, agency, or instrumentality of the United States, a state, or any political subdivision of a state.
- (7) "Noise" means the intensity, frequency, duration, and character of sounds from a source or number of sources. Noise includes vibrations of subaudible frequency.
- (8) "Product" means any manufactured article or goods or component thereof.

➔Section 365. KRS 224.40-340 is amended to read as follows:

The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall not revoke, refuse to issue or refuse to renew permits to operators of solid waste disposal sites or facilities solely because the operator uses an incinerator for disposing of solid waste material. Provided, however, that the cabinet shall be empowered to revoke, refuse to issue or refuse to renew solid waste disposal permits if the operator has not complied with its regulations relating to permits to use incinerators, refuse burners and open burning. This section shall not prevent the cabinet from revoking, refusing to issue or refusing to renew solid waste disposal permits due to the use of incinerators, refuse burning and open burning which it has not authorized.

➔Section 366. KRS 224.40-605 is amended to read as follows:

- (1) The cabinet shall promulgate regulations which establish standards for the operator of any waste site or facility or portion thereof, whether publicly or privately owned, requiring such operators to do the following:
 - (a) Attend a training session concerning the operation of the appropriate type *of* waste facility conducted by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet;
 - (b) Indicate sufficient skill and competency for proper operation of the waste site by adequate performance on an examination prescribed by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet;
 - (c) Pay a reasonable fee related to the cost of conducting training and certification sessions to be utilized to defray the cost of conducting the sessions; and
 - (d) Renew the certificates of competence at reasonable intervals.
- (2) No person shall authorize or allow any person who does not hold a certificate issued pursuant to subsection (1) of this section to have primary responsibility for the operation of any waste site or facility or portion thereof.

➔Section 367. KRS 224.43-080 is amended to read as follows:

- (1) On July 15, 1994, and annually thereafter, each publisher shall submit a report to the cabinet. The report shall indicate the amount of newsprint used in the preceding year, its recycled content, along with any other information required by the cabinet.

- (2) The Governor shall appoint a Newsprint Recycling Task Force consisting of the secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet or a designee; the chairman of the Kentucky Recycling and Marketing Assistance Advisory Committee or a designee; the executive director of the Kentucky Press Association or a designee; three (3) members from environmental organizations; and five (5) members representing the Kentucky newsprint publishing industry and newsprint manufacturers doing business in Kentucky. A list of names of potential task force members shall be provided by the president of the Kentucky Press Association.
- (3) The task force members shall each serve a two (2) year term. The initial five (5) industry representatives appointments shall consist of two (2) two (2) year terms and three (3) one (1) year terms.
- (4) The Newsprint Recycling Task Force shall meet as necessary to monitor the use of newsprint in the state for the following goals:
 - (a) To increase the demand for recycled newsprint in Kentucky;
 - (b) To increase the availability for the product;
 - (c) To establish Kentucky as a reliable source of old newsprint for recycling; and
 - (d) To identify, develop, and advance initiatives to recycle and reuse discarded newspapers and paper products with an emphasis on recycling these materials instead of diverting them for disposal.
- (5) The Newsprint Recycling Task Force and the Kentucky Press Association shall encourage all Kentucky industries and businesses, their trade or professional organizations, and all public agencies at the state and local level to increase their use of recycled newsprint.
- (6) The Newsprint Recycling Task Force shall take steps to attract a recycled newsprint mill or related facility to Kentucky by identifying potential sites and potential manufacturers. The task force shall also work with the Kentucky Recycling and Marketing Assistance Advisory Committee in recommending appropriate economic and tax incentives to encourage such a project.
- (7) The Newsprint Recycling Task Force shall promote the increased recovery of old newspapers and, with the Commonwealth of Kentucky representatives, work with communities to develop processing and collection programs to provide quality material to the marketplace.
- (8) The Newsprint Recycling Task Force shall report to the Interim Joint Committee on Agriculture and Natural Resources by October 1, 1995, on the availability and cost of adequate supplies of newsprint which contain a recycled content of fifty percent (50%) or more, or any other information or recommendations deemed appropriate.

➔Section 368. KRS 224.43-090 is amended to read as follows:

Exclusive venue for any appeal of a violation, determination, finding of noncompliance, or any other action of the Finance and Administration Cabinet, ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet, or other state agency relating to any county, urban-county, charter county, consolidated local government, city, special district, or other governmental unit specified in this subchapter and KRS 30A.190, 109.011, 109.041, 109.0415, 224A.011, 224A.100, 431.100, 433.753, 433.757, and 512.070 shall be in the court of competent jurisdiction of the county which is the subject of the action by the state agency.

➔Section 369. KRS 224.43-310 is amended to read as follows:

- (1) The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet of the Commonwealth of Kentucky is designated as the official planning and management agency of the Commonwealth of Kentucky in the field of solid waste. The cabinet shall have primary responsibility for coordinating the solid waste planning and management activities of waste management districts, counties, cities, area development districts, and any combination thereof and for the approval of solid waste management facilities. In doing so it shall be the goal of the cabinet to reduce the amount of solid waste disposed in municipal solid waste disposal facilities within the Commonwealth and to encourage regional management of solid waste.
- (2) The cabinet shall have the primary responsibility to develop, review, report on, and triennially update a statewide solid waste reduction and management plan. A draft plan shall be prepared and made available for public inspection by December 1, 1991; a proposed final plan shall be submitted to the General Assembly by

February 1, 1992; and a final plan shall be submitted to the General Assembly by March 1, 1992. The plan shall be designed to address the following:

- (a) Coordination of area plans and provision of support for area planning efforts;
 - (b) Elimination of existing open dumps and prevention of new open dumps;
 - (c) Proper closure, characterization, and corrective action for municipal solid waste disposal facilities that ceased accepting waste before July 1, 1992;
 - (d) Reductions in solid waste disposed in municipal solid waste disposal facilities within the Commonwealth by actively promoting reuse and reduction consistent with the policies and goals established by KRS 224.43-010;
 - (e) Adequate capacity exists for recycling or disposal of solid waste generated within the Commonwealth for five (5), ten (10), and twenty (20) year planning periods;
 - (f) Maintenance of disposal capacity for solid waste generated in the Commonwealth if the cabinet acts to close a solid waste management facility;
 - (g) Encouragement of regional alternatives for waste reduction and management in the planning process;
 - (h) Priority in grants and loans for projects and practices consistent with the policies and goals established by KRS 224.43-010;
 - (i) Minimum standards and procedures for solid waste management plans as established by the cabinet in administrative regulations;
 - (j) A description of the status of solid waste reduction and management efforts in Kentucky;
 - (k) Identification of state actions and responsibilities necessary to implement this chapter; and
 - (l) Identification of problems impeding the attainment of the policies and goals of this chapter.
- (3) The statewide solid waste reduction and management plan shall not establish maximum disposal capacity limitations for the Commonwealth.
- (4) The cabinet, beginning July 1, 1992, shall report annually to the Governor and to the General Assembly on the status of solid waste management in the Commonwealth. The report filed July 1, 1992, shall present the current status of solid waste planning and management in the Commonwealth. Subsequent annual reports shall include but not be limited to:
- (a) The status of solid waste planning and management;
 - (b) The number and types of recycling and solid waste management facilities in the Commonwealth;
 - (c) The status of actions taken to:
 1. Eliminate existing open dumps and prevent new open dumps; and
 2. Undertake proper closure, characterization, and corrective action for municipal solid waste disposal facilities that ceased accepting waste before July 1, 1992;
 - (d) The remaining permitted capacity of each permitted solid waste management facility;
 - (e) The number and types of solid waste grants or loans made to cities, counties, waste management districts, and area development districts;
 - (f) A compilation and analysis of solid waste reduction and management data provided to the cabinet;
 - (g) A statement of progress achieved in meeting the policies and goals established by KRS 224.43-010;
 - (h) A statement of progress achieved in solid waste management education;
 - (i) A statement of progress achieved in establishing regional solid waste management approaches;
 - (j) Any revisions in the statewide solid waste reduction and management plan; and
 - (k) Recommendations for improving the reduction and management of solid waste in the Commonwealth.
- (5) On March 1 of each year, each governing body shall report annually to the cabinet on the status of solid waste management in its area. The annual report shall include but not be limited to:

- (a) The amount of in-area and out-of-area municipal solid waste disposed in municipal solid waste disposal facilities in the area;
- (b) The total cumulative progress made toward meeting the policies and goals established by KRS 224.43-010;
- (c) The remaining permitted capacity of disposal facilities;
- (d) Recycling and composting activities in existence;
- (e) Public information and education activities during the reporting period including public campaigns urging participation in a municipal solid waste collection system and public campaigns promoting anti-litter and anti-dumping behavior with an accounting by the governing body of funds spent, labor expended, volunteer time and money expended, and an estimation of the campaign's effect;
- (f) The number of households within the area served by the governing body and the methods of public or private municipal solid waste collection available to them, the cost to the households using the collection system, the percentage of households using each method of municipal solid waste collection available to them, the cost to the governing body of providing a municipal solid waste collection system, how the cost is paid for by the governing body, and the percentage of the cost that is recovered through service fees, including a complete accounting for collected fees, uncollected fees, and success in recovering uncollected fees;
- (g) Progress made since the last report on cleaning up illegal open dumps, including the number of open dumps eliminated since the last report or the last solid waste management plan revision, the total and average cost per open dump elimination, and identification of new open dumps or cleaned up open dumps that have been used again for illegal dumping;
- (h) Fees for solid waste management assessed and collected;
- (i) Costs of any projects undertaken pursuant to the solid waste management plan; and
- (j) Any other pertinent information as may be required by the cabinet.

➔Section 370. KRS 224.46-315 is amended to read as follows:

- (1) There shall be established a Center for Pollution Prevention, which shall be a technical information and assistance office to be located at a state-owned university, which shall facilitate and promote the commercial implementation of pollution prevention technologies and procedures by providing technical and financial assistance, as available, to business and industry. The center shall be governed by a board of directors representing the following organizations:
 - (a) The secretary of the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet or a designee of the secretary;
 - (b) The dean of the University of Louisville School of Engineering or a designee of the dean;
 - (c) The dean of the University of Kentucky School of Engineering or a designee of the dean;
 - (d) A representative of the industrial community appointed by the Governor;
 - (e) A representative of the environmental protection community appointed by the Governor;
 - (f) A representative of local government appointed by the Governor;
 - (g) An environmental engineer appointed by the Governor;
 - (h) An at-large member appointed by the Governor representing an industrial facility;
 - (i) An at-large member appointed by the Governor representing an agricultural producer; and
 - (j) An at-large member appointed by the Governor representing the public.
- (2) Board members may designate proxies who shall have voting privileges at board meetings. The members identified in subsection (1)(a) to (1)(d) of this section shall serve as permanent members of the board. Of the six (6) members identified in subsections (1)(e) to (j) of this section, two (2) shall continue in office for two (2) years, two (2) shall continue in office for three (3) years, and two (2) shall continue in office for four (4) years,

as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the board for three (3) years. Members may be reappointed. The Governor shall appoint a chairperson for the board.

- (3) Meetings of the board shall be held at least quarterly, but may be held more frequently if necessary. The chair or a majority of members may call a special meeting. Five (5) members of the board shall constitute a quorum for doing business. Each member shall have one (1) vote and a majority vote of the members present shall control on all questions. No member shall receive a salary, fee, or other remuneration for services as a member of the board, but each member shall be reimbursed for ordinary travel expenses, including meals and lodging, incurred in the performance of the member's duties.
- (4) The board shall:
 - (a) Formulate policies and procedures necessary to carry out the purposes stated in KRS 224.46-305;
 - (b) Promulgate administrative regulations solely to carry out the purposes of KRS 224.46-320 to assure the proper distribution of funds available to the center;
 - (c) Review and authorize pollution prevention projects and programs to be undertaken and financed pursuant to KRS 224.46-305, 224.46-320, 224.46-330, and 224.46-580;
 - (d) Review and approve all progress and final research reports on projects authorized by KRS 224.46-305 and 224.46-320;
 - (e) Assure that funds available to the center are not diverted to any uses inconsistent with KRS 224.46-305 to 224.46-335 and KRS 224.46-580, and that all authorized projects are directed toward improvement of the environment, specifically toward pollution prevention and toward preserving and strengthening industry in Kentucky;
 - (f) Provide to the Governor and the General Assembly an annual report showing the status of funds appropriated for the purposes of KRS 224.46-305 to 224.46-335 and KRS 224.46-580 for pollution prevention and progress of the board in terms of its research and pollution prevention technology implementation efforts;
 - (g) Advise the Governor and the General Assembly each year of the need for continuation of the center and its board through levy of the hazardous waste assessment fund for the purpose of financing pollution prevention programs;
 - (h) Approve and release public statements relating to the progress and results of pollution prevention programs and research;
 - (i) Hire a technical advisor if deemed necessary; and
 - (j) Approve the budget and expenditures of the center.

➔Section 371. KRS 224.46-505 is amended to read as follows:

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

- (1) That technological progress and increases in the amounts of manufacturing are continuing to result in increasing quantities of hazardous waste being generated and prohibiting the generation of hazardous waste would result in a competitive economic disadvantage for the Commonwealth;
- (2) That the Commonwealth is the site of much improper and inadequately regulated handling, treatment, transportation, storage, and disposal of hazardous waste which presents a threat to the public health, safety, and welfare and the environment;
- (3) That by the enactment by the Congress of the United States of the Resource Conservation and Recovery Act of 1976, as amended (PL 94-580), the generation, transportation, treatment, storage, recycling, and disposal of hazardous waste has been determined to be a matter of national importance, recognizing that hazardous waste presents, in addition to the problems generally associated with nonhazardous waste, special dangers to health and requires a greater degree of regulation than does nonhazardous waste;
- (4) That the primary responsibility for proper hazardous waste management rests with the generators, transporters, treaters, storers, recyclers, and disposers of hazardous waste, subject to rules, regulations, guidelines, and standards promulgated by the *Energy and Environment* ~~(Environmental and Public Protection)~~ Cabinet and

also subject to registration or permitting by the cabinet for the purpose of effectuating safe and proper management at all steps in the hazardous waste cycle;

- (5) That the participation of the private sector and the interested public in any aspect of hazardous waste management not expressly reserved as state or federal authority as set forth in KRS 224.46-510 to 224.46-570 or other statutes is encouraged, moreover, it is preferable for hazardous waste management functions to be performed by the private sector when such is in the best interest of the public and conforms with the policies and provisions set forth in KRS 224.46-510 to 224.46-570;
- (6) That as a matter of policy the prevention of pollution or reduction of waste at its source is the preferred management option. Pollutants that cannot be prevented should be recycled in an environmentally-safe manner whenever feasible. Pollution that cannot be prevented or recycled should be treated; and, disposal or other release into the environment should only be employed when no other feasible option is available; and
- (7) That as a result of the conditions described in the foregoing findings, the problems of hazardous waste generation, transportation, treatment, storage, recycling, and disposal have become a matter of extreme state concern necessitating action by the General Assembly to protect the public health, safety, and welfare and the environment of the Commonwealth.

➔Section 372. KRS 224.46-580 is amended to read as follows:

- (1) The General Assembly declares that it is the purpose of this section to promote the development of statewide programs, under the responsibility of a single agency, which are intended to protect the health of the citizens and the environment of the Commonwealth from present and future threats associated with the management of hazardous wastes and the release of toxic chemicals regulated under Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986, including disposal, treatment, recycling, storage, and transportation. The intent of the General Assembly is to add to and coordinate, and not replace, existing efforts and responsibilities in the areas of hazardous waste management, toxic chemical manufacture, processing, or other use, and to leave the primary burden and responsibility for hazardous waste and toxic chemical reduction on private industry; and further to finance assistance and coordination by imposing assessments on the generation of hazardous waste. The assessments are intended to produce a reduction in waste generated; to promote the use of new techniques in recycling, treatment, and alternatives other than land disposal; and to place the burden of financing additional hazardous waste management activities necessarily undertaken by state agencies on the users of those products associated with the generation of hazardous waste. The General Assembly further finds that Kentucky's industries need assistance in developing and implementing pollution prevention goals and that a fund should be established to provide technical and financial assistance to those industries.
- (2) The **Energy and Environment** ~~(Environmental and Public Protection)~~ Cabinet is given the authority to administer the provisions and programs of this section and the responsibility to achieve the purposes of this section.
- (3) In addition to all specific responsibilities contained elsewhere in this chapter, the cabinet shall:
 - (a) Respond effectively and in a timely manner to emergencies created by the release of hazardous substances, as defined in KRS 224.01-400, into the environment. The cabinet shall provide for adequate containment and removal of the hazardous substances in order that the threat of a release or actual release of the substance may be abated and resultant harm to the environment minimized. The provisions of KRS 45A.695 to 45A.725 may be suspended by the cabinet if necessary to respond to an environmental emergency.
 - (b) Provide for post-closure monitoring and maintenance of hazardous waste disposal sites upon termination of post-closure monitoring and maintenance responsibilities by persons permitted to operate the facility pursuant to this chapter.
 - (c) Identify, investigate, classify, contain, or clean up any release, threatened release, or disposal of a hazardous substance where responsible parties are economically or otherwise unavailable to properly address the problem and the problem represents an imminent danger to the health of the citizens and the environment of the Commonwealth.
- (4) The cabinet shall have the authority to finance the nonfederal share of the cost for clean up of sites under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Pub. L. 96-510).

- (5) The cabinet shall recover, when possible, actual and necessary expenditures incurred in carrying out the duties under this section. Any expenditures recovered shall be placed in the hazardous waste management fund.
- (6) It is the expressed purpose of this section to accomplish effective hazardous waste and toxic chemical management that results in a reduction of the generation of hazardous wastes and the release of toxic chemicals within the Commonwealth; further, it is a purpose of this chapter to allocate a portion of the cost of administering necessary governmental programs related to hazardous waste and toxic chemical management to those industries whose products are reasonably related to the generation of hazardous waste.
- (7) There is hereby imposed upon every person engaged within this state in the generation of hazardous waste an annual hazardous waste assessment to be determined pursuant to this section according to the quantity by weight of hazardous waste generated, except that no assessment shall be levied against generators for any quantity of "special wastes," waste oil, or spent material from air pollution control devices controlling emissions from coke manufacturing facilities. The assessment shall not be imposed upon any person for any quantities of hazardous waste generated by others for which that person is a secondary handler that stores, processes, or reclaims the waste. The assessment shall be reported and paid to the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet for the generation of hazardous waste on an annual basis on January 1 of each year. The payment shall be accompanied by a report or return in a form that the cabinet may prescribe. If a federal law is enacted which accomplishes or purports to accomplish the purposes set forth in this section and which levies an assessment or tax upon any business assessed pursuant to this section, the amount of the assessment to be levied upon the business under this section shall be reduced by the amount of the federal assessment or tax upon the business. The reduction shall only be authorized when funds raised by the federal assessment or tax are made available to the state for any of the activities to be funded under this section. If federal moneys are available to carry out the duties imposed by subsection (3) of this section, the assessment shall cease to be levied and collected until such time as federal moneys are no longer available to the Commonwealth for these purposes. The assessment shall be charged against generators of hazardous waste until June 30, 2016. After this date, no further hazardous waste management assessment shall be charged against generators. The hazardous waste assessment shall be waived for any generator owing less than fifty dollars (\$50) for the year. However, a return must be filed by generators to whom a payment waiver applies.
- (8) The assessment on generators shall be one and two-tenths cents (\$0.012) per pound if the waste is liquid, or two-tenths of a cent (\$0.002) per pound if the waste is solid.
 - (a) Hazardous waste that is injected into a permitted underground injection well shall be assessed on a dry weight basis;
 - (b) Hazardous waste treated, detoxified, solidified, neutralized, recycled, incinerated, or disposed of on-site shall be assessed at one-half (1/2) of the appropriate rate, except for recycled waste used in the steel manufacturing process which shall be exempt;
 - (c) Waste that is subject to regulation under Section 402 or 307B of the Federal Clean Water Act shall be exempt;
 - (d) Emission control dust and sludge from the primary production of steel that is recycled by high temperature metals recovery or managed by stabilization of metals shall be exempt; and
 - (e) Waste that is delivered from the generator to an on-site or off-site industrial boiler or furnace and burned for energy recovery in accordance with state and federal laws and regulations shall be assessed at one-half (1/2) of the appropriate rate.
- (9) Except for waste brought into the state by a company to an affiliated manufacturing facility of the company receiving the waste, any person who transports hazardous waste into the state for land disposal or treatment which is generated outside of the state shall pay an assessment to the hazardous waste facility which first receives the waste for storage, treatment, or land disposal. The assessment rate shall be identical to the rate described in subsection (8) of this section. The facility shall remit the assessment to the cabinet on an annual basis on January 1 of each year. The payment shall be accompanied by a return the cabinet shall prescribe.
- (10) If any generator or hazardous waste facility subject to the provisions of subsection (8) or (9) of this section fails or refuses to file a return or furnish any information requested in writing by the cabinet, the cabinet may, from any information in its possession, make an estimate and issue an assessment against the generator or hazardous waste facility and add a penalty of ten percent (10%) of the amount of the assessment so determined. This penalty shall be in addition to all other applicable penalties in this chapter.

- (11) If any generator or hazardous waste facility subject to the provisions of subsection (8) or (9) of this section fails to make and file a return required by this chapter on or before the due date of the return or the due date as extended by the cabinet, unless it is shown to the satisfaction of the cabinet, that the failure is due to reasonable cause, five percent (5%) of the assessment found to be due by the cabinet shall be added to the assessment for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it is filed, but the total penalty shall not exceed twenty-five percent (25%) of the assessment.
- (12) If the assessment imposed by this chapter, whether assessed by the cabinet, or the generator, or any installment or portion of the assessment is not paid on or before the date prescribed for its payment, there shall be collected, as a part of the assessment, interest upon the unpaid amount at the rate of eight percent (8%) per annum from the date prescribed for its payment until payment is actually made to the cabinet.
- (13)
 - (a) There is hereby created within the State Treasury a trust and agency fund which shall not lapse to be known as the hazardous waste management fund. The fund shall be deposited in an interest-bearing account. The cabinet shall be responsible for collecting and receiving funds as provided in this section, and all such assessments collected or received by the State Treasury shall be deposited in the hazardous waste management fund. All interest earned on the money deposited in the fund shall be deposited to the fund. When the State Treasurer certifies to the cabinet that the uncommitted balance of the hazardous waste management fund exceeds six million dollars (\$6,000,000), assessments shall not be collected until the State Treasurer certifies to the cabinet that the balance in the hazardous waste management fund is less than three million dollars (\$3,000,000). The implementation of the cap on the fund shall be suspended from July 13, 1990, until July 1, 1991. In addition, for assessments paid after July 1, 1991, the cabinet shall refund or grant a credit against the next assessment to come due, on a pro-rated basis, any money collected in one (1) year in excess of the cap.
 - (b) In any fiscal year in which the fees assessed under this section total less than one million eight hundred thousand dollars (\$1,800,000) in fiscal year 2007-2008 dollars, adjusted annually to reflect any increase in the cost-of-living index, the difference between the fee receipts and the adjusted minimum balance shall be transferred from funds collected pursuant to KRS 224.60-130.
 - (c) The cabinet shall file with the Legislative Research Commission a biennial report, beginning two (2) years after July 15, 2008, on the revenues and expenditures of the fund.
- (14) There is hereby created within the State Treasury a trust and agency account which shall not lapse to be known as the pollution prevention fund. The fund shall be placed in an interest-bearing account. The fund shall be administered by the Center for Pollution Prevention. The cabinet shall remit to the fund each fiscal year twenty percent (20%) of the funds received by the hazardous waste management fund subject to the enacted budget bill.
- (15) Upon request of the secretary, moneys accumulated in the hazardous waste management fund shall be released in amounts necessary to accomplish the performance of the duties imposed by subsection (3) of this section. However, moneys from the fund shall not be used when federal moneys are available to carry out these duties, except when immediate action is required to protect public health or the environment, in which case the cabinet shall actively pursue reimbursement of the fund by any available federal moneys.
- (16) If any person responsible for a release or threatened release of a hazardous substance fails to take response actions or to make reasonable progress in completing response actions ordered by the cabinet, the cabinet may bring an action to compel performance or may take appropriate response actions and order the responsible person to reimburse the cabinet for the actual costs incurred by the cabinet.
- (17) If disposal activities have occurred at a hazardous waste site, the cabinet shall record in the office of the county clerk in the county in which a waste site is situated a notice containing a legal description of the property that discloses to any potential transferee that the land was used to dispose hazardous waste and that further information on the hazardous waste site may be obtained from the cabinet.
- (18) No person shall affect the integrity of the final cover, liners, or any other components of any containment system after closure of a hazardous waste site on or in which hazardous waste remains without prior written approval of the cabinet.

➔Section 373. KRS 224.46-810 is amended to read as follows:

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

- (1) "Board" means the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board.
- (2) "Certificate" means a certificate of environmental safety and public necessity.
- (3) "Cabinet" means the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet.
- (4) "Regional integrated waste treatment and disposal demonstration facility" means a model hazardous waste facility receiving wastes from a region larger than the county boundaries in which it is located, from more than one (1) person, and utilizing multiple treatment and disposal technologies, one (1) of which must be a secure landfill, and one (1) of which must be a high technology incinerator, and designed so as to promote resource recovery and energy generation from hazardous waste and the use of state-of-the-art techniques for rendering waste nonhazardous, and the disposal of waste in a manner that minimizes the risk to public health and long term environmental impacts.

➔Section 374. KRS 224.46-850 is amended to read as follows:

- (1) It is the intent of the General Assembly that a regional integrated waste treatment and disposal demonstration facility contain an industrial park component. The approved site for a regional integrated waste treatment and disposal demonstration facility shall be of sufficient size to accommodate new industrial and commercial concerns that can utilize the energy by-products of the treatment technologies.
- (2) It shall be the responsibility of the *Department for Energy Development and Independence*~~{Office of Energy Policy}~~ to establish a plan for and develop the industrial park component of a regional integrated waste treatment and disposal demonstration facility. The industrial park component, located on property contiguous with the treatment and disposal technologies, shall be designed so as to utilize energy generated from the waste treatment technologies.

➔Section 375. KRS 224.46-870 is amended to read as follows:

The *Department for Energy Development and Independence*~~{Office of Energy Policy}~~ shall provide the cabinet with the information deemed necessary by the cabinet to project hazardous waste generation in the Commonwealth as required by KRS 224.10-100(24) and 224.46-830(2)(d).

➔Section 376. KRS 224.60-105 is amended to read as follows:

- (1) Owners of any underground storage tank, currently existing, or taken out of operation after January 1, 1974, shall notify the cabinet of the existence of such tanks and a description of the tank and its use in accordance with regulations promulgated by the cabinet.
- (2) The cabinet shall regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, record keeping, reporting releases, corrective actions, closure, financial responsibility, and any other requirement deemed necessary by the cabinet to protect the public health and environment. In promulgating regulations to carry out this section the cabinet may distinguish between types, classes, and ages of underground storage tanks.
- (3) It is the intent of the General Assembly that the cabinet shall establish a program to regulate underground storage tanks which implements federal regulatory requirements for underground storage tanks. The cabinet shall develop and implement a program and promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations.
- (4) KRS 224.60-105 to 224.60-160 and administrative regulations promulgated under authority of KRS 224.60-105 to 224.60-160 shall supercede and preempt all local laws, ordinances, and regulations pertaining to petroleum underground storage tanks, except:
 - (a) Any applicable *state* fire marshal regulations or local building permit procedures for petroleum storage tank installations;
 - (b) Any local law, ordinance, or regulation promulgated before July 15, 1990; or
 - (c) Any local restrictions or conditions imposed pursuant to KRS Chapter 100.

➔Section 377. KRS 224.60-115 is amended to read as follows:

As used in KRS 224.60-120 to 224.60-150, unless the context otherwise requires:

- (1) "Bodily injury and property damage" means only those actual economic losses to an individual or the individual's property resulting from bodily injuries and damages to property caused by a release into the environment from a petroleum storage tank. In this context, property damage includes damage to natural resources;
- (2) "Cabinet" means the *Energy and Environment* ~~Environmental and Public Protection~~ Cabinet;
- (3) "Claim" means any demand in writing for a certain sum;
- (4) "Corrective action" means those actions necessary to protect human health and the environment in the event of a release from a petroleum storage tank. Corrective action includes initial responses taken pursuant to KRS 224.60-135, remedial actions to clean up contaminated groundwater, surface waters, or soil, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action also includes actions necessary to monitor, assess, and evaluate a release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a release has occurred;
- (5) "Dealer" means a person required to be licensed as a gasoline or special fuels dealer as defined in KRS 138.210(2);
- (6) "Division" means the Division of Waste Management;
- (7) "Facility" means, with respect to any owner or operator, all petroleum storage tanks which are owned or operated by an owner or operator and are located on a single parcel of property or on any contiguous or adjacent property;
- (8) "Federal regulations" means regulations for underground petroleum storage tanks promulgated by the United States Environmental Protection Agency pursuant to Subtitle I of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- (9) "Free product" means a regulated substance that is present as a non-aqueous phase liquid;
- (10) "Fund" means the petroleum storage tank environmental assurance fund and its subaccounts, the financial responsibility account and the petroleum storage tank account established pursuant to KRS 224.60-140;
- (11) "Gasoline" means gasoline as defined in KRS 138.210(4);
- (12) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, that is typically used in the operation of a motor engine, jet fuel, and any petroleum or petroleum-based substance typically used in the operation of a motor vehicle, including used motor vehicle lubricants and oils;
- (13) "Occurrence" means a release, or releases, of an accidental nature, requiring corrective action, from a petroleum storage tank or tanks located at the same facility, due to continuous or repeated exposure to conditions. An additional release or releases at the same facility in which the area requiring remedial action is separate from a previous remediation area or areas shall be considered a separate occurrence;
- (14) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, the state, a municipality, commission, or political subdivision of the state. The term includes a consortium, a joint venture, the United States government, or a commercial entity;
- (15) "Petroleum" and "petroleum products" means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at sixty (60) degrees Fahrenheit and 14.7 pounds per square inch absolute. The term includes motor gasoline, gasohol, other alcohol-blended fuels, diesel fuel, heating oil, special fuels, lubricants, and used oil;
- (16) "Petroleum storage tank" means an underground storage tank, as defined by KRS 224.60-100, which contains petroleum or petroleum products but, for the purpose of participation or eligibility for the fund, shall only include tanks containing motor fuels and shall not include petroleum storage tanks used exclusively for storage of fuel used in the operation of a commercial ship or vessel or tanks used exclusively for storage of fuel used for the purposes of powering locomotives or tanks owned by a federal agency or the United States government;
- (17) "Petroleum storage tank operator" means any person in control of, or having responsibility for, the daily operation of a petroleum storage tank;

- (18) "Petroleum storage tank owner" means the person who owns a petroleum storage tank, except that petroleum storage tank owner does not include any person who, without participation in the management of a petroleum storage tank, holds indicia of ownership primarily to protect a security interest in the tank;
- (19) "Received" means the same as defined in KRS 138.210(5);
- (20) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water, or surface or subsurface soils. The term shall not include releases that are permitted or authorized by the state or federal law;
- (21) "Special fuels" means special fuels as defined in KRS 138.210(4); and
- (22) "Third party" means a person other than the owner or operator of a facility, or the agents or employees of the owner or operator, who sustains bodily injury or property damage as a result of a release from that facility.

➔Section 378. KRS 224.60-130 is amended to read as follows:

- (1) The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet, Department for Environmental Protection, Division of Waste Management, shall:
- (a) Establish by administrative regulation the policy, guidelines, and procedures to administer the financial responsibility and petroleum storage tank accounts of the petroleum storage tank environmental assurance fund. In adopting administrative regulations to carry out this section, the division may distinguish between types, classes, and ages of petroleum storage tanks. The division may establish a range of amounts to be paid from the fund, or may base payments on methods such as pay for performance, task order, or firm fixed pricing, which are designed to provide incentives for contractors to more tightly control corrective action costs, and shall establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. The criteria may include the certification of individuals, partnerships, and companies. Criteria shall be established to certify laboratories that contract to perform analytical testing related to the underground storage tank program. Owners and operators shall have all required analytical testing performed by a certified laboratory to be eligible for fund participation. Persons who contract with petroleum storage tank owners or operators shall not be paid more than the amount authorized by the division for reimbursement from the fund for the performance of corrective action. At a minimum, the division shall promulgate administrative regulations that will insure an unobligated balance in the fund adequate to meet financial assurance requirements and corrective action requirements of KRS 224.60-135(2) and (4). If the unobligated balance in the fund is not adequate to meet the requirements of this paragraph, the division shall obligate funds necessary to meet these requirements;
- (b) Establish by administrative regulation the criteria to be met to be eligible to participate in the financial responsibility and petroleum storage tank accounts and to receive reimbursement from these accounts. The division may establish eligibility criteria for the petroleum storage tank account based upon the financial ability of the petroleum storage tank owner or operator. Owners or operators seeking coverage under the petroleum storage tank account shall file for eligibility and for financial assistance with the division. To ensure cost effectiveness, the division shall promulgate administrative regulations specifying the circumstances under which prior approval of corrective action costs shall be required for those costs to be eligible for reimbursement from the fund. In promulgating administrative regulations to carry out this section, the division may distinguish between types, classes, and ages of petroleum storage tanks and the degree of compliance of the facility with any administrative regulations of the cabinet promulgated pursuant to KRS 224.60-105 or applicable federal regulations;
- (c) Establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by administrative regulations of the cabinet or the federal regulations applicable to petroleum storage tanks, consistent with the intent of the General Assembly as set forth in KRS 224.60-120(5). The account shall receive four-tenths of one cent (\$0.004) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. To be eligible to use this account to demonstrate compliance with financial responsibility requirements of the cabinet or federal regulations, or to receive reimbursement from this account for taking corrective action and for compensating third parties for bodily injury and property damage, the petroleum storage tank owner or operator shall meet the eligibility requirements established by administrative regulation promulgated by the division;

- (d) Establish a small operator assistance account within the fund which may be used by the division to make or participate in the making of loans, to purchase or participate in the purchase of the loans, which purchase may be from eligible lenders, or to insure loans made by eligible lenders;
- (e) Establish a petroleum storage tank account within the fund to be used to pay the costs of corrective action due to a release from a petroleum storage tank not eligible for reimbursement from the financial responsibility account. Reimbursements of corrective action projects performed under the petroleum storage tank account shall be carried out on or before July 15, 2013. Any corrective action costs incurred after this date shall not be eligible for reimbursement under the petroleum storage tank account. The account shall receive one cent (\$.01) from the one and four-tenths cent (\$.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. This account shall not be used to compensate third parties for bodily injury and property damage. Within three (3) months after July 15, 2004, the division shall develop a plan to address the payment of claims and completion of corrective action at facilities eligible for reimbursement from this account. The division shall establish a ranking system to be used for the distribution of amounts from this account for the purpose of corrective action. In promulgating administrative regulations to carry out this section, the division shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by a release into the environment from a petroleum storage tank;
- (f) Hear complaints brought before the division regarding the payment of claims from the fund in accordance with KRS 224.10-410 to 224.10-470;
- (g) Establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation;
- (h) Employ, in accordance with the procedures found in KRS 45A.690 to 45A.725 for awarding personal service contracts, a qualified actuary to perform actuarial studies, as directed by the division, for determining an appropriate reserve in the financial responsibility account and the petroleum storage tank account sufficient to satisfy the obligations in each account for all eligible facilities and to satisfy future liabilities and expenses necessary to operate each account. The division shall, by administrative regulation, set the entry level for participation in the fund;
- (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-105 to 224.60-160, including reasonable costs of administering the fund, the procurement of legal services, and the procurement of analytical testing services when necessary to confirm the accuracy of analytical testing results obtained by a petroleum storage tank owner or operator. The expenditures shall be paid from the appropriate account;
- (j) Establish a small operators' tank removal account within the fund to reimburse the reasonable cost of tank system removal for small owners and operators. The account shall not be used when an owner or operator is removing the tank with the intention of replacing or upgrading the tank. In promulgating administrative regulations to carry out this paragraph, the division may distinguish among owners and operators based on income, number of tanks, number of facilities, and types and classes of tanks;
- (k) Establish by administrative regulation the policy, guidelines, and procedures to perform financial audits of any petroleum storage tank owner or operator receiving reimbursement from the fund or any entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement. Financial audits shall be limited to those files, records, computer records, receipts, and other documents related to corrective action performed at a facility where the costs of corrective action have been reimbursed by the fund. Files, records, computer records, receipts, and other documents related to corrective action reimbursed by the fund shall be subject to a financial audit for a period of three (3) years after the date of final reimbursement from the fund. Results of the audits shall be protected from disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may be contracted for or personnel may be employed as needed to implement the requirements of this paragraph;
- (l) Be authorized to enter and inspect any facility intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action. The division may collect soil or water samples or require storage tank owners or operators to split samples with the

division for analytical testing. Refusal to allow entry and inspection of a facility or refusal to allow the division to collect or split samples shall make the facility ineligible for fund participation;

- (m) Have inspectors on site at all tank system removals. Failure to comply with this provision shall make the facility ineligible for fund participation. A petroleum storage tank owner or operator may request through certified mail that the division schedule an inspector to be present at an upcoming tank removal. If the request is made at least two (2) weeks before the time for the removal and an inspector fails to be present at the time scheduled, the tank removal may proceed without making the facility ineligible for fund participation unless the owner is notified by the division no later than ten (10) days prior to the proposed date that an inspector is not available on the proposed date, in which event a representative of the division shall contact the operator and schedule a new date. If no inspector is present at the rescheduled date, the removal may then proceed without penalty; and
 - (n) Establish that the deadline for submission of final reimbursement requests under the petroleum storage tank account is two (2) years after receipt of a no further action letter.
- (2) The division may advise the cabinet on the promulgation of administrative regulations concerning petroleum storage tanks.
 - (3) The division may sue and be sued in its own name.
 - (4) The division may transfer funds from the petroleum storage tank account to the small operator tank removal account as needed to satisfy the obligations, future liabilities, and expenses necessary to operate that account. The division may transfer funds to the financial responsibility account as needed to maintain within that account sufficient funds to demonstrate financial responsibility and to ensure payment of claims as provided in subsection (1)(c) of this section.

➔Section 379. KRS 224.70-120 is amended to read as follows:

- (1) As used in this section, "cabinet" shall mean the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet.
- (2) An applicant for a permit to discharge pollutants into waters of the Commonwealth shall be subject to a filing fee by the cabinet in the amount of twenty percent (20%) of the discharge permit fee.
- (3) An applicant for a permit to discharge pollutants into waters of the Commonwealth shall be subject to a discharge permit fee by the cabinet upon receiving the cabinet's determination that the permit will be issued and the fee shall be equal to the cost of review but shall not exceed the following amounts:
 - (a) Major industry: three thousand two hundred dollars (\$3,200);
 - (b) Minor industry: two thousand one hundred dollars (\$2,100);
 - (c) Nonprocess industry: one thousand dollars (\$1,000);
 - (d) Large, non-publicly-owned treatment works: one thousand seven hundred dollars (\$1,700);
 - (e) Intermediate, non-publicly-owned treatment works: one thousand five hundred dollars (\$1,500);
 - (f) Small, non-publicly-owned treatment works: one thousand dollars (\$1,000);
 - (g) Agriculture: one thousand two hundred dollars (\$1,200); and
 - (h) Surface mining operation: one thousand two hundred dollars (\$1,200).
- (4) The cabinet may impose the maximum fee if a discharge falls into multiple categories.

➔Section 380. KRS 224.71-110 is amended to read as follows:

- (1) The Agriculture Water Quality Authority is created and administratively attached to the cabinet. The authority shall be a multidiscipline peer group that shall evaluate, develop, and improve best-management practices in conservation plans, compliance plans, and forest stewardship management plans; establish statewide and regional agriculture water quality plans; and otherwise promote soil and water conservation activities that protect waters of the Commonwealth from the adverse impacts of agriculture operations within the Commonwealth. The cabinet shall provide staff to the authority.

- (2) Within six (6) months of July 15, 1994, the Soil and Water Conservation Commission shall submit to the Governor for appointment to the Agriculture Water Quality Authority a list of three (3) persons recommended by each of the following state agencies and organizations:
- (a) Kentucky Association of Conservation Districts;
 - (b) Kentucky Department of Agriculture;
 - (c) University of Kentucky College of Agriculture Cooperative Extension Service;
 - (d) Kentucky Farm Bureau Federation, Inc.;
 - (e) Division of Conservation, ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet;
 - (f) Division of Forestry, ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet;
 - (g) Kentucky Geological Survey; and
 - (h) Environmental organizations.

The membership of the Agriculture Water Quality Authority appointed by the Governor shall consist of one (1) representative from each of the groups identified in paragraphs (a) to (h) of this subsection and three (3) members at large from agriculture operations. The Soil and Water Conservation Commission shall solicit nominations from Kentucky agriculture operations organizations and submit those names to the Governor for selection of the three (3) members at large from agriculture operations. The Governor shall select four (4) members to serve two (2) year initial terms, four (4) members to serve three (3) year initial terms, and three (3) members to serve four (4) year initial terms. All succeeding terms shall be four (4) year terms. A representative from the United States Soil Conservation Service and a representative from the United States Agriculture Stabilization and Conservation Service may also be appointed by the Governor to serve on the authority. One (1) representative each from the Division of Water, ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet and the Division of Public Health Protection and Safety, Cabinet for Health and Family Services shall serve as ex officio members.

- (3) It shall be the responsibility of the Agriculture Water Quality Authority to establish, at a minimum, the following four (4) committees for agriculture operations, with membership outside the Agriculture Water Quality Authority:
- (a) Livestock, including but not limited to, beef, swine, dairy, poultry, and equine;
 - (b) Crops, including but not limited to, tobacco, corn, soybeans, small grains, fruits and vegetables, pasture and timber;
 - (c) Pesticides, fertilizers, and other agricultural chemicals; and
 - (d) Farmstead issues.
- (4) The Agriculture Water Quality Authority shall have the following responsibilities:
- (a) Review water quality data as available;
 - (b) Review university research on water quality and alternative best-management practices research;
 - (c) Evaluate the adoption and effectiveness of best-management practices, and modify best-management practice design standards to improve water quality protection practices;
 - (d) Develop by July 1, 1996, statewide agriculture water quality plans to address identifiable water pollution problems from agriculture operations, and continue to evaluate and modify the agriculture water quality plans, as necessary to prevent water pollution from agriculture operations;
 - (e) Assist with the review of state-funded and other water quality monitoring data and with the establishment of agriculture water priority protection regions;
 - (f) Provide technical assistance to persons engaged in agriculture operations and to the Soil and Water Conservation Commission in its efforts to coordinate water quality protection as related to agriculture operations;

- (g) Work with the United States Soil Conservation Service, United States Agriculture Stabilization and Conservation Service, and conservation districts to disseminate to agriculture operations the best-management practices, conservation plans, compliance plans, forest stewardship management plans, and agriculture water quality plans which address the protection of groundwater and surface water;
 - (h) Provide the Governor and the Legislative Research Commission with biennial reports of the progress of the Agriculture Water Quality Authority program; and
 - (i) Establish procedures for modifications to be incorporated into statewide or regional agriculture water quality plans.
- (5) The cabinet's Division of Water shall approve or disapprove any statewide and regional water quality plan within thirty (30) days of receiving the plan from the Agriculture Water Quality Authority. All provisions of a statewide or regional water quality plan not found deficient shall be approved. If the Division of Water finds any provision of the statewide or regional agriculture water quality plan deficient, the Division of Water shall give written notice to the authority of those provisions found to be deficient. Within the thirty (30) days following the notice of deficiency, the authority shall deliver to the Division of Water a written response setting forth proposed solutions to the deficiencies. Any deficiencies which remain unresolved shall be resolved in a manner agreed to jointly by the Division of Water and the authority within sixty (60) days unless the Division of Water and authority jointly agree to an extension or alternate dispute resolution. The Division of Water shall approve or disapprove all modifications to the statewide and regional plans as set forth at KRS 224.71-120(8).

➔Section 381. KRS 224.73-100 is amended to read as follows:

Any corporation authorized to do business in this state and organized for the purpose of constructing, maintaining and operating sewer lines and sewage treatment facilities may, if it is unable to contract or agree with the owner after a good faith effort to do so, condemn rights-of-way necessary for constructing, maintaining and operating its pipelines and, if necessary, pumping stations; and the necessary ingress and egress to examine, alter, repair and maintain such pipelines. The condemnation proceedings shall be conducted in the manner provided in the Eminent Domain Act of Kentucky. Provided, however, that before any corporation shall be authorized to use the provisions of this section, it shall have presented plans and specifications to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet and received from said cabinet a permit to operate and maintain said sewage treatment facilities together with an approval of the discharge of the treated effluent from said facilities to a specific point of the waters of this Commonwealth. Provided, further, that any person wishing to object to a pipeline or plant location subject to the provisions of this section shall have the right to have his objections heard by said cabinet pursuant to the provisions of KRS 224.10-440.

➔Section 382. KRS 224.73-110 is amended to read as follows:

- (1) The Kentucky Board of Certification of Wastewater System Operators is established. The board shall recommend qualified applicants to the cabinet for certification and perform such other acts as may be necessary to carry out the purposes of this section. Members of the board shall be appointed by the Governor. The board shall consist of eight (8) members who may have professional backgrounds as follows: one (1) employee of a municipality who holds the position of either city manager, city engineer, director of public works, or the equivalent thereof; one (1) member who is a faculty member of a college, university, or professional school whose major field is related to wastewater treatment; one (1) nonvoting ex officio member representing the cabinet; and five (5) members currently employed as operators holding valid certificates where one (1) of these five (5) shall be an operator of an industrial wastewater system. Board members shall serve for a four (4) year term, except for the first board to which two (2) of the operators will be appointed for four (4) years and three (3) for two (2) years. The first college faculty member will be appointed for two (2) years and the remaining board members will be appointed for four (4) years. The cabinet's representative shall serve as executive secretary and treasurer and be responsible for maintaining records. The members of the board shall serve without compensation but may be reimbursed for all actual and necessary expenses incurred while discharging their official duties. At least four (4) existing members of the board shall constitute a quorum.
- (2) No person shall have primary responsibility for the operation of any sewage system or portion thereof whether publicly or privately owned unless he has passed an examination prescribed by the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet and board which shall determine his skill and competency for such operation and has been issued a certificate to that effect by the cabinet.

- (3) No person shall authorize or allow any person who does not hold a certificate issued pursuant to subsection (2) of this section to have primary responsibility for the operation of any sewage system or portion thereof.
- (4) The cabinet, with the advice of the board of certification, may classify all sewage systems and portions thereof in the manner provided by the rules and regulations of the cabinet with regard to size, type, physical conditions affecting such systems or portions thereof, and the skill, knowledge and experience required for the operation of the system or portion thereof and restrict the application of any certificate issued pursuant to subsection (2) of this section to the operation of a sewage system or portion thereof of a specific class.
- (5) Any person who has primary responsibility for the operation of a sewage system for a school shall be entitled to a limited certificate of competency for his particular system, provided he has demonstrated that he has the knowledge and experience required to operate properly the particular sewage system for which he is responsible. A limited certificate of competency so issued is not transferable to any other sewage system, nor is the period of operation under such a limited certificate eligible for consideration toward the experience requirements for a certificate of competency as provided in subsection (2) of this section.
- (6) All applicants for the examination and certification for the operation of any sewage system or portion thereof, whether publicly or privately owned, shall pay a reasonable schedule of fees and charges fixed by regulation. The fees required under this section shall be payable to the cabinet.
- (7) Operators shall have accumulated a minimum number of hours of appropriate board approved training set by regulation for certificate renewal. Such training shall include, but may not be limited to, correspondence courses, short courses, trade association meetings, and on-the-job training. Training hours accumulated in any given year in excess of the minimum requirement necessary for renewal may be carried forward for a period not to exceed two (2) years.
- (8) The board may waive any or all of the requirements of subsection (7) of this section for all or portions of an established class of operators.

➔Section 383. KRS 224.80-100 is amended to read as follows:

As used in this subchapter:

- (1) "Activity and use limitations" means restrictions or obligations created under KRS 224.80-100 to 224.80-210.
- (2) "Applicant" means a person applying to the cabinet for approval of an environmental covenant.
- (3) "Cabinet" means the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet.
- (4) "Common interest community" means a condominium, cooperative, or other real property owned by a person as part of a parcel of real property for which there is an obligation to pay property taxes, insurance premiums, or maintenance, or to make improvements to the real property as described and established in a recorded environmental covenant.
- (5) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.
- (6) "Environmental response project" means a plan or work performed for the environmental remediation of real property conducted:
 - (a) Under a federal or state program governing environmental remediation of real property including programs established pursuant to KRS 224.01-400, 224.01-405, 224.46-530, and 224.01-450 to 224.01-465;
 - (b) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of the cabinet; or
 - (c) Under a Commonwealth voluntary cleanup program authorized under KRS 224.01-510 to 224.01-532.
- (7) "Holder" means the grantee of an environmental covenant.
- (8) "Indexing" means the practice or method kept by a county clerk's office to record legal property transactions.
- (9) "Interest" means all or part of a legal equitable claim to a right in real property which shall include both possessory and nonpossessory interests.

- (10) "Owner" means a person that owns a fee simple interest or any other interest in real property that is subject to an environmental covenant.
- (11) "Person" shall have the meaning specified in KRS 224.01-010(17).
- (12) "Public notice" means the publication of required information in a daily or weekly newspaper of major circulation located in the county or counties where the property subject to the proposed environmental covenant is located. If there is no daily or weekly newspaper of major circulation in the county or counties where the property is located, public notice shall mean publication of required information in a daily or weekly newspaper of major circulation in a county adjacent to the county or counties where the property is located.
- (13) "Subordination agreement" means an agreement affecting priority of interests in a real property that is subject to an environmental covenant.
- (14) "Servitude" means a right, burden, or restriction on the use of real property that passes from the current owner or tenant to any owners or tenants in succession.

→Section 384. KRS 224.99-030 is amended to read as follows:

Any applicant or certificate holder who fails to provide the information required in KRS 224.01-310 or falsifies such information shall be liable for a civil penalty of not to exceed the sum of one thousand dollars (\$1,000). The penalty shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the ~~cabinet~~~~cabinet's~~ ~~Office of Legal Services~~, or upon the secretary's request, by the Attorney General.

→Section 385. KRS 224A.011 is amended to read as follows:

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

- (1) "Administrative fee" means a fee assessed and collected by the authority from borrowers under assistance agreements, to be used for operational expenses of the authority.
- (2) "Applicable interest rate" means the rate of interest which shall be used as part of the repayment criteria for an assistance agreement between a governmental agency and the authority, and shall be determined by the authority pertinent to the source of funds from which the assistance agreement is funded.
- (3) "Assistance agreement" means the agreement to be made and entered into by and between a governmental agency and the authority, as authorized by this chapter, providing for a lease, loan, services, or grant to the governmental agency or for the purchase of obligations issued by the governmental agency, and for the repayment thereof to the authority by the governmental agency.
- (4) "Authority" means the Kentucky Infrastructure Authority, which is created by this chapter.
- (5) "Authority revenues" means the totality of all:
- (a) Service charges;
 - (b) Utility tax receipts, to the extent not otherwise committed and budgeted by the authority during any fiscal period of the authority;
 - (c) Any gifts, grants, or loans received, to the extent not otherwise required to be applied;
 - (d) Any and all appropriations made to the authority by the General Assembly of the Commonwealth of Kentucky, to the extent not otherwise required to be applied;
 - (e) All moneys received in repayment of and for interest on any loans made by the authority to a governmental agency, except as provided in KRS 224A.111, 224A.1115, and 224A.112, or as principal of and interest on any obligations issued by a governmental agency and purchased by the authority, or as receipts under any assistance agreement;
 - (f) The proceeds of bonds or long-term debt obligations of governmental agencies pledged to the payment of bond anticipation notes issued by the authority on behalf of the said governmental agency to provide interim construction financing; and
 - (g) Payments under agreements with any agencies of the state and federal government.
- (6) "Borrower or borrowing entity" means any agency of the state or its political subdivisions, any city, or any special district created under the laws of the state acting individually or jointly under interagency or interlocal cooperative agreements to enter into assistance agreements with the authority.

- (7) "Community flood damage abatement project" means any structural or nonstructural study, plan, design, construction, development, improvement, or other activity to provide for flood control.
- (8) "Construction" means and includes, but is not limited to:
- (a) Preliminary planning to determine the economic and engineering feasibility of infrastructure projects, the engineering, architectural, legal, fiscal, and economic investigations, and studies necessary thereto, and surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of infrastructure or solid waste projects;
 - (b) The erection, building, acquisition, alteration, remodeling, improvement, or extension of infrastructure or solid waste projects; and
 - (c) The inspection and supervision of the construction of infrastructure or solid waste projects and all costs incidental to the acquisition and financing of same. This term shall also relate to and mean any other physical devices or appurtenances in connection with, or reasonably attendant to, infrastructure or solid waste projects.
- (9) "Dams" means any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:
- (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the *Energy and Environment*~~Environmental and Public Protection~~ Cabinet; or
 - (b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more.
- (10) "Distribution facilities" means all or any part of any facilities, devices, and systems used and useful in obtaining, pumping, storing, treating, and distributing water for agricultural, industrial, commercial, recreational, public, and domestic use.
- (11) "*Energy and Environment*~~Environmental and Public Protection~~ Cabinet" means the Kentucky *Energy and Environment*~~Environmental and Public Protection~~ Cabinet, or its successor, said term being meant to relate specifically to the state agency which is designated as the water pollution agency for the Commonwealth of Kentucky, for purposes of the federal act.
- (12) "Federal act" means the Federal Clean Water Act (33 U.S.C. secs. 1251 et seq.) as said federal act may be amended from time to time in the future, or any other enactment of the United States Congress providing funds that may assist in carrying out the purposes of the authority.
- (13) "Federally assisted wastewater revolving fund" means that fund which will receive federal and state funds or the proceeds from the sale of revenue bonds of the authority for the purpose of providing loans to finance construction of publicly owned treatment works as defined in Section 212 of the federal act and for the implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act.
- (14) "Governmental agency" means any incorporated city or municipal corporation, or other agency, or unit of government within or a department or a cabinet of the Commonwealth of Kentucky, now having or hereafter granted, the authority and power to finance, acquire, construct, or operate infrastructure or solid waste projects. This definition shall specifically apply but not by way of limitation to incorporated cities; counties, including any counties containing a metropolitan sewer district; sanitation districts; water districts; water associations if these associations are permitted to issue interest-bearing obligations which interest would be excludable from gross income under Section 103 of the Internal Revenue Code of 1986 as amended; sewer construction districts; metropolitan sewer districts; sanitation taxing districts; and any other agencies, commissions, districts, or authorities (either acting alone, or in combination with one another in accordance with any regional or area compact, or intergovernmental cooperative agreements), now or hereafter established in accordance with the laws of the Commonwealth of Kentucky having and possessing the described powers described in this subsection.
- (15) "Industrial waste" means any liquid, gaseous, or solid waste substances resulting from any process of industry, manufacture, trade, or business, or from the mining or taking, development, processing, or recovery of any natural resources, including heat and radioactivity, together with any sewage as is present therein, which

pollutes the waters of the state, and specifically, but not by way of limitation, means heat or thermal differentials created in the waters of the state by any industrial processing, generating, or manufacturing processes.

- (16) "Infrastructure project" means any construction or acquisition of treatment works, distribution facilities, or water resources projects instituted by a governmental agency or an investor-owned water utility which is approved by the authority and, if required, by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, Public Service Commission, or other agency; solid waste projects; dams; storm water control and treatment systems; gas or electric utility; broadband deployment project; or any other public utility or public service project which the authority finds would assist in carrying out the purposes set out in KRS 224A.300.
- (17) "Infrastructure revolving fund" means that fund which will receive state funds, the proceeds from the sale of revenue bonds of the authority or other moneys earmarked for that fund for the purpose of providing loans or grants to finance construction or acquisition of infrastructure projects as defined in this section.
- (18) "Loan or grant" means moneys to be made available to governmental agencies by the authority for the purpose of defraying all or any part of the total costs incidental to construction or acquisition of any infrastructure project.
- (19) "Market interest rate" means the interest rate determined by the authority under existing market conditions at the time the authority shall provide financial assistance to a governmental agency.
- (20) "Obligation of a governmental agency" means a revenue bond, bond anticipation note, revenue anticipation note, lease, or other obligation issued by a governmental agency under KRS 58.010 et seq. or other applicable statutes.
- (21) "Person" means any individual, firm, partnership, association, corporation, or governmental agency.
- (22) "Pollution" means the placing of any noxious or deleterious substances ("pollutants"), including sewage and industrial wastes, in any waters of the state or affecting the properties of any waters of the state in a manner which renders the waters harmful or inimical to the public health or to animal or aquatic life, or to the use, present or future, of these waters for domestic water supply, industrial or agricultural purposes, or recreational purposes.
- (23) "Prioritization schedules" means the list of wastewater treatment works, distribution facilities and water resources projects which the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet has evaluated and determined to be of priority for receiving financial assistance from the federally assisted wastewater revolving fund and the federally assisted drinking water revolving fund, or the list of infrastructure projects which the authority has evaluated and determined to be of priority for receiving financial aid from the infrastructure revolving fund. The evaluation by the authority of infrastructure projects for water systems shall be undertaken with input from the appropriate area development district. The evaluation by the authority of infrastructure for broadband deployment projects shall be undertaken with consideration given to input from area development districts, telecommunications businesses, information services, technology industries, governmental entities, and Kentucky-based nonprofit organizations, including ConnectKentucky.
- (24) "Solid waste project" means construction, renovation, or acquisition of a solid waste facility which shall be instituted and owned by a governmental agency.
- (25) "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis.
- (26) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste facility if solid waste generated by a recovered material processing facility is managed in accordance with KRS Chapter 224 and administrative regulations adopted by the cabinet.

- (27) "Revenue bonds" means special obligation bonds issued by the authority as provided by the provisions of this chapter, which are not direct or general obligations of the state, and which are payable only from a pledge of, and lien upon, authority revenues as provided in the resolution authorizing the issuance of the bonds, and shall include revenue bond anticipation notes.
- (28) "Service charge" means any monthly, quarterly, semiannual, or annual charge to be imposed by a governmental agency, or by the authority, for any infrastructure project financed by the authority, which service charge arises by reason of the existence of, and requirements of, any assistance agreement.
- (29) "Sewage" means any of the waste products or excrements, or other discharges from the bodies of human beings or animals, which pollute the waters of the state.
- (30) "Solid waste" means "solid waste" as defined by KRS 224.01-010(31)(a).
- (31) "Solid waste facility" means any facility for collection, handling, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether the facility is associated with facilities generating the waste or otherwise, but does not include a container located on property where the waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility.
- (32) "Solid waste revolving fund" means that fund which shall receive state funds, the proceeds from the sale of revenue bonds of the authority, or other moneys earmarked for the purpose of providing loans or grants to finance solid waste projects defined in this section.
- (33) "State" means the Commonwealth of Kentucky.
- (34) "System" means the system owned and operated by a governmental agency with respect to solid waste projects, treatment works, or infrastructure projects financed as provided by the assistance agreement between the governmental agency and the authority.
- (35) "Treatment works" or "wastewater treatment works" means all or any part of any facilities, devices, and systems used and useful in the storage, treatment, recycling, and reclamation of wastewater or the abatement of pollution, including facilities for the treatment, neutralization, disposal of, stabilization, collecting, segregating, or holding of wastewater, including without limiting the generality of the foregoing, intercepting sewers, outfall sewers, pumping power stations, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof, and any wastewater treatment works, including site acquisition of the land that will be an integral part of the wastewater treatment process, or is used for ultimate disposal of residues resulting from wastewater treatment, together with any other facilities which are deemed to be treatment works in accordance with the federal act.
- (36) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to a predetermined formula or index or in accordance with the standards set forth in KRS 224A.120.
- (37) "Wastewater" means any water or liquid substance containing sewage, industrial waste, or other pollutants or contaminants derived from the prior use of these waters.
- (38) "Water resources" means all waters of the state occurring on the surface, in natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface aquifers, which are available, or which may be made available to agricultural, industrial, commercial, recreational, public, and domestic users.
- (39) "Water resources project" means any structural or nonstructural study, plan, design, construction, development, improvement, or any other activity including programs for management, intended to conserve and develop the water resources of the state and shall include all aspects of water supply, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures.
- (40) "Waters of the state" means all streams, lakes, watercourses, waterways, ponds, marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural, surface, or underground waters.
- (41) "Utility tax" means the tax which may be imposed by the authority on every purchase of water or sewer service in the Commonwealth of Kentucky.

(42) "Broadband deployment project" means the construction, provision, development, operation, maintenance, leasing, or improvement of broadband infrastructure, broadband services, or technologies that constitute a part of, or are related to, broadband infrastructure or broadband services, to provide for broadband service in unserved areas of the Commonwealth.

(43) "Unserved area" means any place where broadband service is not available.

➔Section 386. KRS 224A.030 is amended to read as follows:

- (1) There is hereby created the Kentucky Infrastructure Authority, which authority shall be a body corporate and politic, constituting a public corporation and a governmental agency and instrumentality of the state. The affairs of the authority shall be managed and carried out by a board consisting of eleven (11) members. The secretaries of the Economic Development, Finance and Administration, and **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinets; the executive director of the Public Service Commission; and the commissioner of the Governor's Office for Local Development shall serve as ex officio members of the authority. The secretaries, the executive director, and the commissioner may designate alternates. The Governor shall additionally appoint six (6) at-large members. One (1) member shall be selected from a list of three (3) nominees submitted by the Kentucky Association of Counties, one (1) member selected from a list of three (3) nominees submitted by the Kentucky League of Cities, one (1) member selected from a list of three (3) nominees submitted by the Kentucky Rural Water Association, one (1) member representing for-profit private water companies, one (1) member selected from a list of three (3) nominees submitted by the Kentucky section of the American Water Works Association, and one (1) member selected from a list of three (3) nominees submitted by the Kentucky Municipal Utilities Association. As the terms of the at-large members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed. The members shall constitute the Kentucky Infrastructure Authority, with power in that name to contract and be contracted with, sue and be sued, have and use a corporate seal, and exercise, in addition to the powers and functions specifically stated in this chapter, all of the usual powers of private corporations to the extent that the powers are not inconsistent with specifically enumerated powers of the authority. In the carrying out of its purposes and the exercise by it of the powers conferred by this chapter, the authority is deemed and declared to be performing essential governmental functions and public purposes of the state.
- (2) The members of the authority shall receive no compensation for their services in their official capacity but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as authority members.
- (3) Six (6) members of the authority shall constitute a quorum for the transaction of business, and in the absence of a quorum, one (1) or more members may adjourn from time to time until a quorum is convened. The members of the authority shall choose from their ranks a chair and a vice chair. The authority shall elect a secretary and a treasurer who shall not be members of the authority, each of whom shall serve at the pleasure of the authority and shall receive compensation as may be determined by the authority.
- (4)
 - (a) The authority shall, for administrative purposes, be attached to the Governor's Office for Local Development, which shall provide any office space required by the authority.
 - (b) The secretary of the authority shall at all times maintain therein complete records of all of the authority's actions and proceedings which shall constitute public records open to inspection at all reasonable times.

➔Section 387. KRS 224A.111 is amended to read as follows:

- (1) The federally-assisted wastewater revolving fund shall be established in the State Treasury and shall be administered by the authority under an agreement with the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet to assure compliance with the federal act.
- (2) The fund shall be a dedicated fund and all moneys in the fund shall be dedicated solely to securing the payment of the principal of, interest on, and premium, if any, of revenue bonds issued by the authority under subsection (5) of this section which are to be secured solely by loan payments made by governmental agencies that have been deposited in the fund, making transfers to the federally-assisted water supply revolving fund, and providing financial assistance to government agencies for the construction of publicly owned treatment works as defined in Section 212 of the federal act and for the implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act.

- (3) The authority may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants for the revolving fund in accordance with payment schedules established with the administrator.
- (4) All payments from the administrator pursuant to subsection (3) of this section shall be deposited in the dedicated revolving fund.
- (5) The authority may issue its revenue bonds or seek appropriations for deposit into the revolving fund, including the amounts required to match the capitalization grants from the administrator. An amount not exceeding the amount permitted by the federal act may be used for the reasonable costs of administering the fund, for reviewing and regulating project construction and for other reasonable costs of complying with the federal act.
- (6) The financial assistance which may be provided to governmental agencies by the revolving fund shall be limited to:
 - (a) Making loans, on the condition that the loans are made at or below market interest rates, including interest free loans; that annual principal and interest payments will commence no later than when project construction is completed and all loans will be fully amortized not later than twenty (20) years after project construction is completed; that the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and that the fund will be credited with all payments of principal and interest on all loans;
 - (b) Guaranteeing, or purchasing insurance for obligations of the fund where the action would improve credit market access or reduce interest rates;
 - (c) Providing moneys with which to carry out the requirements of assistance agreements; and
 - (d) Providing a source of revenue or security for the payment of principal and interest on bonds or notes issued by the authority or agencies of the state if the proceeds of the sale of the bonds will be deposited in the fund.
- (7) The revolving fund shall be established, maintained and credited with repayments and the fund balance shall be available in perpetuity solely for its stated purposes.
- (8) The authority shall obligate all payments from the administrator of the United States Environmental Protection Agency as well as the required state match, within one (1) year after the receipt of the payments.
- (9) Financial assistance may be provided from the fund only for those infrastructure projects which the Finance and Administration Cabinet has approved from the prioritization schedule prepared by the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet.
- (10) The authority may make and condition loans from the fund as required by state or federal law.
- (11) The authority shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for payments and disbursements received and made by the revolving fund and for fund balances at the beginning and end of the accounting period.
- (12) The authority or the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet may make or prepare any necessary or required plan or report.
- (13) The authority or the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet or the loan recipient shall make available to the administrator of the United States Environmental Protection Agency records which the administrator reasonably requires to review in order to determine compliance with any applicable provision of law.
- (14) The authority may enter into any necessary or required agreement and give or make any necessary or required assurance or certification with any person to receive payments or grants or to make or provide any financial assistance.
- (15) The authority may enter into any necessary or required agreement with federal or state agencies or persons to carry out the provisions of this section.
- (16) If a loan is made from the federally-assisted wastewater revolving fund which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly-owned treatment works, the state shall ensure that if the recipient of the loan receives a grant under section 201(g) of

the federal act for construction of such treatment works and an allowance under section 201(1)(l) of the federal act for nonfederal funds expended for the planning and preparation, the recipient shall promptly repay the loan to the extent of the allowance.

- (17) Financial assistance may be provided from the federally assisted wastewater revolving fund only with respect to a project which is consistent with plans, if any, developed under Sections 205(j), 208, 303(e), 319, and 320 of the federal act, as amended.
- (18) The authority shall require as a condition of making a loan or providing other assistance, as described in KRS 224A.100(6), from the fund that the recipient of the assistance shall maintain project accounts in accordance with generally-accepted governmental accounting standards.
- (19) Assistance may be provided from the fund, other than under subsection (6)(a) of this section, to a governmental agency with respect to the nonfederal share of the costs of a treatment works project for which the governmental agency is receiving assistance from the administrator of the United States Environmental Protection Agency under any other authority only if the assistance, as determined by the Finance and Administration Cabinet, is necessary to allow the project to proceed.

➔Section 388. KRS 224A.1115 is amended to read as follows:

- (1) The federally-assisted water supply revolving fund shall be established in the State Treasury and shall be administered by the authority under an agreement with the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet to assure compliance with the federal act.
- (2) The fund shall be a dedicated fund and all moneys in the fund shall be dedicated solely to securing the payment of the principal of, interest on, and premium, if any, of revenue bonds issued by the authority under subsection (5) of this section which are to be secured solely by loan payments made by governmental agencies that have been deposited in the fund, making transfers to the federally-assisted water supply revolving fund, and providing financial assistance to government agencies for the construction of publicly-owned water supply projects.
- (3) The authority may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants for the revolving fund in accordance with payment schedules established with the administrator of the United States Environmental Protection Agency.
- (4) All payments from the administrator of the United States Environmental Protection Agency pursuant to subsection (3) of this section shall be deposited in the dedicated revolving fund.
- (5) The authority may issue its revenue bonds or seek appropriations for deposit into the revolving fund, including the amounts required to match the capitalization grants from the administrator of the United States Environmental Protection Agency. An amount not exceeding the amount permitted by the federal act may be used for the reasonable costs of administering the fund, for reviewing and regulating project construction and for other reasonable costs of complying with the federal act.
- (6) The authority shall make any loan from the revolving fund subject to those conditions established by state or federal law.
- (7) The revolving fund shall be established, maintained, and credited with repayments and the fund balance shall be available in perpetuity solely for its stated purposes.
- (8) Financial assistance may be provided from the fund only for those infrastructure projects which the Finance and Administration Cabinet has approved from the prioritization schedule prepared by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet.
- (9) The authority shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for payments and disbursements received and made by the revolving fund and for fund balances at the beginning and end of the accounting period.
- (10) The authority or the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet may make or prepare any necessary or required plan or report.
- (11) The authority or the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet or the loan recipient shall make available to the administrator of the United States Environmental Protection Agency records which the administrator reasonably requires to review in order to determine compliance with any applicable provision of law.

- (12) The authority may enter into any necessary or required agreement and give or make any necessary or required assurance or certification with any person to receive payments or grants or to make or provide any financial assistance.
- (13) The authority may enter into any necessary or required agreement with federal or state agencies or persons to carry out the provisions of this section.
- (14) If the loan is made from the federally-assisted water supply revolving fund which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly-owned water supply projects, the state shall ensure that if the recipient of the loan receives a grant under the federal act for construction of those water supply projects and an allowance under the federal act for nonfederal funds expended for the planning and preparation, the recipient shall promptly repay the loan to the extent of the allowance.
- (15) Financial assistance may be provided from the federally-assisted water supply revolving fund only with respect to a project which is consistent with plans, if any, developed under the federal act, as amended.
- (16) The authority shall require as a condition of making a loan or providing other assistance, as described in KRS 224A.100(6), from the fund that the recipient of the assistance shall maintain project accounts in accordance with generally-accepted governmental accounting standards.
- (17) Assistance may be provided from the fund to a governmental agency with respect to the nonfederal share of the costs of a water supply system project for which the governmental agency is receiving assistance from the administrator of the United States Environmental Protection Agency under any other authority only if the assistance is necessary to allow the project to proceed, as determined by the Finance and Administration Cabinet.

➔Section 389. KRS 227.200 is amended to read as follows:

As used in KRS 227.200 to 227.400, unless the context otherwise requires:

- (1) "~~Commissioner~~~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of housing, buildings and construction;
- (2) "~~Department~~~~{Office}~~" means the *Department*~~{Office}~~ of Housing, Buildings and Construction;
- (3) "Fire loss" means loss of or damage to property, loss of life or personal injury, by fire, lightning, or explosion;
- (4) "Owner" means any person who owns, occupies, or has charge of any property;
- (5) "Property" means property of all types, both real and personal, movable and immovable;
- (6) "Rule" or "regulation" means a general order of the *commissioner*~~{executive director}~~, designed for the prevention of fire loss, which affects or may affect property rights of a designated class of owners or for the prevention of fire loss by certain indicated hazards;
- (7) "Order" or "special order" means an order of the state fire marshal, designed for the prevention of fire loss, that affects or may affect the property rights of a particular owner or designated property.

➔Section 390. KRS 227.205 is amended to read as follows:

The *Department*~~{Office}~~ of Housing, Buildings and Construction (hereinafter referred to as the *department*~~{office}~~ of housing) is hereby created within the ~~{Cabinet for Environmental and }Public Protection~~ *Cabinet*~~, Department of Public Protection~~. The *department*~~{office}~~ shall be headed by a *commissioner*~~{an executive director}~~ appointed by the ~~{secretary of the Environmental and Public Protection Cabinet with the approval of the }Governor~~ in accordance with KRS ~~12.040~~~~{12.050}~~, and who shall report to the secretary of the ~~{Cabinet for Environmental and }Public Protection~~ *Cabinet*. The office of the *commissioner*~~{executive director}~~ shall also include a deputy *commissioner*~~{director}~~ and an executive assistant to the *commissioner*~~{executive director}~~, who shall be the policy making assistants to the *commissioner*~~{executive director}~~ and shall be appointed pursuant to KRS 12.050. The *department*~~{office}~~ shall consist of the Division of Fire Prevention, the Division of Building Codes Enforcement, ~~{the Division of Administrative Services, }the Division of Plumbing, and the Division of Heating, Ventilation, and Air Conditioning (HVAC).~~

➔Section 391. KRS 227.210 is amended to read as follows:

Any power, duty or function, whether ministerial, discretionary or whatever character, vested in or imposed upon the state fire marshal, by any provision of KRS 227.200 to 227.410, 227.550 to 227.660, and 227.990 to 227.992 may be exercised, discharged, and performed by any deputy or assistant of the state fire ~~marshal~~^[marshal's office] acting in the *state* fire marshal's name and by his delegated authority.

➔Section 392. KRS 227.220 is amended to read as follows:

- (1) The state fire marshal shall enforce or aid in the enforcement of all laws, administrative regulations, and ordinances of the state and its political subdivisions relating to fire loss as defined in KRS 227.200:
 - (a) The prevention or reduction of loss by fire or by other hazard or risk insured by property or casualty insurance companies doing business in this state, except as to disability insurance and workers' compensation, and shall enforce any other regulations or methods adopted for the prevention of loss from such hazards or risks in order to promote the safety of persons or property;
 - (b) The manufacture, transportation, storage, sale, or use of combustibles, explosives, and hazardous materials or equipment;
 - (c) The design, construction, and maintenance of property which has a direct bearing on safety to life and property;
 - (d) The construction, installation, maintenance, or equipment of fire alarm systems, fire protection and extinguishing equipment, and fire escapes and other means of access to or exit from property; and
 - (e) Arson and related offenses.
- (2) The chief state building official shall enforce and administer all applicable provisions of the Kentucky Building Code, including all the provisions designed for the prevention of fire loss, and shall have all the powers and duties awarded by KRS Chapter 198B and the Kentucky Building Code.
- (3) The state fire marshal is authorized to:
 - (a) Investigate the cause, origin, and circumstances of fires and explosions for the purpose of detecting and suppressing arson and related offenses, or for the purpose of minimizing or preventing fire loss;
 - (b) Supervise and make periodic inspections of all property within the state, and assist cities having fire departments in making like periodic inspections of all property in cities, except occupied private dwellings;
 - (c) Issue and enforce reasonable emergency orders and orders in accordance with KRS 227.330 for the prevention of fire loss, and for the adoption, approval, and installation of safety measures, remodeling, and equipment as will minimize fire loss;
 - (d) Provide technical and engineering advice and assistance to state and local governmental agencies in relation to fire prevention or fire protection;
 - (e) Direct and assist owners of educational institutions, places of public assembly, institutional buildings, public buildings, factories, business buildings, or other places where persons congregate, in the instruction of fire prevention, and the holding of fire drills;
 - (f) Conduct fire prevention and educational campaigns;
 - (g) Conduct examinations into the cause, origin, or circumstances of fire losses;
 - (h) Hold administrative hearings in accordance with the KRS Chapter 13B, as may be required by law or deemed by the state fire marshal necessary or desirable as to any matter within the scope of this chapter. All administrative hearings shall be public, unless the state fire marshal, or an authorized designee, determines that a private hearing would be in the public interest, in which case, and only with the consent of all parties to the hearing, the hearing shall be private;
 - (i) Direct research in the field of fire protection and accept gifts and grants for these purposes; and
 - (j) Recommend curricula for advanced courses and seminars in fire science training in colleges and institutions of higher education.
- (4) ***The state fire marshal shall head the Division of Fire Prevention in the department.***

➔Section 393. KRS 227.230 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall appoint a state fire marshal, who shall appoint such deputy fire marshals, assistants, and employees as are necessary to exercise, discharge, or perform any power, duty or function vested in, imposed upon, or delegated to the state fire marshal by law or regulation. The state fire marshal, under the general direction of the **commissioner**~~{executive director}~~, shall enforce and administer the provisions of this chapter and any other duties assigned by law or regulation. The chief of each fire department and the sheriff of each county shall be deemed deputies when ordered by the state fire marshal to act as such for their respective jurisdictions. Other deputy fire marshals may be appointed from the members of the fire department as the state fire marshal deems necessary.

➔Section 394. KRS 227.300 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall promulgate reasonable rules and regulations based on good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as is practicable against fire loss. Such rules and regulations shall be known as the standards of safety. After promulgation of the Uniform State Building Code, no part of the standards of safety shall establish, in whole or in part, any building code other than the Uniform State Building Code, but the **commissioner**~~{executive director}~~ may supplement the Uniform State Building Code with fire safety regulations designed to operate in conjunction with the code.
- (2) In making such rules and regulations the **commissioner**~~{executive director}~~ shall establish minimum fire prevention and protection requirements, including but not limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of the following: structural requirements for the various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; maximum occupancy loads and other requirements for buildings of public assembly; flue and chimney construction; heating devices; boilers and pressure vessels; electrical wiring and equipment; air conditioning, ventilating and other duct systems; refrigeration systems; flammable liquids, oil and gas wells; garages, repair, and service shops; application of flammable finishes, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; dry cleaning and dyeing plants; flammable motion picture film; combustible fibers; airports and airport buildings; hazardous chemicals; rubbish; open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.
- (3) For the purpose of integrating the need for safety from hazards of fire with the other safety needs of infants or preschool children under institutional care, the **commissioner**~~{executive director}~~ shall allow persons who own, manage, or are employed by institutions which provide care or education for infants or preschool children to participate in drafting the standards of safety as they apply to such institutions. Such participation shall be by representation of professional associations relating to infant and preschool care, and by representation from other individuals licensed to provide infant and preschool care, on a committee chaired by the state fire marshal or his or her designate. Such participation shall occur prior to the publication of proposed regulations in the administrative register pursuant to KRS 13A.050 but shall not limit any individual's right to use those procedures set forth in KRS Chapter 13A concerning comment on or protest of proposed regulations. All professional associations relating to infant and preschool care shall be notified by the **commissioner**~~{executive director}~~ when the drafting of standards of safety relating to such institutions is commenced and all such professional associations shall be regularly notified of the time and place of any meetings conducted by authorized employees of the **department**~~{office}~~ for the purpose of drafting such standards.
- (4) The **commissioner**~~{executive director}~~ shall publish guidelines relating to the standards of safety as they apply to day care and preschool child care centers and nurseries which shall indicate the items inspectors from the **Division of Fire Protection**~~{office of the state fire marshal}~~ will be looking for when they conduct inspections pursuant to the standards of safety. Such guidelines shall be made available to persons who own, operate, or manage such centers or nurseries and shall be designed to enable said persons to anticipate and comply with the requirements of the standards of safety.
- (5) The **commissioner**~~{executive director}~~ shall issue supplemental regulations addressing the temporary change of use in buildings as authorized by KRS Chapter 198B. These regulations shall establish specific standards for such use and shall be designed to operate in conjunction with the Kentucky Building Code.
- (6) Any standards of safety or other regulations promulgated under this section shall be subject to the requirements of KRS 198B.030(9) and (10) and 198B.040(11).

➔Section 395. KRS 227.310 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall conduct a hearing prior to the issuance of rules and regulations promulgated pursuant to KRS 227.300. At such hearing interested parties shall be given an opportunity to be heard in person or by counsel. The **commissioner**~~{executive director}~~ shall cause a notice of such hearing to be published pursuant to KRS Chapter 424. No defect or inaccuracy in the notice or in its publication shall invalidate any such rules or regulations.

➔Section 396. KRS 227.320 is amended to read as follows:

The authorities of any county, city, or other political subdivision shall adopt and enforce the standards of safety promulgated by the **commissioner**~~{executive director}~~, and may enter upon private property to enforce required fire lane open space in parking lots containing space for ten (10) or more vehicles. Whenever the **commissioner**~~{executive director}~~, by rules and regulations prescribes a standard of safety from fire loss, such rules and regulations shall establish a minimum requirement concerning the matters covered thereby and shall be so construed in relation to any local rules and regulations.

➔Section 397. KRS 227.330 is amended to read as follows:

- (1) Whenever the state fire marshal or any deputy state fire marshal finds that any property is not safe as to fire loss, under the terms and conditions of this chapter and under the administrative regulations promulgated thereunder, or that the practices or methods of construction or operation, or processes or materials employed or used in connection therewith do not afford adequate protection from fire loss, under this chapter or under applicable administrative regulations, he shall order that additions, improvements, repairs, or changes be made and equipment be provided or action be taken that will reasonably render the property safe.
- (2) Orders and notices of the state fire marshal shall be effective only when in writing signed by him or by his authority.
- (3) Every order of the fire marshal shall state its effective date and shall concisely state:
 - (a) The grounds or alleged violations on which based;
 - (b) The provisions of this chapter or the administrative regulations pursuant to which action is so taken or proposed to be taken;
 - (c) The date by which the alleged violation shall be corrected or eliminated and the correction recommended therefor; and
 - (d) All other matters required by law.
- (4) Except as provided by KRS 227.340, an order or notice may be given by delivery to the person to be ordered or notified or his agent or by mailing it, postage prepaid, addressed to him at his principal place of business or residence as last of record in the **department**~~{fire marshal's office}~~.
- (5) Before any order issued under subsection (1) of this section is enforceable, notice and opportunity for a hearing shall be provided the owner or his agent in accordance with KRS Chapter 13B.
- (6) Whenever the state fire marshal or any deputy state fire marshal designated by him for that purpose finds that a violation or violations of the provisions of this chapter or any administrative regulations promulgated thereunder render any property especially susceptible to fire loss, and there is present such hazard to human life or limb that the public safety imperatively requires emergency action, a fire inspector or other state fire marshal employee may be authorized in writing by the state fire marshal to issue an emergency order pursuant to KRS 13B.125 that directs the property to be closed to the public or vacated by its occupants until the violation is corrected.
- (7) Notwithstanding the above upon receipt of notice of an emergency order issued under subsection (6) of this section, an owner or agent may seek a temporary restraining order prohibiting its enforcement in the Circuit Court within whose jurisdiction the property is located. The court shall review the emergency order and may prohibit its enforcement.
- (8) Appeals from any order issued or action taken under this section may be taken in the manner prescribed by KRS 227.335.
- (9) An order prepared by the **state** fire marshal's designee and approved in writing by the **state** fire marshal shall be considered the **state** fire marshal's order.

➔Section 398. KRS 227.331 is amended to read as follows:

- (1) Any person who willfully violates any administrative regulation, emergency order, or final order of the state fire marshal shall be subject to suspension or revocation of certificate of authority, occupancy, or other license or permit, or administrative fine not exceeding one thousand dollars (\$1,000) in lieu of suspension or revocation, for violation of the provision to which the administrative regulation or order relates, after notice and hearing in accordance with KRS Chapter 13B.
- (2) It shall be the duty of the state fire marshal, or upon the *commissioner's*~~executive director's~~ request, of the Attorney General, to bring an action to enforce any proper order made or action taken by the *state* fire marshal or on his or her authority, or for the recovery of the penalties provided in subsection (1) of this section, and to bring an action for a restraining order or for a temporary or permanent injunction, as the state fire marshal deems necessary for the prevention or correction of a condition constituting or threatening to constitute a violation of this chapter or administrative regulations promulgated thereunder. In any action for a restraining order or for a temporary or permanent injunction, allegations in a verified complaint or affidavit by the state fire marshal deputy or employee that the respondent is in violation of specified fire prevention and protection laws or administrative regulations and the violation or violations present such hazard to human life or limb that the public safety imperatively requires emergency action shall be sufficient under Rule 65 of the Kentucky Rules of Civil Procedure to show that the applicant's rights are being or will be violated and that he or she will suffer immediate and irreparable injury, loss, or damage before notice can be served and a hearing had thereon or pending a final judgment in the action.
- (3) All actions for enforcement, recovery of administrative fines, and injunctive relief for violations of this chapter shall be brought in the name of the Commonwealth of Kentucky by the state fire marshal, or upon the *commissioner's*~~executive director's~~ request by the Attorney General, in the Circuit Court within which the property involved is located.
- (4) If the *state* fire marshal has reason to believe that any person has violated any provision of this chapter, for which criminal penalties are provided and in his or her opinion prosecution would be in order, he or she shall give the information relative thereto to the appropriate county attorney, Commonwealth's attorney, or to the Attorney General. The county attorney, Commonwealth's attorney, or Attorney General shall promptly institute any action or proceedings against the person as in his or her opinion the information may require or justify.

➔Section 399. KRS 227.332 is amended to read as follows:

- (1) The *state* fire marshal shall give written notice of a hearing as required by KRS Chapter 13B. In addition to all parties to the hearing, the *state* fire marshal shall give this notice to all persons whose pecuniary interests, to the *state* fire marshal's knowledge or belief, are to be directly and immediately affected by the hearing.
- (2) If any hearing is to be held for consideration of administrative regulations of the *commissioner*~~executive director~~, or of other matters which, under subsection (1) of this section, would otherwise require separate notice to more than thirty (30) persons, in lieu of other notice the *commissioner*~~executive director~~ may give notice of the hearing by publication pursuant to KRS Chapter 424; but the *commissioner*~~executive director~~ shall mail the notice to all persons who had requested the same in writing in advance and have paid to the *commissioner*~~executive director~~ the reasonable amount fixed by him or her to cover the cost thereof.
- (3) All notices, other than notices provided for in subsection (2) of this section, shall be given as provided in KRS Chapter 13B.

➔Section 400. KRS 227.336 is amended to read as follows:

- (1) Whenever the state fire marshal or any deputy state fire marshal appointed or employed by him or her makes any finding set forth in subsection (1) of KRS 227.330, or finds any property in violation of any provision of KRS 227.200 to 227.410 or any regulations adopted thereunder, in lieu of the order required in KRS 227.330(1), he or she shall notify the owner or his or her agent in writing of such specific finding and violation and instruct him or her to correct the violation within a period of time not to exceed sixty (60) days. Should the owner fail to make the required corrections within the specified time, the state fire marshal may proceed to take any other action authorized in this chapter.
- (2) If the state fire marshal or a deputy state fire marshal is required to make additional inspections, beyond the initial inspection and one (1) follow-up inspection, to determine if the required corrections referred to in subsection (1) of this section have been made, the state fire marshal or the deputy state fire marshal shall assess

a fee against the property owner to recover the cost of each additional inspection according to the following schedule:

Third inspection fee.....	\$100.00
Fourth inspection fee.....	\$200.00
Fifth and subsequent inspection fee.....	\$500.00

- (3) Any fee collected under the provisions of this section by the state fire marshal shall be payable to the State Treasury and credited to the **Division of Fire Prevention**~~[Office of the State Fire Marshal]~~ for the operation of the general inspection program. Any fee collected under the provisions of this section by a deputy state fire marshal shall be payable to the fire department conducting the inspection.
- (4) If during a follow-up inspection or any subsequent inspection for the same violation the state fire marshal or a deputy state fire marshal finds an additional violation not found during the initial inspection, such additional violation shall be treated as an initial violation which the property owner shall have the opportunity to correct under subsection (1) of this section prior to the assessment of a fee under subsection (2) of this section.

➔Section 401. KRS 227.390 is amended to read as follows:

If any owner fails to comply with an order issued pursuant to KRS 227.380 or with an order as modified on appeal to the **commissioner**~~[executive director]~~, the officer may cause the property to be repaired, or removed if repair is not feasible, and all fire hazard conditions remedied, at the expense of the owner. Such expense may be enforced against any property of such owners and the officer and those employed to do the work or who furnish materials or equipment therefor shall have a lien for such expense on the real estate or property involved.

➔Section 402. KRS 227.410 is amended to read as follows:

- (1) As used in this section:
 - (a) "Gas-fired heating device" means a gas burning appliance of either a gravity or mechanical circulation type, designed for the heating of air or of water in an enclosed structure;
 - (b) "Gas-fired room heating device of the unventable type" means a self-contained, free standing, air heating, gas-fired appliance, designed as a space heater for an enclosed structure; and
 - (c) "Enclosed structure" includes a room used for public assembly, educational, instructional, mercantile, office, or residential purposes (including manufactured homes, mobile homes, travel trailers, and houseboats).
- (2) No person, firm, or corporation shall sell at retail or wholesale, or offer or expose for sale at retail or wholesale any gas-fired room heating device of the unventable type, or other type which has not been approved as provided in KRS 234.175, except unvented heaters that are built and sold solely for the curing of tobacco, which if sold or used by any person for any other purpose shall subject him or her to the penalty set forth in KRS 227.991.
- (3) No person, firm, or corporation shall install in any room or enclosed structure any gas-fired room heating device of the unventable type or other type which has not been approved as provided in KRS 234.175.
- (4) No person, firm, or corporation may install any gas-fired heating device of the ventable type for use in any room or enclosed structure unless said device is vented in accordance with the provisions of the standards of safety of the **Department**~~[Office]~~ of Housing, Buildings and Construction.
- (5) No person, firm, or corporation who may own a gas-fired heating device of the unventable type or a gas-fired heating device of the ventable type, which has not been approved as provided in KRS 234.175, or which does not conform to the provisions of the standards of safety of the **department**~~[office]~~ (all of which heating devices are referred to as "proscribed heaters" in this subsection and subsection (6) of this section), or who may occupy an enclosed structure in which such a proscribed heater is installed, shall continue to use or operate said proscribed heater after receipt of a written order described in subsection (6) of this section, and before the conditions contained in said order are met.
- (6) Cities of the first or second class may under ordinance duly enacted appoint inspectors or officers who have power to issue written orders directing owners of heaters or occupants of structures in which heaters are installed, to discontinue the use or operation of a proscribed heater and to specify conditions which must be met before said proscribed heater may again be used or operated. Said order may be issued if said authorized

person has actual knowledge of the existence of a proscribed heater, and, in the opinion of said authorized person, the continued use or operation of said proscribed heater would constitute a danger to life or health; provided however, no person, agency, firm, or corporation (other than the owner, user, seller, or installer of a proscribed heater) shall be liable for civil damages for his or her or its failure to recognize a proscribed heater, for failure to issue the order described in this subsection, for complying with said order, for assisting with the compliance therewith, or for allowing the continued use or operation of a proscribed heater prior to receipt of said order.

- (7) This section shall not apply to liquefied petroleum gas heaters subject to the jurisdiction of the **department**~~{office}~~ under KRS Chapter 234, except those liquefied petroleum gas heaters sold or installed for residential usage.

➔Section 403. KRS 227.450 is amended to read as follows:

As used in KRS 227.450 to 227.500 unless the context otherwise requires:

- (1) "Electrical contractor" means any licensed individual, partnership, or corporation that is licensed to engage in, offers to engage in, or advertises or holds itself out to be qualified to engage in designing, planning, superintending, contracting of, or assuming responsibility for the installation, alteration, or repair of any electrical wiring used for the purpose of furnishing heat, light, or power, and employs electrical workers to engage in this practice. If the electrical contractor is not a master electrician, the electrical contractor shall employ at least one (1) full-time master electrician;
- (2) "Electrician" means any person licensed by the **department**~~{office}~~ who is employed by an electrical contractor and is engaged in the construction, alteration, or repair of any electrical wiring used for the purpose of furnishing heat, light, or power;
- (3) "Electrical" pertains to the installation, alteration, or repair of wires and conduits for the purpose of transmitting electricity, and the installation of fixtures and equipment in connection therewith;
- (4) "Electrical inspector" means any person certified by the **commissioner**~~{executive director}~~ of housing, buildings and construction pursuant to KRS 227.489 who, for compensation, inspects the construction and installation of electrical conductors, fittings, devices, and fixtures for light, heat, or power service equipment to ascertain the compliance with the National Electrical Code incorporated in the Uniform State Building Code promulgated pursuant to KRS 198B.050 or the standards of safety of the Commonwealth of Kentucky; and
- (5) "**Department**~~{Office}~~" means the **Department**~~{Office}~~ of Housing, Buildings and Construction.

➔Section 404. KRS 227.480 is amended to read as follows:

- (1) A city, county, urban-county, charter county, or consolidated local government shall, according to the Uniform State Building Code as it pertains to the plan review and inspection responsibilities of local governments, require any person to obtain permits before commencing construction, alteration, or repairs of any electrical wiring. The city, county, urban-county, charter county, or consolidated local government shall require all inspections that are deemed necessary by the **department**~~{office}~~ for the safety of life and property. The **department**~~{office}~~ shall promulgate administrative regulations to describe the circumstances where inspections are required.
- (2) A city, county, urban-county, charter county, or consolidated local government or the state shall not issue a permit unless the applicant submits proof of being licensed as an electrical contractor under KRS Chapter 227A or of acting on behalf of a licensed electrical contractor. However, the provisions of this subsection shall not apply to a homeowner or farmer who does construction, alteration, or repairs of any electrical wiring on his or her own premises or any other person exempt from licensing under KRS 227A.030. This subsection shall not apply to electrical work performed by the Commonwealth of Kentucky, a city, county, urban-county, charter county, or consolidated local government, or any subdivision thereof.
- (3) A city, county, urban-county, charter county, or consolidated local government shall appoint and may fix the compensation of city, county, urban-county, charter county, or consolidated local government electrical inspectors, and may by ordinance fix reasonable fees and establish other requirements for the conduct of electrical inspections within its boundaries. All electrical inspectors must be certified under KRS 227.489.
- (4) Reasonable standards for the construction, alteration, and repair of any electrical wiring shall be those adopted in the Uniform State Building Code, as promulgated by the Board of Housing, Buildings and Construction, and

shall have as a minimum standard the requirements of the National Electric Code. These standards shall be used by the electrical inspector in making his inspections.

➔Section 405. KRS 227.487 is amended to read as follows:

Except where other rules are adopted by a city or county, the following reporting and fee requirements shall apply to electrical inspections of residential buildings and single-family dwellings:

- (1) The inspector shall complete a report for each inspection. One (1) copy of the report shall be given to the owner of the electrical installation or his representative at the time the inspection fees are paid. A second copy of the report shall be sent to the **Department**~~{Office}~~ of Housing, Buildings and Construction no later than one (1) week after the inspection is completed. The report shall include, but is not limited to, the following:
 - (a) The address of the dwelling inspected;
 - (b) The number of rooms, number of receptacles and number of switch boxes inspected;
 - (c) Number of code violations, if any;
 - (d) A description of each code violation, and recommended change to correct the violation;
 - (e) The date and time of day the inspection commenced;
 - (f) The time, in hours and minutes, required for the inspection;
 - (g) The number of miles and hours and minutes of travel time incurred by the inspector for that inspection, if mileage and travel charges are added to the inspection fee;
 - (h) The amount charged for the inspection, separated into an amount for mileage, if any, and the amount for travel time, if any, and the amount charged for the actual inspection.
- (2) The maximum inspection fee shall be an amount equal to the prevailing wage for a master electrician in the region in which the inspection is made, multiplied by the time required to conduct the inspection. This rate shall not be applied to travel time to and from the inspection.
- (3) An inspector may charge, in addition to the inspection fee, an amount for necessary travel to and from the inspection site. The mileage rate charged shall not exceed the amount per mile allowed to state employees, and the inspector shall charge no more than ten dollars (\$10) per hour for travel time. If two (2) or more inspections are made during one (1) trip, then the cost of travel shall be divided between the inspections made. In no case shall an inspector charge more than once for the same trip, or charge for mileage or time not actually expended.
- (4) Each inspector shall furnish bond of five thousand dollars (\$5,000) with surety satisfactory to the **Department**~~{Office}~~ of Housing, Buildings and Construction.
- (5) The **Department**~~{Office}~~ of Housing, Buildings and Construction shall design reporting forms which meet the requirements of subsection (1) of this section, and provide these forms to electrical inspectors. The **department**~~{office}~~ shall adopt regulations to administer the requirements of this section.
- (6) Nothing in this section is intended to limit the right of cities or counties to set fees or adopt rules for electrical inspections which are different from those specified in subsections (1), (2), (3) or (4) of this section.

➔Section 406. KRS 227.489 is amended to read as follows:

The **commissioner**~~{executive director}~~ of housing, buildings and construction shall require electrical inspectors to be certified. Examinations shall be based on the National Electrical Code incorporated in the Uniform State Building Code and the standards of safety prescribed by the **department**~~{office}~~. Electrical inspectors who have been engaged in the inspection of electrical light and power wiring installations, based on the requirements of the National Electrical Code, for a period of three (3) years, may be certified on the basis of knowledge of this subject and experience. No certificate shall be denied, suspended, or revoked unless the applicant or certificate holder is afforded the opportunity for a hearing in accordance with KRS Chapter 13B.

➔Section 407. KRS 227.491 is amended to read as follows:

- (1) An electrical inspector who certifies an electrical installation shall furnish and attach an approval sticker, bearing his or her signature and certification number in a conspicuous place on the main service entrance equipment. He or she shall also provide the owner of the electrical installation or his or her authorized agent with a certificate of approval if the same is requested. A complete record of each inspection shall be kept by

the inspector and these records shall be made available to the **Department**~~{Office}~~ of Housing, Buildings and Construction upon its request.

- (2) No electrical inspector shall:
- (a) Attempt to supplant, overrule, or otherwise invalidate the judgment of another electrical inspector whose services for a particular building, structure, or other project have been solicited by an owner, contractor, municipality, or other person without first obtaining express written consent from the designated inspector's office supervising the original inspector;
 - (b) Certify unlicensed or unlawful electrical installations;
 - (c) Certify or inspect an electrical installation in a manufactured home or mobile home where the certified installer seal is not present pursuant to KRS 227.570; or
 - (d) Certify or inspect an electrical installation in a previously owned manufactured home or a previously owned mobile home when a Class B1 seal is not present as required by KRS 227.605.
- (3) Failure of an electrical inspector to observe subsection (2) of this section shall subject that inspector to review by the **commissioner**~~{executive director}~~ of housing, buildings and construction with possible suspension of certification for a period not to exceed one (1) year from the date of the **commissioner's**~~{executive director's}~~ ruling.

➔Section 408. KRS 227.492 is amended to read as follows:

It shall be the duty of the **commissioner**~~{executive director}~~ of housing, buildings and construction to investigate alleged misconduct of any electrical inspector certified under KRS 227.489 when, in the opinion of the **commissioner**~~{executive director}~~, there is sufficient evidence to suggest that such misconduct exists. Any party may seek redress from the **commissioner**~~{executive director}~~ when alleged misconduct of an electrical inspector is deemed to have worked an undue hardship on the party.

➔Section 409. KRS 227.495 is amended to read as follows:

- (1) Electrical inspectors shall have the authority to take immediate action to prevent further electrical work at any inspection site where, in the judgment of the electrical inspector, imminent danger to life or property exists. Actions the electrical inspector may take to address this danger are the following:
- (a) Stop-work order regarding any electrical work at the inspection site; or
 - (b) Recommendations of fines or other penalties as described in KRS 227.500.
- (2) The findings of the electrical inspector under subsection (1) of this section shall be presumed to be correct until the city, county, urban-county, charter county, or consolidated local government, the **department**~~{office}~~, or the party affected by the findings demonstrates that it is more likely than not that the electrical inspector was incorrect in his or her findings.
- (3) The actions of an electrical inspector under this section are subject to misconduct investigation by the **commissioner**~~{executive director}~~ under KRS 227.492, and the inspector is subject to any appropriate criminal or civil penalty due to misconduct or violation of any provision of KRS 227.200 to 227.400 or 227.450 to 227.500.

➔Section 410. KRS 227.530 is amended to read as follows:

- (1) There is hereby created an Electrical Advisory Committee which shall be attached to the **Department**~~{Office}~~ of Housing, Buildings and Construction for administrative purposes. The committee shall be constituted as follows:
- (a) Two (2) members chosen from public utility companies;
 - (b) Two (2) members who are electricians;
 - (c) Two (2) members who are certified electrical inspectors, one (1) of whom shall be employed by a governmental entity and the other who shall be an independent contractor engaged in the business of inspecting electrical installations;
 - (d) Two (2) members who are licensed professional electrical engineers;

- (e) Two (2) members who are engaged in the business of electrical contracting; and
 - (f) One (1) member who is engaged in the business of electrical contracting and who employs no more than five (5) full-time employees when appointed.
- (2) Committee members shall be appointed by the Governor for four (4) year terms. No committee member shall be appointed for more than one (1) successive term.
 - (3) The committee shall meet at least quarterly or upon request of the *department*~~{office}~~ for the purpose of considering matters relating to electrical installations and electrical inspections. The committee shall have the opportunity to review and comment on relevant administrative regulations that are subject to the requirements of KRS 198B.030(9) and (10) and 198B.040(11) and shall make recommendations to and otherwise advise the *department*~~{office}~~ on these matters.
 - (4) All committee members shall be compensated for expenses incurred in the conduct of Commonwealth business.

➔Section 411. KRS 227.550 is amended to read as follows:

As used in this section to KRS 227.660, 227.990, and 227.992, unless the context requires a different definition:

- (1) "Board" means the Manufactured Home Certification and Licensure Board.
- (2) "Seal" means the United States Department of Housing and Urban Development seal for manufactured homes.
- (3) "Class B1 Seal" and "Class B2 Seal" mean seals issued pursuant to subsection (1) of KRS 227.600.
- (4) "Retailer" means any person, firm, or corporation, who sells or offers for sale two (2) or more manufactured homes, mobile homes, or recreational vehicles in any consecutive twelve (12) month period. The term "retailer" shall not include:
 - (a) A manufacturer, as defined in this section;
 - (b) Any bank, trust company, or lending institution that is subject to state or federal regulation, with regard to the disposition of its own repossessed manufactured housing; or
 - (c) A licensed real estate agent who acts as a negotiator between an owner and a prospective purchaser and does not acquire ownership or possession of manufactured homes for resale purposes.
- (5) "Established place of business" means a fixed and permanent place of business in this state, including an office building and hard surface lot of suitable character and adequate facilities and qualified personnel, for the purpose of performing the functional business and duties of a retailer, which shall include the books, records, files, and equipment necessary to properly conduct such business, or a building having sufficient space therein in which the functional duties of a retailer may be performed. The place of business shall not consist of a residence, tent, temporary stand, or open lot. It shall display a suitable sign identifying the retailer and his business.
- (6) "Federal act" means the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. secs. 5401 et seq., as amended, and rules and regulations issued thereunder.
- (7) "Manufactured home" means a single-family residential dwelling constructed in accordance with the federal act, manufactured after June 15, 1976, and designed to be used as a single-family residential dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The manufactured home may also be used as a place of business, profession, or trade by the owner, the lessee, or the assigns of the owner or lessee and may comprise an integral unit or condominium structure. Buildings the construction of which is not preempted by the federal act are subject to building code requirements of KRS Chapter 198B.
- (8) "Factory-built housing" means manufactured homes, mobile homes, or mobile office units.
- (9) "Manufacturer" means any person who manufactures manufactured homes and sells to Kentucky retailers.
- (10) "Mobile home" means a factory-built structure manufactured prior to June 15, 1976, which was not required to be constructed in accordance with the federal act.
- (11) "*Department*~~{Office}~~" means the *Department of Housing, Buildings, and Construction in the Public Protection Cabinet*~~{office of the state fire marshal}~~.

- (12) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle not requiring a special permit for movement on Kentucky highways. The basic entities are: travel trailer, camping trailer, truck camper, motor home, and park vehicle.
- (a) Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units, or fixtures) and bath and toilet rooms.
 - (b) Camping trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use.
 - (c) Truck campers: A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pickup truck.
 - (d) Park vehicle: A vehicle which:
 - 1. Is built on a single chassis mounted on wheels;
 - 2. Is primarily designed as temporary living quarters for seasonal or destination camping and which may be connected to utilities necessary for operation of installed fixtures and appliances;
 - 3. Has a gross trailer area not exceeding four hundred (400) square feet in the set-up mode;
 - 4. Has a gross trailer area not less than two hundred forty (240) square feet and is certified by the manufacturer as complying with ANSI A119.5, Park Vehicles.
 - (e) Motor home: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.

(13) "Secretary" means the Secretary of the Federal Department of Housing and Urban Development.

(14) "ANSI" means the American National Standards Institute.

➔Section 412. KRS 227.555 is amended to read as follows:

- (1) Every manufactured or mobile home as defined in KRS 227.550 shall have:
 - (a) At least one (1) working smoke detector located inside the home near the bedroom areas on each floor level; and
 - (b) At least two (2) operable means of egress, if the home was originally equipped with at least two (2) means.
- (2) The ~~Department~~~~Office~~ of Housing, Buildings and Construction, through the promulgation of administrative regulations in accordance with KRS Chapter 13A, shall design and cause to be placed:
 - (a) At each vehicle entrance to a manufactured home park or community as defined in KRS 219.320, a notice stating the requirements set out in subsection (1) of this section, the penalty for noncompliance set out in subsection (5) of this section, and any other information it deems necessary to effect the purposes of this section; and
 - (b) In each county clerk's office, a notice stating the requirements set out in subsection (1) of this section, the penalty for noncompliance set out in subsection (5) of this section, and any other information it deems necessary to effect the purposes of this section.
- (3) No public servant with the authority to issue a citation shall enter a manufactured or mobile home solely for the purpose of determining whether or not the manufactured or mobile home is in compliance with this section.
- (4) No ordinance contrary to subsections (1) and (3) of this section may be enacted by any unit of local government, and the provisions of subsections (1) and (3) shall supersede any local ordinance to the contrary.

The provisions of this subsection shall not apply to any city which has adopted or may in the future adopt the Uniform Residential Landlord and Tenant Act under KRS Chapter 383.

- (5) The owners of manufactured homes and mobile homes located within a manufactured home park or community which do not comply with subsection (1) of this section shall be responsible for the correction of any violation.
- (6) Any person who violates subsection (1) of this section shall be guilty of a violation.

➔Section 413. KRS 227.560 is amended to read as follows:

- (1) There is hereby created the Manufactured Home Certification and Licensure Board which shall issue certificates of acceptability to qualifying manufacturers and licenses to retailers and shall certify installers.
- (2) The board shall consist of the state fire marshal, the secretary of the Transportation Cabinet, the commissioner of the Department for Public Health, or their designees, and seven (7) citizens of the Commonwealth appointed by the Governor, which shall include three (3) manufactured or mobile home retailers, one (1) certified manufactured or mobile home installer, and three (3) members who shall have no interest in the industry to be regulated.
- (3) The state fire marshal, the secretary of the Transportation Cabinet, and the commissioner of the Department for Public Health shall be permanent members of the board, by virtue of their respective offices. The appointed members of the board shall hold office for terms of four (4) years with their terms expiring on September 1 of even-numbered years. Each member shall hold office until his or her successor is appointed and has qualified.
- (4) In the initial appointments to the board, the Governor shall designate three (3) members to serve for two (2) years and three (3) to serve for four (4) years. In the initial appointment of the certified manufactured or mobile home installer to the board, the Governor shall designate the member to serve for a term expiring September 1, 2004.
- (5) All members appointed from the manufactured housing industry shall be required to remain *licensed and certified*~~[licensees of the office]~~ during their term and are subject to removal for chronic absenteeism.
- (6) If a vacancy occurs in the office of one (1) of the members of the board, the position shall be filled by a person appointed by the Governor, and the person so appointed shall serve only to the end of the unexpired term.
- (7) The chairman of the board shall be elected by the board. In the event of the chairman's absence or disability, the members of the board shall elect a temporary chairman by a majority vote of those present at a meeting.
- (8) Each appointed member shall be entitled to fifty dollars (\$50) for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing, or other authorized business. Each member of the board shall also be entitled to reimbursement for travel and other necessary expenses incurred in performing official duties.
- (9) The chairman, or in his absence a temporary chairman selected by the members of the board present at the meeting, shall preside at all meetings of the board. The board shall have regular meetings at times specified by a majority vote of the board. The chairman may call special meetings at any time. He shall call a special meeting on written request by two (2) or more members of the board. A majority of the board shall constitute a quorum to transact business.
- (10) All staff assistance deemed necessary by the board to carry out the functions and duties assigned to it in KRS 227.550 to 227.660 shall be provided by the *department*~~[office]~~ and shall function under the supervision of the ~~[administrative]~~ head of the *department*~~[office]~~.
- (11) The provisions of KRS 198B.030(9) and (10) and 198B.040(11) shall not apply to the board.

➔Section 414. KRS 227.570 is amended to read as follows:

- (1) The *department*~~[office]~~ shall enforce such standards and requirements for the installation of plumbing, heating, and electrical systems in manufactured homes and mobile homes and for previously owned recreational vehicles as it determines are reasonably necessary in order to protect the health and safety of the occupants and the public. These standards and requirements shall be those adopted by the Manufactured Home Certification and Licensure Board.
- (2) The *department*~~[office]~~ shall enforce such standards and requirements for the body and frame design, construction, and installation of manufactured homes and mobile homes as it determines are reasonably necessary in order to protect the health and safety of the occupants and the public. These standards and

requirements shall be those adopted by the Manufactured Home Certification and Licensure Board. If any part of 1976 Ky. Acts ch. 136 conflicts with Title 6 of the Federal Housing and Community Development Act of 1974, the federal act shall take precedence.

- (3) All installations of manufactured homes and mobile homes shall be performed by an installer certified under the provisions of KRS 227.560 in accordance with the manufacturer's instructions, if available, or ANSI A225.1, Manufactured Home Installations.
- (4) A certified installer shall apply for a certified installer seal prior to installing a manufactured home or a mobile home. The board shall promulgate administrative regulations in accordance with KRS Chapter 13A. The administrative regulations shall provide for the fees, purchase and application of the seal, report procedures, and attachment of the certified installer seal.

➔Section 415. KRS 227.580 is amended to read as follows:

- (1) It is unlawful for any manufacturer to manufacture, import, or sell manufactured homes within this state unless such manufacturer has been issued a certificate of acceptability for such manufactured homes from the **board or its designee**~~{office}~~. This provision shall not, however, apply to manufactured homes manufactured in this state and designated for delivery to and sale in another state.
- (2) The **department**~~{office}~~ shall require that the manufacturer establish and submit to the **department**~~{office}~~ for approval systems for quality control for recreational vehicles prior to the issuance of a certificate of acceptability. Certificates of acceptability shall be numbered and a record shall be kept by the **department**~~{office}~~, by number, of the certificates issued to manufacturers.
- (3) No manufacturer to which a certificate of acceptability has been issued shall modify in any way its manufacturing specifications without prior written approval of the **department**~~{office}~~.

➔Section 416. KRS 227.590 is amended to read as follows:

- (1) The board shall make and the **department**~~{office}~~ shall enforce rules and regulations reasonably required to effectuate the provisions of KRS 227.550 to 227.660 and to carry out the **department's**~~{state fire marshal's office's}~~ responsibilities as a state administrative agency for the enforcement and administration of the federal act.
- (2) At least thirty (30) days before the adoption or promulgation of any change in or addition to the rules and regulations authorized in subsection (5) of this section the **department**~~{office}~~ shall mail to all manufacturers possessing valid certificates of acceptability and retailers possessing valid licenses a notice including a copy of the proposed changes and additions and the time and place that the board will consider any objections to the proposed changes and additions. After giving the notice required by this section, the board shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner.
- (3) Every rule or regulation or modification, amendment, or repeal of a rule or regulation adopted by the board shall state the date it shall take effect.
- (4) Notwithstanding the provisions of KRS 227.550 to 227.660, the board shall have the authority to promulgate rules and regulations exempting manufacturers and retailers from the provisions of KRS 227.550 to 227.660 when manufactured homes or mobile homes are brought into this state for exhibition only.
- (5) All rules, regulations, codes, fees, and charges adopted by the board pursuant to KRS 227.550 to 227.660 shall be prepared and filed in accordance with KRS Chapter 13A.
- (6) The board shall have the authority to promulgate rules and regulations to issue temporary licenses, not to exceed thirty (30) days, to out-of-state retailers for the purpose of participating in manufactured home shows in the Commonwealth of Kentucky.

➔Section 417. KRS 227.600 is amended to read as follows:

- (1) Any retailer who has acquired a previously owned manufactured home, mobile home, or recreational vehicle without a seal shall apply to the **department**~~{office}~~ for the appropriate seal by submitting an affidavit that the unit has been brought up to or meets reasonable standards established by the board for previously owned manufactured homes, mobile homes, or recreational vehicles. Those manufactured homes or mobile homes taken in trade must be reinspected and certified. A numbered Class B1 Seal shall be affixed by the retailer to

the unit prior to sale. A seal will not be required if such retailer submits an affidavit that the unit will not be resold for use as such by the public. A retailer shall not transport or install a manufactured or mobile home which is to be used for residential purposes which does not have a Class B1 Seal.

- (2) The owner of any manufactured home or mobile home which is not covered by the federal act and which was purchased in another state and not bearing a seal of approval shall purchase a seal from the *department*{office}. Application to purchase a seal of approval shall be made to the *department*{office or other person or agency authorized by the state fire marshal}.
- (3) The *department*{office} shall make available suitable forms for application for seals of approval for previously owned manufactured homes or mobile homes which are not covered by the federal act and for previously owned recreational vehicles.
- (4) The clerk of the county in which a manufactured home, mobile home, or previously owned recreational vehicle is sought to be registered after June 1, 1976, which was purchased out of Kentucky, shall require production of proof of purchase of a seal of approval as provided in subsection (2) of this section before registering or issuing a license for any manufactured home, mobile home, or previously owned recreational vehicle.

➔Section 418. KRS 227.605 is amended to read as follows:

- (1) No person shall transport into the Commonwealth of Kentucky any previously owned manufactured or mobile home for the purpose of resale or use as a dwelling in the Commonwealth of Kentucky unless the previously owned manufactured or mobile home has a B1 Seal attached to it prior to resale or use as a dwelling. The application and certification procedures for the attachment of the B1 Seal prior to the resale or occupancy of the manufactured or mobile home shall be set out by the *board*{office} through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. Nothing in this section shall require a person who owns a manufactured or mobile home in another state and who transports that manufactured or mobile home into the Commonwealth of Kentucky to use as that person's dwelling to obtain a Class B seal.
- (2) Except for manufactured or mobile homes installed within the Commonwealth of Kentucky before July 13, 2004, no person shall sell, lease, rent, or furnish for use as a dwelling in the Commonwealth of Kentucky any previously owned manufactured or mobile home that does not bear a B1 Seal and which is not installed in compliance with the manufacturer's instructions, if available, or ANSI 225.1, Manufactured Home Installations.

➔Section 419. KRS 227.610 is amended to read as follows:

The *board or its designee*{office} shall, ~~after approval by the board,~~ license retailers under the provisions of KRS 227.550 to 227.660. The ~~office may make the~~ issuance of a license **shall be** contingent upon the applicant's chief managing officer passing a test administered by the *department*{office}. Before issuing a license, the *department*{office} shall require proof of liability insurance which shall name the *department*{office} in the certificate of insurance, and the license shall be null and void if there is a lapse of coverage in insurance.

➔Section 420. KRS 227.620 is amended to read as follows:

- (1) No retailer shall engage in business as such in this state without a license therefor as provided in KRS 227.550 to 227.660.
- (2) Application for license shall be made to the board *or its designee* at such time, in such form and contain such information as the board shall require and shall be accompanied by the required fee. The board may require in such application, or otherwise, such information as it deems commensurate with the safeguarding of the public interest in the locality in which said applicant proposes to engage in business, all of which may be considered by the board in determining the fitness of said applicant to engage in business as set forth in KRS 227.550 to 227.660.
- (3) All licenses shall be granted or refused within thirty (30) days after application. The initial license for a retailer shall expire on the last day of the licensee's birth month in the following year. The board may reduce the license fee on a pro rata basis for initial licenses issued for less than twelve (12) months. Renewed licenses shall expire on the last day of the licensee's birth month of each year after the date of issuance of the renewed license.
- (4) The license fee for such calendar year or part thereof shall be established by the board, subject to the following maximums:

- (a) For manufacturers a "certificate of acceptability" shall be subject to a maximum of five hundred dollars (\$500).
 - (b) For retailers the maximum license fee shall be two hundred fifty dollars (\$250) for each established place of business.
 - (c) The fee for a "Class B Seal" for recreational vehicles shall be twenty-five dollars (\$25) per seal and the application form and seal shall be made available from the *department*~~{office}~~.
 - (d) The fee for a "Class B1 Seal" and "Class B2 Seal" for manufactured and mobile homes shall be established by the board subject to a maximum of twenty-five dollars (\$25) per seal.
 - (e) The *department*~~{office}~~ may establish a monitoring inspection fee in an amount established by the secretary. This monitoring inspection fee shall be an amount paid by each manufactured home manufacturer in this state for each manufactured home produced by the manufacturer in this state. The monitoring inspection fee shall be paid by the manufacturer to the secretary or the secretary's agent, who shall distribute the fees collected from all manufactured home manufacturers among the states approved and conditionally approved by the secretary based on the number of new manufactured homes whose first location after leaving the manufacturing plant is on the premises of a distributor, retailer, or purchaser in that state, and the extent of participation of the state in the joint team monitoring program established under the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended.
- (5) All revenues raised through the provisions of subsections (4)(a), (b), and (c), and funds paid to the state by the secretary under the provisions of subsection (4)(d) of this section shall be deposited in a trust and agency fund and shall be used solely for the purpose of carrying out the provisions of KRS 227.550 to 227.660 and other departmental responsibilities. No amount of such trust and agency fund shall lapse at the end of any fiscal year.
 - (6) The licenses of retailers shall specify the location of the established place of business and must be conspicuously displayed there. In case such location be changed, the retailer shall notify the *department*~~{office}~~ of any change of location, and the *department*~~{office}~~ shall endorse the change of location on the license without charge if it be within the same municipality. A change of location to another municipality or to a county which is not adjacent to the county where the business is located shall require a new license.
 - (7) Every retailer licensed in accordance with the provisions of this section shall make reports to the *department*~~{office}~~ at such intervals and showing such information as the *department*~~{office}~~ may require.
 - (8) Each manufacturer, distributor of manufactured homes or mobile homes, and retailer of manufactured or mobile homes shall establish and maintain such records, make such reports, and provide such information as the *department*~~{office}~~ or the secretary may reasonably require to be able to determine whether such manufacturer, distributor, or retailer has acted or is acting in compliance with KRS 227.550 to 227.660 or the federal act and shall, upon request of a person duly designated by the *department*~~{office}~~ or secretary, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer, distributor, or retailer has acted or is acting in compliance with KRS 227.550 to 227.660 or the federal act.

➔Section 421. KRS 227.625 is amended to read as follows:

- (1) Before any license will be issued or renewed, the applicant shall file or have on file with the *department*~~{office}~~ a liability insurance policy issued by an insurance carrier authorized to transact insurance business within the Commonwealth of Kentucky. The policy of insurance must be issued in the name of the applicant licensee.
- (2) The board shall by regulation establish the minimum amount of liability insurance required herein.
- (3) No insurance carrier issuing any policy filed with the *department*~~{office}~~ shall be relieved from liability under the policy until after the expiration of fifteen (15) days' notice to the *department*~~{office}~~ of an intention to cancel the policy, provided, however, that a prior cancellation may be allowed in cases where one (1) policy is substituted for another policy when the substituted policy is in force and effect prior to the expiration of fifteen (15) days' notice to the *department*~~{office}~~ of an intention to cancel the policy which is being substituted.

- (4) Upon cancellation of any policy of insurance required by this section, all operating rights granted by the license for which the said policy was filed, shall immediately cease and the ~~department~~~~office~~ shall have the authority to immediately require the cessation of all operations conducted under the authority of the said license and to require the surrender of all licenses, certificates, and seals previously issued hereunder.

➔Section 422. KRS 227.640 is amended to read as follows:

- (1) The board *or its designee* may deny the application for a license, certification, or certificate of acceptability within thirty (30) days after receipt thereof by written notice to the applicant, stating the grounds for such denial.
- (2) No license, certification, or certificate of acceptability shall be suspended or revoked by the board unless the licensee or certificate holder is afforded the opportunity for a hearing to be conducted in accordance with KRS Chapter 13B.
- (3) Any manufacturer, certified installer, or licensed retailer who violates or fails to comply with KRS 227.550 to 227.660 or any administrative regulations promulgated thereunder shall be notified in writing setting forth facts describing the alleged violation and instructed to correct the violation, if it is correctable, within twenty (20) days. Should the manufacturer, certified installer, or retailer fail to make the necessary corrections within the specified time or if the violation is not correctable, the board may, after notice and hearing in accordance with KRS Chapter 13B, suspend or revoke any certificate of acceptability, certification, or license if it finds that:
 - (a) The manufacturer, certified installer, or retailer has failed to pay the fees authorized by KRS 227.550 to 227.660; or that
 - (b) The manufacturer, certified installer, or retailer, either knowingly or without the exercise of due care to prevent the same, has violated any provision of KRS 227.550 to 227.660 or any administrative regulation or order lawfully made pursuant to and within the authority of KRS 227.550 to 227.660; or that
 - (c) The manufacturer has shipped or imported into this state a manufactured home or mobile home to any person other than to a duly licensed retailer.

The ~~board~~~~office~~ shall set out, through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, and shall provide for a dispute resolution process which may be used prior to a formal hearing under KRS Chapter 13B. The dispute resolution process shall be nonbinding on the licensee, certified installer, or manufacturer and shall be conducted after application for a KRS Chapter 13B hearing, but prior to the convening of the KRS Chapter 13B hearing.

- (4) Any person aggrieved by any final order of the ~~department~~~~state fire marshal~~ may appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

➔Section 423. KRS 227.650 is amended to read as follows:

- (1) The ~~department~~~~office~~ is empowered to inspect all mobile homes which are not covered by the federal act and previously owned recreational vehicles for which it has issued a seal of approval.
- (2) The ~~board~~~~office~~ may establish and require such training programs in the concept, techniques, and inspection of manufactured homes, mobile homes, and previously owned recreational vehicles for the personnel of local governments, as the ~~board~~~~office~~ considers necessary.
- (3) The staff of the ~~department~~~~office~~, upon showing proper credentials and in the discharge of their duties pursuant to KRS 227.550 to 227.660 or the federal act, is authorized with the consent of the manufacturer or by proper warrant to enter and inspect all factories, warehouses, or establishments in this state in which manufactured homes are manufactured or stored.

➔Section 424. KRS 227.660 is amended to read as follows:

The ~~department~~~~office~~, subject to the provisions of Chapter 18A and Chapter 64 of the Kentucky Revised Statutes, may set qualifications, employ, and fix the compensation of such state inspectors as the ~~department~~~~office~~ deems necessary to carry out the functions of KRS 227.550 to 227.650. To carry out the provisions of KRS 227.550 to 227.650, the ~~department~~~~office~~ may authorize the state inspectors to travel within or without the state for the purposes of inspecting the manufacturing facilities for manufactured homes or for any other purpose in connection with KRS 227.550 to 227.650.

➔Section 425. KRS 227.710 is amended to read as follows:

No person, firm, copartnership, or corporation shall offer for sale, expose for sale, sell at retail, keep with intent to sell, possess, use, or explode any fireworks, except as follows:

- (1) In cities the chief of the fire department, or mayor, or similar official where there is no fire department, and in counties outside of cities the county judge/executive, may grant permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. Every display shall be handled by a competent operator to be approved by the public official by whom the permit is granted, and shall be of such character, and so located, discharged or fired as in the opinion of the official, after proper inspection, shall not be hazardous to property or endanger any person. Permits shall be filed with the ~~Office of~~ state fire marshal at least fifteen (15) days in advance of the date of the display. After the privilege is granted, sales, possession, use, and distribution of fireworks for the display shall be lawful for that purpose only. No permit granted under this subsection shall be transferable. For the purposes of this subsection, "public display of fireworks" shall include the use of pyrotechnic devices or pyrotechnic materials before a proximate audience, whether indoors or outdoors.
- (2) The sale, at wholesale, of any fireworks for supervised displays by any resident manufacturer, wholesaler, dealer, or jobber, in accordance with regulations of the United States Bureau of Alcohol, Tobacco and Firearms, if the sale is to the person holding a display permit as outlined in subsection (1) of this section. The permit holder shall present the permit along with other verifiable identification at the time of sale.
- (3) The sale, at wholesale, of any kind of fireworks by any resident manufacturer, wholesaler, dealer, or jobber, provided the fireworks are intended for shipment directly out of state in accordance with regulations of the United States Department of Transportation.
- (4) The sale and use in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, and highway use.
- (5) The use of fuses and railway torpedoes by railroads.
- (6) The sale and use of blank cartridges for use in a show or theater or for signal or ceremonial purpose in athletics or sports.
- (7) The use of any pyrotechnic device by military organizations.
- (8) The use of fireworks for agricultural purposes under the direct supervision of the United States Department of the Interior or any equivalent or local agency.
- (9) The sale of common fireworks as permitted pursuant to KRS 227.715.

➔Section 426. KRS 227.715 is amended to read as follows:

Except as provided in KRS 227.710, the common fireworks described in KRS 227.702(1) may be offered for sale, sold at retail, or kept with the intent to sell, only if the following requirements are met:

- (1) Any person or business intending to sell common fireworks shall register annually with the state fire ~~marshal~~~~[marshal's office]~~, ~~who~~~~[which]~~ may assess a fee of no more than fifty dollars (\$50) for each site at which fireworks shall be sold. The registration requirement under this section shall not apply to permanent business establishments which are open year round and in which the sale of fireworks is ancillary to the primary course of business;
- (2) The annual registration required by subsection (1) of this section shall be received by the state fire ~~marshal~~~~[marshal's office]~~ at least fifteen (15) days prior to offering fireworks for sale at the site for which the registration is intended;
- (3) Each site at which fireworks are offered for sale shall have its registration certificate displayed in a conspicuous location at the site;
- (4) Each site at which fireworks are offered for sale shall have a working fire extinguisher at the site, in compliance with NFPA Pamphlet 10;
- (5) No common fireworks item shall be offered for sale if it has as part of its device any wings, fins, or other mechanism designed to cause the device to fly, or if it carries a cautionary label which includes in its description any of the following terms: "explosive," "emits flaming pellets," "flaming balls," "firecracker," "report," or "rocket;"

- (6) No person or business shall give, offer for sale, or sell any common fireworks listed in KRS 227.702 to any person under sixteen (16) years of age;
- (7) The state fire marshal may revoke the registration of any site which is in violation of a requirement of this section, or any other requirement provided pursuant to this chapter. If the violation renders any property especially susceptible to fire loss, and there is present such hazard to human life or limb that the public safety imperatively requires emergency action, the *state* fire marshal may take that action, as provided in KRS 227.330(6).

➔Section 427. KRS 227.800 is amended to read as follows:

As used in KRS 227.800 to 227.810, unless the context otherwise requires:

- (1) "~~Department~~~~Office~~" means the *Department*~~Office~~ of Housing, Buildings and Construction;
- (2) "Fountain" means all devices that artificially produce or contain a jet or stream of water;
- (3) "Ground-fault circuit-interrupter" means a device intended for the protection of the general public that functions to deenergize a circuit or a portion thereof within an established period of time when a current to ground exceeds a predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit;
- (4) "Pool" means all swimming, wading, therapeutic, decorative, ornamental, display, and reflection pools; hot tubs; spas; and hydromassage bathtubs, whether permanently installed or storable; and
- (5) "Public place" means any building, structure, or location that is accessible to the general public for business, civic, educational, political, religious, recreational, social, or travel purposes.

➔Section 428. KRS 227.810 is amended to read as follows:

- (1) A ground-fault circuit-interrupter shall be installed on all existing and new fountains and pools that are located in a public place within the Commonwealth, in accordance with standards set forth in the National Electrical Code adopted by administrative regulations of the *department*~~office~~.
- (2) A state or local government agency shall not promulgate an administrative regulation or ordinance to exempt any fountain or pool located in a public place from the required installation of a ground-fault circuit-interrupter, regardless of the age of construction of the fountain or pool.

➔Section 429. KRS 227A.010 is amended to read as follows:

As used in KRS 227A.010 to 227A.140, unless the context otherwise requires:

- (1) "Authorized local licensing program" means any city, county, urban-county, charter county, or consolidated local government electrician and electrical contractor licensing program established by local ordinance for the purpose of licensing electrical workers. "Authorized local licensing program" shall include a licensing program established through a cooperative agreement between two (2) or more counties;
- (2) "Committee" means the Electrical Advisory Committee as described in KRS 227.530;
- (3) "~~Department~~~~Office~~" means the *Department*~~Office~~ of Housing, Buildings and Construction;
- (4) "Electrical" pertains to the installation, alteration, or repair of wires and conduits for the purpose of transmitting electricity, and the installation of fixtures and equipment in connection therewith;
- (5) "Electrical contractor" means any licensed individual, partnership, or corporation that is licensed to engage in, offers to engage in, or advertises or holds itself out to be qualified to engage in designing, planning, superintending, contracting of, or assuming responsibility for the installation, alteration, or repair of any electrical wiring used for the purpose of furnishing heat, light, or power, and employs electrical workers to engage in this practice. If the electrical contractor is not a master electrician, the electrical contractor shall employ at least one (1) full-time master electrician; however, no master electrician shall act in this capacity for more than one (1) electrical contractor;
- (6) "Electrician" means any person licensed by the *department*~~office~~ who is employed by an electrical contractor and is engaged in the construction, alteration, or repair of any electrical wiring used for the purpose of furnishing heat, light, or power;
- (7) "Maintenance worker or maintenance engineer" means a person who is a regular, bona fide employee or agent of a property owner, property lessor, property management company, or firm that is not in the electrical

business but has jurisdiction over the property where the routine maintenance of electrical systems is being performed;

- (8) "Master electrician" means any individual licensed to assume responsible charge, supervision, or direction of an electrician engaged in the construction, installation, alteration, or repair of electrical wiring used to furnish heat, light, or power; and
- (9) "Routine maintenance of electrical systems" means the routine and periodic servicing of electrical systems, including cleaning, inspecting, and making adjustments to ensure the proper operation and the removal or replacement of component parts. "Routine maintenance of electrical systems" does not include the installation of complete electrical systems.

➔Section 430. KRS 227A.020 is amended to read as follows:

- (1) A person who is not licensed as an electrical contractor shall not represent himself or herself to the public as an electrical contractor or use any terms, titles, or abbreviations which express or imply that the person is a licensed electrical contractor.
- (2) A person who is not licensed as a master electrician shall not represent himself or herself to the public as a master electrician or use any terms, titles, or abbreviations which express or imply that the person is a licensed master electrician.
- (3) A person who is not licensed as an electrician shall not represent himself or herself to the public as an electrician or use any terms, titles, or abbreviations which express or imply that the person is a licensed electrician.
- (4) A person who is not licensed as an electrical contractor, electrician, or master electrician shall not engage in any activities or perform any of the duties usually performed by an electrical contractor, electrician, or master electrician unless the unlicensed person is under the direct supervision of a licensed electrician or master electrician who is present on the site where the work is being performed.
- (5) An authorized local licensing program in existence on June 24, 2003, may contract with the ~~department~~{office} to become an agent of the ~~department~~{office} for purposes of the issuance and renewal of licenses issued pursuant to KRS 227A.010 to 227A.140. The ~~department~~{office} may also contract with local governments that want to become authorized licensing programs.
- (6) KRS 227A.010 to 227A.140 shall supersede all ordinances or regulations regulating electricians, master electricians, and electrical contractors of any city, county, urban-county, charter county, or consolidated local government. This provision shall not affect city, county, urban-county, charter county, or consolidated local government regulations relating to zoning requirements or occupational payroll taxes pertaining to electricians, master electricians, and electrical contractors.

➔Section 431. KRS 227A.040 is amended to read as follows:

- (1) The ~~department~~{office}, with assistance from the Electrical Advisory Committee, shall administer and enforce the provisions of KRS 227A.010 to 227A.140 and shall evaluate the qualifications of applicants for licensure.
- (2) The ~~department~~{office} may issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of KRS 227A.010 to 227A.140 or the administrative regulations promulgated under KRS 227A.010 to 227A.140 and KRS Chapter 13A.
- (3) The ~~department~~{office} shall conduct hearings under KRS Chapter 13B and keep records and minutes necessary to carry out the functions of KRS 227A.010 to 227A.140.
- (4) The ~~department~~{office}, with assistance from the Electrical Advisory Committee, shall evaluate the qualifications of applicants and issue licenses to qualified candidates.
- (5) The ~~department~~{office} shall renew licenses.
- (6) The ~~department~~{office} may:
 - (a) Refuse to issue or renew a license;
 - (b) Suspend or revoke a license;
 - (c) Impose supervisory or probationary conditions upon a licensee;

- (d) Impose administrative disciplinary fines;
 - (e) Issue written reprimands or admonishments; and
 - (f) Take any combination of the actions permitted in this subsection.
- (7) The *department*{office} may seek injunctive relief in the Circuit Court of Franklin County, in the county in which the violation occurred, or in the county where the business of the accused is located to stop any unlawful practice in KRS 227A.010 to 227A.140 and administrative regulations promulgated thereunder. The *department*{office} may also seek injunctive relief for unlicensed persons who inappropriately use the title "electrical contractor," "electrician," or "master electrician."
- (8) The *department*{office}, with comments and advice from the Electrical Advisory Committee if required by KRS 198B.030(9) and (10), may promulgate administrative regulations to create a code of ethics and procedures governing the licensure of electrical contractors, electricians, and master electricians.
- (9) The *department*{office} may enter into reciprocal agreements with other states having licensure, certification, or registration qualifications and requirements substantially equal to those of this state.

➔Section 432. KRS 227A.050 is amended to read as follows:

- (1) All fees and other moneys received by the *department*{office} under the provisions of KRS 227A.010 to 227A.140 shall be deposited in the State Treasury to the credit of a revolving fund for use by the *department*{office} in administering the provisions of KRS 227A.010 to 227A.140.
- (2) No part of this revolving fund shall revert to the general funds of the Commonwealth.
- (3) An authorized local licensing program under KRS 227A.010 to 227A.140 shall negotiate with the *department*{office} the amount of the fees to be retained by the authorized local licensing program.
- (4) Funds for the initial administration of KRS 227A.010 to 227A.140, following June 24, 2003, and to the extent fee income is insufficient to meet actual costs as determined by the chief budget officer for the *department*{office}, shall be borrowed from surplus trust and agency accounts of the *department*{office} and repaid without interest over no more than the succeeding two (2) fiscal years.

➔Section 433. KRS 227A.060 is amended to read as follows:

- (1) The *department*{office} shall issue a license as an "electrical contractor" to an applicant who meets the following requirements:
 - (a) Has paid to the *department*{office} the application fee not to exceed two hundred dollars (\$200) and the appropriate examination fee, which shall not exceed the actual cost of examination;
 - (b) Has achieved a passing score, as set by the *department*{office}, on all portions of the examination required by the *department*{office}. The *department*{office} shall promulgate administrative regulations to specify who shall take the examination if the applicant is a business entity; and
 - (c) Has submitted proof that he or she has complied with workers' compensation and unemployment insurance laws and administrative regulations and has obtained a general liability insurance policy of not less than five hundred thousand dollars (\$500,000).
- (2) The *department*{office} shall issue a license as a "master electrician" to an applicant who meets the following requirements:
 - (a) Has paid to the *department*{office} the application fee not to exceed one hundred dollars (\$100) and the appropriate examination fee not to exceed the actual cost of the examination;
 - (b) Has completed:
 - 1. a. Six (6) years of verifiable experience in the electrical trade; and
 - b. A training course in electrical work, acceptable to the *department*{office}, or an additional two (2) years of verifiable experience in the electrical trade; or
 - 2. a. Five (5) years of verifiable experience in the electrical trade; and
 - b. An associate's degree or diploma program in electrical technology at a college within the Kentucky Community and Technical College System after 1998; and

- (c) Has achieved a passing score, as set by the *department*{office}, on all portions of the examination required by the *department*{office}.
- (3) The *department*{office} shall issue a license as an "electrician" to an applicant who meets the following requirements:
- (a) Has paid to the *department*{office} the application fee not to exceed fifty dollars (\$50) and the appropriate examination fee not to exceed the actual cost of the examination;
 - (b) Has completed:
 - 1. a. Four (4) years of verifiable experience in the electrical trade; and
 - b. A training course in electrical work, acceptable to the *department*{office}, or an additional two (2) years of verifiable experience in the electrical trade; or
 - 2. a. Three (3) years of verifiable experience in the electrical trade; and
 - b. An associate's degree or diploma program in electrical technology at a college within the Kentucky Community and Technical College System after 1998; and
 - (c) Has achieved a passing score, as set by the *department*{office}, on all portions of the examination required by the *department*{office}.

➔Section 434. KRS 227A.070 is amended to read as follows:

Upon application to the *department*{office} and payment of all applicable fees, the *department*{office} shall license by endorsement an applicant who is registered, licensed, or certified in another state if the requirements for registration, licensing, or certification in the issuing state are substantially equal to the requirements for licensing in the Commonwealth of Kentucky and the applicant is in good standing in the issuing state. The *department*{office} shall license an applicant by endorsement only if the issuing state extends similar reciprocity to Kentucky citizens licensed under KRS 227A.010 to 227A.140.

➔Section 435. KRS 227A.090 is amended to read as follows:

- (1) The *department*{office}, with advice from the Electrical Advisory Committee, shall select and approve an examination to be used in determining the competency of persons to be licensed under KRS 227A.010 to 227A.140. Examinations selected and approved for each level of licensing shall be nationally recognized examinations which have been determined through proper validation techniques to measure successfully an individual's competency to perform the licensed practice.
- (2) The *department*{office} shall offer the examinations on a regularly scheduled basis in localities determined by the committee. The *department*{office} shall offer the examinations through any authorized local licensing program.
- (3) The *department*{office} may contract with an outside entity or testing service for the administration of examinations required for licensure.

➔Section 436. KRS 227A.100 is amended to read as follows:

- (1) Each licensee licensed under the provisions of KRS 227A.010 to 227A.140 shall annually, on or before the last day of the licensee's birth month, pay to the *department*{office} a renewal fee as established in administrative regulations promulgated by the *department*{office}.
- (2) A sixty (60) day grace period shall be allowed after the anniversary date of the license during which time a licensee may continue to practice and may renew his or her license upon payment of the renewal fee plus a late renewal fee as promulgated by administrative regulation of the *department*{office}.
- (3) A license not renewed before the end of the sixty (60) day grace period shall terminate based on the failure of the licensee to renew in a timely manner. Upon termination, the licensee is no longer eligible to practice in the Commonwealth.
- (4) After the sixty (60) day grace period, a former licensee with a terminated license may have the license reinstated upon payment of the renewal fee plus a reinstatement fee as promulgated by administrative regulation of the *department*{office}. An applicant for reinstatement after termination of the license shall not be

required to submit to any examination as a condition for reinstatement, if the reinstatement application is made within three (3) years from the date of termination.

- (5) A suspended license is subject to expiration and termination and shall be renewed as provided in this section. Renewal shall not entitle the licensee to engage in the practice until the suspension has ended or is otherwise removed by the *department*{office} and the right to practice is restored by the *department*{office}.
- (6) A revoked license is subject to expiration or termination but may not be renewed. If it is reinstated, the former licensee shall pay the reinstatement fee as promulgated by administrative regulations under subsection (4) of this section and the renewal fee as promulgated by administrative regulations under subsection (1) of this section.
- (7) The *department*{office} shall require an applicant for renewal or reinstatement of a license to show evidence of completing at least six (6) hours of continuing education provided by the National Electrical Contractors Association, the Associated Builders and Contractors, the International Brotherhood of Electrical Workers, the Associated General Contractors, the International Association of Electrical Inspectors, the Independent Electrical Contractors Association, the Kentucky *Department*{Office} of Housing, Buildings and Construction, or other provider of instruction approved by the *department*{office}. The *department*{office} shall promulgate administrative regulations establishing the content of the programs and the qualifications of the providers.
- (8) The *department*{office} shall require, where applicable, that an applicant for renewal or reinstatement of a license submit proof that the applicant has complied with workers' compensation and unemployment insurance laws and regulations and has obtained a general liability insurance policy of not less than five hundred thousand dollars (\$500,000).
- (9) The *department*{office} may, through the promulgation of administrative regulations:
 - (a) Establish an inactive license for licensees who are not actively engaging in the electrical business but wish to maintain their license;
 - (b) Reduce license and renewal fees for inactive licensees; and
 - (c) Waive the requirements established in subsection (8) of this section for inactive licensees.

➔Section 437. KRS 227A.110 is amended to read as follows:

- (1) The *department*{office} may, following a hearing pursuant to KRS Chapter 13B, impose sanctions specified in KRS 227A.040 upon proof that the licensee has:
 - (a) Misrepresented or concealed a material fact in obtaining a license, or in the reinstatement thereof;
 - (b) Been incompetent or negligent in the practice of performing electrical work;
 - (c) Failed to comply with an order issued by the *department*{office} or an assurance of voluntary compliance; or
 - (d) Violated any provisions of KRS 227A.010 to 227A.140 and administrative regulations promulgated thereunder.
- (2) One (1) year from the date of a revocation, any former licensee whose license has been revoked may petition the *department*{office} for reinstatement. The *department*{office} shall investigate the petition and may reinstate the license upon a finding that the applicant has complied with any terms prescribed by the *department*{office} and is again able to competently engage in the practice of performing electrical work.
- (3) At any time during the investigative or hearing processes, the *department*{office} may enter into an agreed order or accept an assurance of voluntary compliance with the license holder which effectively deals with the complaint.
- (4) The *department*{office} may reconsider, modify, or reverse its probations, suspensions, or other disciplinary actions.

➔Section 438. KRS 227A.120 is amended to read as follows:

Any party aggrieved by a disciplinary action of the *department*{office} may bring an action in the Circuit Court of Franklin County under the provisions of KRS Chapter 13B.

➔Section 439. KRS 227A.140 is amended to read as follows:

- (1) A master electrician who ceases to be associated with the electrical contractor and is the representative by which the licensed electrical contractor qualifies shall immediately report his or her disassociation to the ~~department~~~~office~~ or the authorized local licensing program. The master electrician shall be responsible for all work done under his or her license until the ~~department~~~~office~~ or the authorized local licensing program is notified by the master electrician that he or she is no longer associated with the electrical contractor.
- (2) If the holder of any electrical license ceases to be a part of the business relying upon the holder's license for its right to remain in business, the business shall employ a licensed person prior to the continuance of any business activity or within thirty (30) days, whichever comes first.

➔Section 440. KRS 227A.150 is amended to read as follows:

Nothing in KRS 227A.010 to 227A.140 shall apply to low-voltage, power-limited installations for control or coordination of interconnected devices separated from a power source by a Class 2 or Class 3 transformer installed by a low-voltage installer certificate holder. The ~~department~~~~office~~ shall set the standards for experience and testing for issuance of a low-voltage installer certificate by administrative regulation and may charge a fee to be set by the ~~department~~~~office~~ by administrative regulation but not to exceed the actual cost of issuance of the certificate.

➔Section 441. KRS 229.151 is amended to read as follows:

- (1) The Kentucky Boxing and Wrestling Authority is hereby created and established as an agency of state government charged with the responsibility for regulatory oversight and the establishment of sound policies and procedures governing the conduct of boxing, wrestling, and other full contact competitive bouts within the Commonwealth of Kentucky. The authority shall be attached to the ~~Environmental and~~ Public Protection Cabinet~~, Department of Public Protection,~~ for administrative purposes.
- (2) The authority shall consist of five (5) members appointed by the Governor.
 - (a) One (1) member shall be the secretary of the ~~Environmental and~~ Public Protection Cabinet, or the secretary's designee, who shall serve as an ex officio voting member;
 - (b) One (1) member shall be a medical doctor; and
 - (c) Three (3) members shall be appointed from the state at large, one (1) of whom shall have no financial interest in the business or industry regulated.

One (1) member shall be appointed to serve as the authority's chairperson. The Governor shall further designate a second member to serve as vice chair with authority to act in the absence of the chair. A majority of the members of the authority shall constitute a quorum for the transaction of business.

- (3) The appointed members of the authority shall serve for a term of three (3) years at the pleasure of the Governor, with initial terms staggered. Any member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term.
- (4) Members of the authority shall receive one hundred dollars (\$100) per day for each meeting attended and shall be reimbursed for all expenses paid or incurred in the discharge of official business.

➔Section 442. KRS 229.155 is amended to read as follows:

- (1) To carry out the functions relating to the authority's duties and responsibilities and to afford the full experience and resources of the ~~Environmental and~~ Public Protection Cabinet, after revenue of five hundred thousand dollars (\$500,000) is generated in two (2) consecutive fiscal years by the authority, the Governor may appoint an executive director who shall serve at the pleasure of the Governor. The Governor shall set the qualifications and salary for the position of executive director under the provisions of KRS 64.640. The ~~secretary~~~~commissioner~~ of the ~~Department of~~ Public Protection *Cabinet* shall act as executive director until the fiscal requirement is met.
- (2) The executive director shall employ sufficient regulatory staff for the authority that shall be responsible for the day-to-day operations of the authority, including but not limited to the following:
 - (a) Complying with regulations;
 - (b) Issuing licenses and permits;
 - (c) Establishing appropriate organizational structures;

- (d) Carrying out policy and program directives of the authority; and
 - (e) Performing all other duties and responsibilities as assigned.
- (3) With approval of the authority, the executive director and regulatory staff may enter into agreements with any state agency or political subdivision of the state, any postsecondary education institution, or any other person or entity to enlist assistance to implement the duties and responsibilities of the authority.

➔Section 443. KRS 230.210 is amended to read as follows:

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

- (1) "Association" means any person licensed by the Kentucky Horse Racing ~~Commission~~~~Authority~~ under KRS 230.300 and engaged in the conduct of a recognized horse race meeting;
- (2) "~~Racing Commission~~~~Authority~~" means the Kentucky Horse Racing Authority;
- (3) "Thoroughbred race or thoroughbred racing" means a form of horse racing in which each horse participating in the race is a thoroughbred, (i.e., meeting the requirements of and registered with The Jockey Club of New York) and is mounted by a jockey;
- (4) "Harness race" or "harness racing" means trotting and pacing races of the standardbred horses;
- (5) "Appaloosa race or Appaloosa racing" means that form of horse racing in which each horse participating in the race is registered with the Appaloosa Horse Club of Moscow, Idaho, and is mounted by a jockey;
- (6) "Horse race meeting" means horse racing run at an association licensed and regulated by the Kentucky Horse Racing ~~Commission~~~~Authority~~, and may include thoroughbred, harness, and quarter horse racing;
- (7) "Quarter horse" means a horse that is registered with the American Quarter Horse Association of Amarillo, Texas;
- (8) "Arabian" means a horse that is registered with the Arabian Horse Registry of Denver, Colorado;
- (9) "Track" means any association duly licensed by the Kentucky Horse Racing ~~Commission~~~~Authority~~ to conduct horse racing. "Track" shall include any facility or real property that is owned, leased, or purchased by a track within the same geographic area within a sixty (60) mile radius of a track but not contiguous to track premises, upon ~~racing commission~~~~authority~~ approval, and provided the noncontiguous property is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area;
- (10) "Simulcast facility" means any facility approved pursuant to the provisions of KRS 230.380 to simulcast racing and conduct pari-mutuel wagering;
- (11) "Simulcasting" means the telecast of live audio and visual signals of horse races for the purpose of pari-mutuel wagering;
- (12) "Intertrack wagering" means pari-mutuel wagering on simulcast horse races from a host track by patrons at a receiving track;
- (13) "Interstate wagering" means pari-mutuel wagering on simulcast horse races from a track located in another state or foreign country by patrons at a receiving track or simulcast facility;
- (14) "Host track" means the track conducting racing and offering its racing for intertrack wagering, or, in the case of interstate wagering, means the Kentucky track conducting racing and offering simulcasts of races conducted in other states or foreign countries;
- (15) "Receiving track" means a track where simulcasts are displayed for wagering purposes. A track that submits an application for intertrack wagering shall meet all the regulatory criteria for granting an association license of the same breed as the host track, and shall have a heated and air-conditioned facility that meets all state and local life safety code requirements and seats a number of patrons at least equal to the average daily attendance for intertrack wagering on the requested breed in the county in which the track is located during the immediately preceding calendar year;
- (16) "Telephone account wagering" means a form of pari-mutuel wagering where an individual may deposit money in an account at a track and may place a wager by direct telephone call or by communication through other electronic media owned by the holder of the account to the track;

- (17) "Principal" means any of the following individuals associated with a partnership, trust, association, limited liability company, or corporation that is licensed to conduct a horse race meeting or an applicant for a license to conduct a horse race meeting:
- (a) The chairman and all members of the board of directors of a corporation;
 - (b) All partners of a partnership and all participating members of a limited liability company;
 - (c) All trustees and trust beneficiaries of an association;
 - (d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;
 - (e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and
 - (f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation;
- (18) "Kentucky Quarter Horse Purse Program" means a purse program established to receive funds from the ***racine commission***~~[authority]~~ for purse programs established in KRS 230.3771(4) to supplement purses for quarter horse races. The purse program shall be administered by the Kentucky Quarter Horse Racing Association;
- (19) "Advance deposit account wagering" means a form of pari-mutuel wagering in which an individual may establish an account with a person or entity licensed by the ***racine commission***~~[authority]~~, and may place a pari-mutuel wager through that account that is permitted by law;
- (20) "Advance deposit account wagering licensee" means a person or entity licensed by the ***racine commission***~~[authority]~~ to conduct advance deposit account wagering and accept deposits and wagers, issue a receipt or other confirmation to the account holder evidencing such deposits and wagers, and transfer credits and debits to and from accounts; and
- (21) "Secondary pari-mutuel organization" or "SPMO" means an advance deposit account wagering licensee, a hub as defined in KRS 230.775, or any entity other than a licensed association or simulcast facility that offers and accepts pari-mutuel wagers. "SPMO" includes any off-track wagering system or advance deposit account wagering system, regardless of whether the off-track or advance deposit account wagering system is affiliated with a licensed association.

➔Section 444. KRS 230.215 is amended to read as follows:

- (1) It is the policy of the Commonwealth of Kentucky, in furtherance of its responsibility to foster and to encourage legitimate occupations and industries in the Commonwealth and to promote and to conserve the public health, safety, and welfare, and it is hereby declared the intent of the Commonwealth to foster and to encourage the horse breeding industry within the Commonwealth and to encourage the improvement of the breeds of horses. Further, it is the policy and intent of the Commonwealth to foster and to encourage the business of legitimate horse racing with pari-mutuel wagering thereon in the Commonwealth on the highest possible plane. Further, it hereby is declared the policy and intent of the Commonwealth that all racing not licensed under this chapter is a public nuisance and may be enjoined as such. Further, it is hereby declared the policy and intent of the Commonwealth that the conduct of horse racing, or the participation in any way in horse racing, or the entrance to or presence where horse racing is conducted, is a privilege and not a personal right; and that this privilege may be granted or denied by the ***racine commission***~~[authority]~~ or its duly approved representatives acting in its behalf.
- (2) It is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the ***racine commission***~~[authority]~~ forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth. In addition to the general powers and duties vested in the ***racine commission***~~[authority]~~ by this chapter, it is the intent hereby to vest in the ***racine***

commission~~[authority]~~ the power to eject or exclude from association grounds or any part thereof any person, licensed or unlicensed, whose conduct or reputation is such that his presence on association grounds may, in the opinion of the **racing commission**~~[authority]~~, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing.

➔Section 445. KRS 230.218 is amended to read as follows:

- (1) There is established, under the jurisdiction of the Kentucky Horse Racing **Commission**~~[Authority]~~, the backside improvement fund. This revolving fund shall consist of money allocated to the fund under the provisions of KRS 230.3615, together with any other money which may be contributed to or allocated to the fund from all other sources. Money to the credit of the backside improvement fund at the end of each fiscal year shall not lapse but shall be carried forward in the fund to the succeeding fiscal year. The Kentucky Horse Racing **Commission**~~[Authority]~~ may invest any and all funds received by the fund and interest earned by the investment of said funds in types of investments appropriate to the investment needs of the fund after having considered the financial return on authorized investment alternatives, the financial safety of investment alternatives and the impact of any authorized investments on the state's economy. The **racing commission**~~[authority]~~ shall review the status of the fund investments quarterly and report its findings to the Finance and Administration Cabinet and the Legislative Research Commission.
- (2) The purpose of the fund shall be to improve the backside of thoroughbred racing associations averaging one million two hundred thousand dollars (\$1,200,000) or less pari-mutuel handle per racing day on live racing. The Kentucky Horse Racing **Commission**~~[Authority]~~ shall use the backside improvement fund to promote, enhance, and improve the conditions of the backside of eligible racing associations. Conditions considered shall include but not be limited to the living and working quarters of backside employees.
- (3) The Kentucky Horse Racing **Commission**~~[Authority]~~ shall promulgate administrative regulations as may be necessary to carry out the provisions and purposes of this section.

➔Section 446. KRS 230.225 is amended to read as follows:

- (1) The Kentucky Horse Racing **Commission**~~[Authority]~~ is created as an independent agency of state government to regulate the conduct of horse racing and pari-mutuel wagering on horse racing, and related activities within the Commonwealth of Kentucky. The **racing commission**~~[authority]~~ shall be attached to the ~~[Environmental and]~~Public Protection Cabinet for administrative purposes.
- (2) The Kentucky Horse Racing **Commission**~~[Authority]~~ shall consist of **fifteen**~~(15)~~~~[thirteen (13)]~~ members appointed by the Governor, with the secretaries of the ~~[Environmental and]~~Public Protection Cabinet, Tourism, Arts and Heritage Cabinet, and Economic Development Cabinet serving as ex officio, nonvoting members. Two (2) members shall have no financial interest in the business or industry regulated. The members of the **racing commission**~~[authority]~~ shall be appointed to serve for a term of three (3) years~~[except, of the members initially appointed, four (4) shall serve for a term of three (3) years, five (5) shall serve for a term of two (2) years, and four (4) shall serve for a term of one (1) year]~~. Any member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term. In making appointments, the Governor may consider members broadly representative of the thoroughbred industry and members broadly representative of the standardbred, quarter horse, Appaloosa, or Arabian industries. The Governor may also consider recommendations from the Kentucky Thoroughbred Owners and Breeders, Inc., the Kentucky Division of the Horsemen's Benevolent and Protective Association, the Kentucky Harness Horsemen's Association, and other interested organizations.
- (3) Members of the **racing commission**~~[authority]~~ shall receive **one hundred dollars (\$100)**~~[fifty dollars (\$50)]~~ per day for each meeting attended and shall be reimbursed for all expenses paid or incurred in the discharge of official business. The Governor shall appoint one (1) member of the **racing commission**~~[authority]~~ to serve as its chairperson who shall serve at the pleasure of the Governor. The Governor shall further designate a second member to serve as vice chair with authority to act in the absence of the chairperson. Before entering upon the discharge of their duties, all members of the Kentucky Horse Racing **Commission**~~[Authority]~~ shall take the constitutional oath of office.
- (4) The **racing commission**~~[authority]~~ shall establish and maintain a general office for the transaction of its business and may in its discretion establish a branch office or offices. The **racing commission**~~[authority]~~ may hold meetings at any of its offices or at any other place when the convenience of the **racing commission**~~[authority]~~ requires. All meetings of the **racing commission**~~[authority]~~ shall be open and public, and all persons shall be permitted to attend meetings. A majority of the **voting members of the racing**

commission~~[authority]~~ shall constitute a quorum for the transaction of its business or exercise of any of its powers.

- (5)~~[The duly promulgated administrative regulations of the Kentucky Horse Racing Authority, in effect as of January 6, 2004, shall remain in effect as the initial regulations of the Kentucky Horse Racing Authority until revoked or modified by the authority.~~
- (6)~~[All licenses approved by, and dates awarded by, the Kentucky Horse Racing Authority shall remain in effect through December 31, 2004.~~
- (7)~~[Except as otherwise provided, the *racine commission*~~[authority]~~ shall be responsible for the following:~~
- (a) Developing *and implementing programs designed to ensure the safety and well-being of horses, jockeys, and drivers*~~[programs and procedures for oversight and regulation of horse racing matters, including but not limited to race day medications];~~
 - (b) *Developing programs and procedures that will aggressively fulfill its oversight and regulatory role on such matters as medical practices and integrity issues*~~[Recommending tax incentives and other options to promote the strength and growth of the thoroughbred industry and to preserve the economic viability of Kentucky's horse farms];~~
 - (c) *Recommending tax incentives and implementing incentive programs to ensure the strength and growth of the equine industry*~~[Designing and implementing programs that strengthen the ties between Kentucky's horse industry and the state's universities, with the goal of increasing the horse industry's impact on the state's economy];~~
 - (d) *Designing and implementing programs that strengthen the ties between Kentucky's horse industry and the state's universities, with the goal of significantly increasing the economic impact of the horse industry on Kentucky's economy, improving research for the purpose of promoting the enhanced health and welfare of the horse, and other related industry issues*~~[Developing and supporting programs which ensure that Kentucky remains a national leader in equine research]; and~~
 - (e) Developing and *supporting programs which ensure that Kentucky remains in the forefront of equine research*~~[implementing programs that promote Kentucky's horse and tourism industry].~~

➔Section 447. KRS 230.230 is amended to read as follows:

- (1) The Governor shall appoint an executive director who shall serve at the pleasure of the Governor. The Governor shall set the qualifications and salary for the position of executive director pursuant to KRS 64.640. The executive director shall possess the powers and perform the duties imposed upon him by the Governor, and other duties as the *racine commission*~~[authority]~~ may direct or prescribe. The executive director shall:
- (a) Be responsible for the day-to-day operations of the *racine commission*~~[authority]~~;
 - (b) Set up appropriate organizational structures and personnel policies for approval by the *racine commission*~~[authority]~~;
 - (c) Appoint all staff;
 - (d) Prepare annual reports of the *racine commission's*~~[authority's]~~ program of work;
 - (e) Carry out policy and program directives of the *racine commission*~~[authority]~~;
 - (f) Prepare and submit to the *racine commission*~~[authority]~~ for its approval the proposed biennial budget of the *racine commission*~~[authority]~~; and
 - (g) Perform all other duties and responsibilities assigned by law.

The executive director shall cause to be kept a full record of all proceedings before the *racine commission*~~[authority]~~ and shall preserve at its general office all books, maps, records, documents, licenses, and other papers of the *racine commission*~~[authority]~~. All records of the *racine commission*~~[authority]~~ shall be open to inspection by the public during regular office hours. With approval of the *racine commission*~~[authority]~~, the executive director may enter into agreements with any state agency or political subdivision of the state, any postsecondary education institution, or any other person or entity to enlist assistance to implement the duties and responsibilities of the *racine commission*~~[authority]~~.

- (2) The executive director of the *racine commission* may employ, dismiss, or take other personnel action concerning an assistant executive director, stenographers, clerks, and other personnel as he or she may deem necessary to efficiently operate the *racine commission's* general office or any branch thereof. The executive director of the *racine commission* shall fix the compensation of all employees. Any member of the *racine commission* or any employee referred to in this section shall be reimbursed for expenses paid or incurred in the discharge of official business when approved by the executive director of the *racine commission*. The compensation of the employees referred to in this section, except for the executive director, together with reimbursement of expenses incurred by employees, a member of the *racine commission*, or the executive director, shall be paid from *racine commission* funds.

➔Section 448. KRS 230.240 is amended to read as follows:

- (1) In addition to the employees referred to in KRS 230.230, the executive director of the *racine commission* may employ, dismiss, or take other personnel action and determine the reasonable compensation of stewards, supervisors of mutuels, veterinarians, inspectors, accountants, security officers, and other employees deemed by the executive director to be essential at or in connection with any horse race meeting and in the best interest of racing. Three (3) thoroughbred stewards shall be employed at each thoroughbred race meeting. Two (2) stewards shall be employed and compensated by the Commonwealth, subject to reimbursement by the racing associations pursuant to subsection (3) of this section. One (1) thoroughbred steward shall be employed and compensated by the racing association hosting the race meeting. Three (3) standardbred judges shall be employed at each standardbred race meeting. Two (2) standardbred judges shall be employed and compensated by the Commonwealth, subject to reimbursement by the racing associations pursuant to subsection (3) of this section. One (1) standardbred judge shall be employed and compensated by the racing association hosting the race meeting. The security officers shall be peace officers and conservators of the peace on *racine commission* property and at all race tracks and grounds in the Commonwealth and shall possess all the common law and statutory powers and privileges now available or hereafter made available to sheriffs, constables, and police officers for the purpose of enforcing all laws relating directly or indirectly to the conduct of horse racing and pari-mutuel wagering thereon, or the enforcement of laws relating to the protection of persons or property on premises licensed by the *racine commission*. The *racine commission*, for the purpose of maintaining integrity and honesty in racing, shall prescribe by administrative regulation the powers and duties of the persons employed under this section and qualifications necessary to competently perform their duties. In addition, the *racine commission* shall be responsible for seeing that racing officials employed under the provisions of this section have adequate training to perform their duties in a competent manner.
- (2) The *racine commission* shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The *racine commission* may acquire, operate, and maintain, or contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests, and to purchase supplies and equipment for and in connection with the laboratory or testing processes. The expense of the laboratory or other testing processes, whether furnished by contract or otherwise, together with all supplies and equipment used in connection therewith, shall be paid by the various associations licensed under this chapter in the manner and in proportions as the *racine commission* shall by administrative regulation provide.
- (3) The compensation of the employees referred to in this section shall be paid by the licensee conducting the horse race meeting in connection with which the employees are utilized or employed. The salary of the executive director to the *racine commission* shall be prorated among and paid by the various associations licensed under this chapter in the manner as the *racine commission* shall, by administrative regulation, provide. Except for the thoroughbred steward and the standardbred judge authorized in subsection (1) of this section, the employees referred to in this section shall be deemed employees of the *racine commission*, and are paid by the licensee or association for convenience only.
- (4) Each person, as a condition precedent to the privilege of receiving a license under this chapter to conduct a horse race meeting, shall be deemed to have agreed to pay expenses and compensation as provided in this section and as may be actually and reasonably incurred.

➔Section 449. KRS 230.250 is amended to read as follows:

When requested by the *racine commission*[authority], the Attorney General of Kentucky, or an assistant Attorney General as he or she may designate, shall, without additional compensation, advise the *racine commission*[authority] and represent it in all legal proceedings.

➔ Section 450. KRS 230.260 is amended to read as follows:

The *racine commission*[authority], in the interest of breeding or the improvement of breeds of horses, shall have all powers necessary and proper to carry out fully and effectually the provisions of this chapter including, but without limitation, the following:

- (1) The *racine commission*[authority] is vested with jurisdiction and supervision over all horse race meetings in this Commonwealth and over all associations and all persons on association grounds and may eject or exclude therefrom or any part thereof, any person, licensed or unlicensed, whose conduct or reputation is such that his presence on association grounds may, in the opinion of the *racine commission*[authority], reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing or racing at horse race meetings; provided, however, no persons shall be excluded or ejected from association grounds solely on the ground of race, color, creed, national origin, ancestry, or sex;
- (2) The *racine commission*[authority] is vested with jurisdiction over any SPMO that offers and accepts pari-mutuel wagers on races conducted at any racing association within the Commonwealth. An SPMO under the jurisdiction of the *racine commission*[authority] shall be licensed by the *racine commission*[authority], and the *racine commission*[authority] may impose a license fee on an SPMO not to exceed ten thousand dollars (\$10,000) annually. The *racine commission*[authority] shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish conditions and procedures for the licensing of SPMOs, and a fee schedule for applications for licensure;
- (3) The *racine commission*[authority] is vested with jurisdiction over any totalisator company that provides totalisator services to a racing association located in the Commonwealth. A totalisator company under the jurisdiction of the *racine commission*[authority] shall be licensed by the *racine commission*[authority], regardless of whether a totalisator company is located in the Commonwealth or operates from a location or locations outside of the Commonwealth, and the *racine commission*[authority] may impose a license fee on a totalisator company. The *racine commission*[authority] shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish conditions and procedures for the licensing of totalisator companies, and a fee schedule for applications for licensure;
- (4) The *racine commission*[authority] is vested with jurisdiction over any manufacturer, wholesaler, distributor, or vendor of any equine drug, medication, therapeutic substance, or metabolic derivative which is purchased by or delivered to a licensee or other person participating in Kentucky horse racing by means of the Internet, mail delivery, in-person delivery, or other means;
- (5) The *racine commission*[authority] is vested with jurisdiction over any horse training center or facility in the Commonwealth that records official timed workouts for publication;
- (6) The *racine commission*[authority] may require an applicant for a license under subsections (2) and (3) of this section to submit to a background check of the applicant, or of any individual or organization associated with the applicant. An applicant shall be required to reimburse the *racine commission*[authority] for the cost of any background check conducted;
- (7) The *racine commission*[authority], its representatives and employees, may visit, investigate and have free access to the office, track, facilities, or other places of business of any licensee, or any person owning a horse or performing services regulated by this chapter on a horse registered to participate in a breeders incentive fund under the jurisdiction of the *racine commission*[authority];
- (8) The *racine commission*[authority] shall have full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting;
- (9) Applications for licenses shall be made in the form, in the manner, and contain information as the *racine commission*[authority] may, by administrative regulation, require. Fees for all licenses issued under KRS 230.310 shall be prescribed by and paid to the *racine commission*[authority];

- (10) The **racing commission**~~[authority]~~ shall establish by administrative regulation minimum fees for jockeys to be effective in the absence of a contract between an employing owner or trainer and a jockey. The minimum fees shall be no less than those of July 1, 1985;
- (11) The **racing commission**~~[authority]~~ may refuse to issue or renew a license, revoke or suspend a license, impose probationary conditions on a license, issue a written reprimand or admonishment, impose fines or penalties, deny purse money, require the forfeiture of purse money, or any combination thereof with regard to a licensee or other person participating in Kentucky horse racing for violation of any federal or state statute, regulation, or steward's or **racing commission's**~~[authority's]~~ directive, ruling, or order to preserve the integrity of Kentucky horse racing or to protect the racing public. The **racing commission**~~[authority]~~ shall, by administrative regulation, establish the criteria for taking the actions described in this subsection;
- (12) The **racing commission**~~[authority]~~ may issue subpoenas for the attendance of witnesses before it and for the production of documents, records, papers, books, supplies, devices, equipment, and all other instrumentalities related to pari-mutuel horse racing within the Commonwealth. The **racing commission**~~[authority]~~ may administer oaths to witnesses and require witnesses to testify under oath whenever, in the judgment of the **racing commission**~~[authority]~~, it is necessary to do so for the effectual discharge of its duties;
- (13) The **racing commission**~~[authority]~~ shall have authority to compel any racing association licensed under this chapter to file with the **racing commission**~~[authority]~~ at the end of its fiscal year, a balance sheet, showing assets and liabilities, and an earnings statement, together with a list of its stockholders or other persons holding a beneficial interest in the association; and
- (14) The **racing commission**~~[authority]~~ shall promulgate administrative regulations establishing safety standards for jockeys, which shall include the use of rib protection equipment. Rib protection equipment shall not be included in a jockey's weight.

➔Section 451. KRS 230.265 is amended to read as follows:

- (1) (a) There is hereby created a panel, to be known as the Kentucky Equine Drug Research Council, to advise the **racing commission**~~[authority]~~ on the conduct of equine drug research and testing commissioned by the Kentucky Horse Racing **Commission**~~[Authority]~~.
- (b) The council shall consist of nine (9) members appointed by the Governor. It is recommended that the Governor appoint one (1) person from each of the following groups, organizations, or professions:
1. A veterinarian, selected from a list of three (3) submitted by the Kentucky Association of Equine Veterinarians;
 2. A horseman, selected from a list of three (3) submitted by the Kentucky division of the Horsemen's Benevolent and Protective Association;
 3. A pharmacologist, selected from a list of three (3) submitted by the University of Kentucky;
 4. A thoroughbred breeder, selected from a list of three (3) submitted by the Kentucky Thoroughbred Owners and Breeders, Inc.;
 5. A legislator, selected from a list of three (3) submitted by the Legislative Research Commission;
 6. A representative of a licensed racing association, chosen by the Governor;
 7. A member of the harness racing industry, selected from a list of three (3) submitted by the chairman of the Kentucky Horse Racing **Commission**~~[Authority]~~;
 8. A member selected from a list of three (3) submitted by the Kentucky Harness Horsemen's Association; and
 9. A member of the Kentucky Horse Racing **Commission**~~[Authority]~~, selected from a list of three (3) submitted by the chairman of the Kentucky Horse Racing **Commission**~~[Authority]~~, to serve as chairman.
- (c) The council shall meet at the call of the chairman, a majority of the council, or at the request of the **racing commission**~~[authority]~~. Members shall serve at the pleasure of their respective sponsoring organizations and shall receive no compensation for serving.
- (2) The Kentucky Equine Drug Research Council shall:

- (a) Review equine drug research and testing research being conducted at the University of Kentucky, or with state funds;
 - (b) Review and report to the *racing commission*{authority} on drug research and testing research being conducted elsewhere;
 - (c) Advise the *racing commission*{authority} and make recommendations for establishing an effective drug regulatory policy for Kentucky racing; and
 - (d) Report to the General Assembly any needed changes regarding the regulation of drugs in horse racing in the Commonwealth of Kentucky.
- (3) The funds received by the *racing commission*{authority} pursuant to KRS 138.510 shall be used in Kentucky for financing drug research, testing research, equine medical research, and equine health research issues, or any regulatory or administrative activity of the *racing commission*{authority} that is related to the research and issues described in this subsection. Any expenditure under this subsection shall relate to the racing industry in Kentucky. The money received under this subsection shall be in addition to any funds appropriated to the *racing commission*{authority} for these purposes in the executive budget.

➔Section 452. KRS 230.270 is amended to read as follows:

The *racing commission*{authority} shall biennially make a full report to the General Assembly of its proceedings for the two-year period ending December 31 preceding the meeting of the General Assembly and may embody in the report such suggestions and recommendations as it deems desirable.

➔Section 453. KRS 230.280 is amended to read as follows:

- (1) No person shall hold or conduct any horse race meeting for any stake, purse, or reward within the Commonwealth of Kentucky without securing the required license from the *racing commission*{authority}.
- (2) The *racing commission*{authority} shall investigate the qualifications of each applicant for a license to conduct a horse race meeting or the renewal of a license to conduct a horse race meeting. The *racing commission*{authority} may issue or renew a license unless the *racing commission*{authority} determines that:
 - (a) The track location, traffic flow, facilities for the public, and facilities for racing participants and horses do not meet state code or are otherwise inadequate to protect the public health and safety;
 - (b) The racing dates and times requested conflict with another race meeting of the same breed of horse;
 - (c) The financing or proposed financing of the entire operation is not adequate for the operation or is from an unsuitable source;
 - (d) The applicant or licensee has failed to disclose or has misstated information or otherwise attempted to mislead the *racing commission*{authority} with respect to any material fact contained in the application for the issuance or renewal of the license;
 - (e) The applicant has knowingly failed to comply with the provision of this chapter or any administrative regulations promulgated thereunder;
 - (f) Any of the principals of the applicant or licensee is determined to be unsuitable because he or she has:
 - 1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;
 - 2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;
 - 3. Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime, or of being of notorious or unsavory reputation;
 - 4. Been placed and remains in the custody of any federal, state, or local law enforcement authority;

5. Had a racing or gaming license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky; or
 6. Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto; or
- (g) The applicant or licensee has had a racing or gaming license denied or revoked in another jurisdiction on grounds that would be grounds for license denial or revocation in Kentucky.

➔Section 454. KRS 230.290 is amended to read as follows:

All licenses granted under this chapter:

- (1) Shall be in writing;
- (2) Shall be subject to all administrative regulations and conditions as may from time to time be prescribed by the **racing commission**~~[authority]~~;
- (3) Shall contain conditions as may be considered necessary or desirable by the **racing commission**~~[authority]~~ for purposes of this chapter; and
- (4) No license shall extend beyond the end of the calendar year for which it was issued, unless the license expires on the last date of the birth month of the licensee, in which case it may expire on that date. The **racing commission**~~[authority]~~ may renew any license and any renewal shall not be construed to be a waiver or condonement of any violation which occurred prior to renewal and shall not prevent subsequent proceedings against the licensee therefor.

➔Section 455. KRS 230.300 is amended to read as follows:

- (1) Any person desiring to conduct horse racing at a horse race meeting within the Commonwealth of Kentucky or to engage in simulcasting and intertrack wagering as a receiving track during any calendar year shall first apply to the **racing commission**~~[authority]~~ for a license to do so. The application shall be filed at the **racing commission's**~~[authority's]~~ general office on or before October 1 of the preceding year with respect to applications to conduct live horse race meetings, and with respect to intertrack wagering dates, and on forms prescribed by the **racing commission**~~[authority]~~. The application shall include the following information:
 - (a) The full name and address of the person making application;
 - (b) The location of the place, track, or enclosure where the applicant proposes to conduct horse racing meetings;
 - (c) The dates on which the applicant intends to conduct horse racing, which shall be successive days unless authorized by the **racing commission**~~[authority]~~;
 - (d) The proposed hours of each racing day and the number of races to be conducted;
 - (e) The names and addresses of all principals associated with the applicant or licensee;
 - (f) The type of organizational structure under which the applicant operates, i.e., partnership, trust, association, limited liability company, or corporation, and the address of the principal place of business of the organization;
 - (g) Any criminal activities in any jurisdiction for which any individual listed under paragraphs (a) and (e) has been arrested or indicted and the disposition of the charges, and any current or on-going criminal investigation of which any of these individuals is the subject; and
 - (h) Any other information that the **racing commission**~~[authority]~~ by administrative regulation deems relevant and necessary to determine the fitness of the applicant to receive a license, including fingerprints of any individual listed under paragraphs (a) and (e), if necessary for proper identification of the individual or a determination of suitability to be associated with a licensed racing association.
- (2) An application for license shall be accompanied by the following documents:
 - (a) For a new license applicant, a financial statement prepared and attested to by a certified public accountant in accordance with generally accepted accounting principles, showing the following:

1. The net worth of the applicant;
 2. Any debts or financial obligations owed by the applicant and the persons to whom owed; and
 3. The proposed or current financing structure for the operation and the sources of financing.
- (b) For a license renewal applicant, an audited financial statement for the prior year;
 - (c) A copy of the applicant's federal and state tax return for the previous year. Tax returns submitted in accordance with this provision shall be treated as confidential;
 - (d) A statement from the Department of Revenue that there are no delinquent taxes or other financial obligations owed by the applicant to the state or any of its agencies or departments;
 - (e) A statement from the county treasurer of the county in which the applicant conducts or proposes to conduct horse racing meetings that there are no delinquent real or personal property taxes owed by the applicant.
- (3) The completed application shall be signed by the applicant or the chief executive officer if the applicant is an organization, sworn under oath that the information is true, accurate, and complete, and the application shall be notarized.
 - (4) If there is any change in any information submitted in the application process, the applicant or licensee shall notify the **racing commission**~~[authority]~~ within thirty (30) days of the change.
 - (5) The **racing commission**~~[authority]~~ shall as soon as practicable, but in no event later than November 1 in any calendar year, award dates for racing in the Commonwealth during the next year. In awarding dates, the **racing commission**~~[authority]~~ shall consider and seek to preserve each track's usual and customary dates, as these dates are requested. If dates other than the usual and customary dates are requested, the applicant shall include a statement in its application setting forth the reasons the requested dates are sought. Dates for the conduct of intertrack wagering shall be awarded as provided in KRS 230.377. In the event scheduled racing is canceled by reason of flood, fire, inclement weather, or other natural disaster or emergency, the **racing commission**~~[authority]~~ may award after November 1 additional racing dates to make up for those dates canceled.
 - (6) The **racing commission**~~[authority]~~ may issue a license to conduct a horse race meeting to any association making the aforesaid application if the applicant meets the requirements established in KRS 138.530 and other applicable provisions of this chapter, and if the **racing commission**~~[authority]~~ finds that the proposed conduct of racing by the association would be in the best interest of the public health, safety, and welfare of the immediate community as well as to the Commonwealth.
 - (7) As a condition precedent to the issuance of a license, the **racing commission**~~[authority]~~ may require a surety bond or other surety conditioned upon the payment of all taxes due the Commonwealth, together with the payment of operating expenses including purses and awards to owners of horses participating in races.
 - (8) The **racing commission**~~[authority]~~ may impose a fee and shall establish, by administrative regulation promulgated in accordance with KRS Chapter 13A, a fee schedule for association license applications.
 - (9) The **racing commission**~~[authority]~~ may require an applicant for an association license to submit to a background check of the applicant, or of any principal, individual, or organization associated with the applicant. The **racing commission**~~[authority]~~ shall not require a background check for any individual who is a principal as defined in KRS 230.210 but owns stock or financial interest in the applicant of less than ten percent (10%). An applicant shall be required to reimburse the **racing commission**~~[authority]~~ for the cost of any background check conducted.
 - (10) Every license issued under this chapter shall specify among other things the name of the person to whom issued, the address and location of the track where the horse race meeting to which it relates is to be held or conducted, and the days and hours of the day when the meeting will be permitted; provided, however, that no track that is granted overlapping dates for the conduct of a live race meeting with another horse racing track within a fifty (50) mile radius shall be permitted to have a post time after 5:30 p.m., prevailing time for overlapping days between July 1 and September 15, unless agreed to in writing by the tracks affected.
 - (11) A license issued under this section is neither transferable nor assignable and shall not permit the conduct of a horse race meeting at any track not specified therein. However, if the track specified becomes unsuitable for

racing because of flood, fire, or other catastrophe, the **racing commission**^[authority] may, upon application, authorize the meeting, or any remaining portion thereof, to be conducted at any other suitable track available for that purpose, provided that the owner of the track willingly consents to the use thereof.

- (12) Horse racing dates may be awarded and licenses issued authorizing horse racing on any day of the year. Horse racing shall be held or conducted only between sunrise and midnight.
- (13) The **racing commission**^[authority] may at any time require the removal of any official or employee of any association in those instances where it has reason to believe that the official or employee has been guilty of any dishonest practice in connection with horse racing or has failed to comply with any condition of his license or has violated any law or any administrative regulation of this **racing commission**^[authority].
- (14) Every horse race not licensed under this section is hereby declared to be a public nuisance and the **racing commission**^[authority] may obtain an injunction against the same in the Circuit Court of the county where the unlicensed race is proposed to take place.

➔Section 456. KRS 230.310 is amended to read as follows:

- (1) Every person not required to be licensed under KRS 230.300 who desires to participate in horse racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, or in any other capacity as the **racing commission**^[authority] shall from time to time establish by administrative regulation, shall first apply to the **racing commission**^[authority] for a license to participate in the activity on association grounds during a race meeting. No person required to be licensed by this section may participate in any activity required to be licensed on association grounds during a race meeting without a valid license therefor. An applicant for a license shall submit to the **racing commission**^[authority] fingerprints as may be required and other information necessary and reasonable for processing a license application. The **racing commission**^[authority] is authorized to exchange fingerprint data with the Department of Kentucky State Police and the Federal Bureau of Investigation in order to conduct a criminal history background check of an applicant. The **racing commission**^[authority] may issue a license if it finds that the financial responsibility, age, experience, reputation, competence, and general fitness of the applicant to perform the activity permitted by a license are consistent with the best interest of racing and the maintenance of the honesty, integrity, and high quality thereof.
- (2) A license may be issued for the calendar year for which an applicant applies or, if authorized by administrative regulation, a license may be issued that expires on the last day of the birth month of the licensee. A license may be renewed by the **racing commission**^[authority]. The license shall be valid at all horse race meetings in the Commonwealth during the period for which it is issued unless suspended or revoked under the administrative regulations promulgated by the **racing commission**^[authority] under this chapter. With respect to horse owners and trainers, the **racing commission**^[authority] may promulgate administrative regulations to facilitate and promote uniform, reciprocal licensing with other states.

➔Section 457. KRS 230.320 is amended to read as follows:

- (1) Every license granted under this chapter is subject to denial, revocation, or suspension, and every licensee or other person participating in Kentucky horse racing may be assessed an administrative fine and required to forfeit or return a purse, by the **racing commission**^[authority] in any case where it has reason to believe that any provision of this chapter, administrative regulation, or condition of the **racing commission**^[authority] affecting it has not been complied with or has been broken or violated. The **racing commission**^[authority] may deny, revoke, or suspend a license for failure by the licensee or other person participating in Kentucky horse racing to pay an administrative fine imposed upon the licensee by the stewards or the **racing commission**^[authority]. The **racing commission**^[authority], in the interest of honesty and integrity of horse racing, may promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse.
- (2) (a) Following a hearing by the stewards, a person who has been disciplined by a ruling of the stewards may apply to the **racing commission**^[authority] for a stay of the ruling, pending action on an appeal by the **racing commission**^[authority].

- (b) An application for a stay shall be received by the executive director or his designee within ten (10) calendar days of the issuance of the stewards' ruling.
 - (c) An application for a stay shall be in writing and include the following:
 - 1. The name, address, telephone number, and signature of the person requesting the stay;
 - 2. A statement of the justification for the stay; and
 - 3. The period of time for which the stay is requested.
 - (d) On a finding of good cause, the executive director or his designee may grant the stay. The executive director or his designee shall issue a written decision granting or denying the request for stay within five (5) calendar days from the time the application for stay is received by the executive director or his designee. If the executive director or his designee fails to timely issue a written decision, then the stay is deemed granted. The executive director or his designee may rescind a stay granted under this subsection for good cause.
 - (e) A person who is denied a stay by the executive director or his designee, or has a previously granted stay rescinded under paragraph (d) of this subsection, may petition the **racing commission**~~{authority}~~ to overrule the executive director's or designee's denial or rescission of the stay. The petition shall be filed in writing with the chairperson of the **racing commission**~~{authority}~~ and received by the chairperson within ten (10) calendar days of the mailing of the executive director's or designee's denial of the stay. The petition shall state the name, address, phone number, and signature of the petitioner; a statement of justification of the stay; and the time period for which the stay is requested. The chairperson shall convene a special meeting of the **racing commission**~~{authority}~~ within ten (10) calendar days of receipt of the petition, and the **racing commission**~~{authority}~~ shall issue a written final order granting or denying the petition within two (2) calendar days of the special meeting. If the **racing commission**~~{authority}~~ fails to timely issue a final order on the petition, then the stay is granted. The **racing commission**~~{authority}~~ may rescind a stay granted under this subsection for good cause.
 - (f) A person who is denied or has a previously granted stay rescinded by the **racing commission**~~{authority}~~ may file an appeal of the final written order of the **racing commission**~~{authority}~~ in the Circuit Court of the county in which the cause of action arose.
 - (g) The fact that a stay is granted is not a presumption that the ruling by the stewards is invalid.
- (3) If any license is denied, suspended, or revoked, or if any licensee or other person participating in Kentucky horse racing is assessed an administrative fine or required to forfeit or return a purse, after a hearing by the stewards or by the **racing commission**~~{authority}~~ acting on a complaint or by its own volition, the **racing commission**~~{authority}~~ shall grant the applicant, licensee, or other person the right to appeal the decision, and upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
 - (4) The **racing commission**~~{authority}~~ may at any time order that any case pending before the stewards be immediately transferred to the **racing commission**~~{authority}~~ for an administrative hearing conducted in accordance with KRS Chapter 13B.
 - (5) (a) In an administrative appeal to the **racing commission**~~{authority}~~ by a licensee or other person participating in Kentucky horse racing, the **racing commission**~~{authority}~~ may determine in its final order that the appeal is frivolous. If the **racing commission**~~{authority}~~ finds that an appeal is frivolous:
 - 1. This fact shall be considered an aggravating circumstance and may be considered in assessing any penalty against the licensee; and
 - 2. The licensee or other person who raised the appeal may be required to reimburse the **racing commission**~~{authority}~~ for the cost of the investigation of the underlying circumstances of the case and the cost of the adjudication of the appeal. Costs may include but are not limited to fees paid to a hearing officer or court reporter, attorneys fees, and laboratory expenses.
 - (b) The **racing commission**~~{authority}~~ shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous.
- (6) Any administrative action authorized in this chapter shall be in addition to any criminal penalties provided in this chapter or under other provisions of law.

➔Section 458. KRS 230.330 is amended to read as follows:

Any licensee or any applicant aggrieved by any final order of the *racing commission*~~[authority]~~ may appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

➔Section 459. KRS 230.350 is amended to read as follows:

- (1) Any person licensed by this *racing commission*~~[authority]~~ under KRS 230.300 may be issued a license by the Alcoholic Beverage Control Board and may hold a distilled spirits and wine special temporary license and malt beverage special temporary license as provided in KRS 243.260 and 243.290. The licenses, and each of them, when issued shall be valid and effective only upon premises licensed by this *racing commission*~~[authority]~~ and upon the dates and hours for which racing or intertrack wagering has been authorized by this *racing commission*~~[authority]~~. A temporary license may be issued for the period the racing or intertrack wagering has been authorized, even if the period exceeds the thirty (30) days as provided in KRS 243.260 and 243.290.
- (2) Other provisions of the Kentucky Revised Statutes notwithstanding, in a county containing a city of the third or fourth class, a limited sale precinct election may be held in any precinct containing a licensed racing association. The election shall be conducted in the same manner as provided for in KRS 242.1292. Upon approval of the proposition, a license shall be issued in accordance with subsection (1) of this section. Nothing in this section shall be construed as authorizing the issuance of any alcoholic beverage licenses other than for the premises of a licensed racing association pursuant to KRS 243.260 and 243.290.

➔Section 460. KRS 230.361 is amended to read as follows:

- (1) The *racing commission*~~[authority]~~ shall promulgate administrative regulations governing and regulating mutuel wagering on horse races under what is known as the pari-mutuel system of wagering. The wagering shall be conducted only by a person licensed under this chapter to conduct a race meeting and only upon the licensed premises. The pari-mutuel system of wagering shall be operated only by a totalizator or other mechanical equipment approved by the *racing commission*~~[authority]~~. The *racing commission*~~[authority]~~ shall not require any particular make of equipment.
- (2) The operation of a pari-mutuel system for betting where authorized by law shall not constitute grounds for the revocation or suspension of any license issued and held under KRS 230.350.
- (3) All reported but unclaimed pari-mutuel winning tickets held in this state by any person or association operating a pari-mutuel or similar system of betting at horse race meetings shall be presumed abandoned if not claimed by the person entitled to them within one (1) year from the time the ticket became payable.
- (4) The *racing commission*~~[authority]~~ may issue a license to conduct pari-mutuel wagering on steeple chases or other racing over jumps; if all proceeds from the wagering, after expenses are deducted, is used for charitable purposes. If the dates requested for such a license have been granted to a track within a forty (40) mile radius of the race site, the *racing commission*~~[authority]~~ shall not issue a license until it has received written approval from the affected track. Pari-mutuel wagering licensed and approved under this subsection shall be limited to four (4) days per year. All racing and wagering authorized by this subsection shall be conducted in accordance with applicable administrative regulations promulgated by the *racing commission*~~[authority]~~.

➔Section 461. KRS 230.3615 is amended to read as follows:

- (1) The commission, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the association which operates a race track under the jurisdiction of the Kentucky Horse Racing *Commission*~~[Authority]~~ and conducts the thoroughbred racing at which betting is conducted through a pari-mutuel or other similar system, in races where the patron is required to select one (1) horse, and the breaks, which breaks shall be made and calculated to the dime, shall not be more than sixteen percent (16%) at the discretion of those tracks averaging over one million two hundred thousand dollars (\$1,200,000) in on-track pari-mutuel handle per day of live racing conducted by the association. The commission at those tracks averaging one million two hundred thousand dollars (\$1,200,000) or less in on-track pari-mutuel handle per day of live racing conducted by the association, at the discretion of such track, shall not be more than seventeen and one-half percent (17.5%) in races where the patron is required to select one (1) horse, and the breaks, which breaks shall be made and calculated to the dime.
- (2) The commission at those tracks averaging over one million two hundred thousand dollars (\$1,200,000) in on track pari-mutuel handle per day of live racing conducted by the association, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the person, corporation, or association which operates a race track under the jurisdiction of the Kentucky Horse Racing *Commission*~~[Authority]~~ and conducts

thoroughbred racing at which betting is conducted through a pari-mutuel or other similar system shall not exceed nineteen percent (19%) of the gross handle in races where the patron is required to select two (2) or more horses, and the breaks, which breaks shall be made and calculated to the dime. The commission, at those tracks averaging one million two hundred thousand dollars (\$1,200,000) or less in on track pari-mutuel handle per day of live racing conducted by the association, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the association which operates a race track under the jurisdiction of the Kentucky Horse Racing *Commission*~~[Authority]~~ and conducts thoroughbred racing at which betting is conducted through a pari-mutuel or other similar system shall not exceed twenty-two percent (22%) of the gross handle in races where the patron is required to select two (2) or more horses, and the breaks, which breaks shall be made and calculated to the dime.

- (3) The minimum wager to be accepted by any licensed association shall be ten cents (\$0.10). The minimum pay-off on a one dollar (\$1) wager shall be one dollar and ten cents (\$1.10); but, in the event of a minus pool, the minimum pay-off for a one dollar (\$1) wager shall be one dollar and five cents (\$1.05).
- (4) Each association conducting thoroughbred racing and averaging one million two hundred thousand dollars (\$1,200,000) or less in on-track pari-mutuel handle per day of live racing conducted by the association shall pay to the *racine commission*~~[authority]~~ all moneys allocated to the backside improvement fund in an amount equal to one-half of one percent (0.5%) of its on-track pari-mutuel wagers.

→Section 462. KRS 230.362 is amended to read as follows:

Any person holding unclaimed pari-mutuel winning tickets presumed abandoned under the provisions of KRS 230.361 shall file annually, on or before September 1 of each year, with the office of the *racine commission*~~[authority]~~ a list of and the amounts represented by unclaimed pari-mutuel tickets held by such person as of July 1, and other information as the *racine commission*~~[authority]~~ may require for the administration of KRS 230.361 to 230.373. The report shall be made in duplicate; the original shall be retained by the *racine commission*~~[authority]~~ and the copy shall be mailed to the sheriff of the county where the unclaimed pari-mutuel tickets are held. It shall be the duty of the sheriff to post for not less than twenty (20) consecutive days a copy of the report on the courthouse door or the courthouse bulletin board, and to publish the copy in the manner set forth by KRS Chapter 424. The cost of the publication shall be paid by the *racine commission*~~[authority]~~. The sheriff shall immediately certify in writing to the *racine commission*~~[authority]~~ the dates when the list was posted and published. The list shall be posted and published as required on or before October 1 of the year when it is made, and such posting and publishing shall be constructive notice to all holders of pari-mutuel tickets which have remained unclaimed for a period of one (1) year from the time the ticket became payable.

→Section 463. KRS 230.363 is amended to read as follows:

Any person who has made a report of unclaimed pari-mutuel tickets to the *racine commission*~~[authority]~~ as required by KRS 230.362 shall, between November 1 and November 15 of each year, turn over to the *racine commission*~~[authority]~~ the sum represented by the unclaimed pari-mutuel tickets so reported; but if the person making the report or the owner of the unclaimed pari-mutuel ticket certifies to the *racine commission*~~[authority]~~ by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exists or never did exist, or shall certify existence of any fact or circumstance in which there is substantial evidence to rebut such presumption, then, the person reporting the unclaimed pari-mutuel tickets or holding the sum represented by the unclaimed pari-mutuel tickets as reported shall not be required to turn over said sum to the *racine commission*~~[authority]~~ except upon order of court. If the holder of any unclaimed pari-mutuel ticket files an action in court claiming the sum which has been reported under the provisions of KRS 230.362, the person reporting or holding the sum represented by said unclaimed pari-mutuel ticket shall be under no duty while any such action is pending to turn over said sum to the *racine commission*~~[authority]~~, but shall have the duty of notifying the *racine commission*~~[authority]~~ of the pendency of such action.

→Section 464. KRS 230.364 is amended to read as follows:

Any person holding an unclaimed pari-mutuel ticket or any person holding the sum represented by an unclaimed pari-mutuel ticket, or any claimant thereto shall have the right to a judicial determination of his rights under KRS 230.361 to 230.373 and nothing therein shall be construed otherwise; and the *racine commission*~~[authority]~~ may institute an action to recover the sum represented by the unclaimed pari-mutuel tickets which are presumed abandoned whether said sum has been reported or not and may include in one (1) petition the sum represented by all the unclaimed pari-mutuel tickets as defined herein within the jurisdiction of the court in which the action is brought.

→Section 465. KRS 230.365 is amended to read as follows:

Any person who pays the sum represented by the unclaimed pari-mutuel tickets to the ***racing commission***^[authority] under KRS 230.363 is relieved of all liability for the value of said unclaimed pari-mutuel tickets for any claim made in respect of said unclaimed pari-mutuel tickets.

→Section 466. KRS 230.366 is amended to read as follows:

Any person claiming an interest in any unclaimed pari-mutuel ticket which has been paid or surrendered to the ***racing commission***^[authority] in accordance with KRS 230.361 to 230.373 may file his claim to it at any time after it was paid to the ***racing commission***^[authority].

→Section 467. KRS 230.367 is amended to read as follows:

The ***racing commission***^[authority] shall consider any claim or defense permitted to be filed before the ***racing commission***^[authority] and hear the evidence concerning it. If the claimant establishes his claim, the ***racing commission***^[authority] shall, when the time for appeal or other legal procedure has expired, authorize payment to him of a sum equal to the amount of his claim paid to the ***racing commission***^[authority] in accordance with KRS 230.361 to 230.373. The decision shall be in writing and shall state the substance of the evidence heard by the ***racing commission***^[authority], if a transcript is not kept. The decision shall be a matter of public record.

→Section 468. KRS 230.368 is amended to read as follows:

Any person dissatisfied with the decision of the ***racing commission***^[authority] under KRS 230.367 may appeal to the Franklin Circuit Court in accordance with the provisions of KRS 243.560 to 243.590.

→Section 469. KRS 230.369 is amended to read as follows:

The ***racing commission***^[authority], through its employees, may examine all records of any person where there is reason to believe that there has been or is a failure to report unclaimed pari-mutuel tickets.

→Section 470. KRS 230.370 is amended to read as follows:

The ***racing commission***^[authority] may promulgate any reasonable and necessary administrative regulation for the enforcement of the provisions of this chapter and the conduct of hearings held before it.

→Section 471. KRS 230.371 is amended to read as follows:

The ***racing commission***^[authority] may require the production of reports or the surrender of sums represented by unclaimed pari-mutuel tickets as provided in KRS 230.361 to 230.373 by civil equity action, including, but not limited to, an action in the nature of a bill of discovery, in which case the defendant shall pay a penalty equal to ten percent (10%) of all amounts that he is ultimately required to surrender. The ***racing commission***^[authority] shall follow the procedures provided by the Rules of Civil Procedure.

→Section 472. KRS 230.372 is amended to read as follows:

Any payments made to any persons claiming an interest in an unclaimed pari-mutuel ticket, and any necessary expense including, but not limited to, administrative costs, advertising costs, court costs and attorney's fees, required to be paid by the ***racing commission***^[authority] in administering or enforcing the provisions of KRS 230.361 to 230.373 shall be deducted from sums received by the ***racing commission***^[authority] prior to payment to the Kentucky Racing Health and Welfare Fund.

→Section 473. KRS 230.374 is amended to read as follows:

All sums reported and paid to the ***racing commission***^[authority] under the provisions of KRS 230.361 to 230.373, with the exception of funds paid under KRS 230.398, shall be paid by the ***racing commission***^[authority] to the Kentucky Racing Health and Welfare Fund, Inc., a nonprofit charitable corporation, organized for the benefit, aid, assistance, and relief of thoroughbred owners, trainers, jockeys, valets, exercise riders, grooms, stable attendants, pari-mutuel clerks, and other thoroughbred racing personnel employed in connection with racing, and their spouses and children, who can demonstrate their need for financial assistance connected with death, illness, or off-the-job injury and are not otherwise covered by union health and welfare plans, workers' compensation, Social Security, public welfare, or any type of health, medical, death, or accident insurance. These sums shall be paid on or before December 31 in each year, however, no payments shall be made by the ***racing commission***^[authority] to the Kentucky Racing Health and Welfare Fund, Inc., unless the ***racing commission***^[authority] and the Auditor of Public Accounts are satisfied that the fund is in all respects being operated for the charitable and benevolent purposes as set forth in this section and that no part of the funds paid to the fund by the ***racing commission***^[authority] or any net earnings of

the fund inure to the benefit of any private individual, director, officer, or member of the fund or any of the persons who turned over sums to the *rac~~ing~~ commission ~~authority~~* representing unclaimed pari-mutuel tickets.

➔Section 474. KRS 230.375 is amended to read as follows:

- (1) The board of directors of the Kentucky Racing Health and Welfare Fund, Inc., may create and fund the Kentucky Race Track Retirement Plan. The board shall use no more than twenty-five percent (25%) of the annual sum paid by the *rac~~ing~~ commission ~~authority~~* under KRS 230.361 to 230.373 to fund the plan.
- (2) The plan shall be provided for the benefit of thoroughbred trainers, assistant trainers, exercise riders, grooms, stable attendants, and other stable employees who can demonstrate that they are not otherwise eligible to participate in any other private or public, nonself-funded retirement or pension plan.
- (3) The Kentucky Race Track Retirement Plan shall be administered by the board of directors of the Kentucky Racing Health and Welfare Fund, Inc., for the charitable and benevolent purposes set forth in KRS 230.374, and no part of the sums administered by the fund for the plan or any net earnings of the plan shall inure to the benefit of any private individual, director, officer, or member of the fund, or any of the persons who paid sums to the *rac~~ing~~ commission ~~authority~~* under the provisions of KRS 230.361 to 230.373.
- (4) The board of directors of the Kentucky Racing Health and Welfare Fund, Inc., shall be the trustee of the plan's funds and shall have full power to invest and reinvest funds. Investments shall be diversified to balance the risks associated with various investment options to maintain the long-term solvency of the plan. The board shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the investments in which any of the plan's funds have been invested, as well as of the proceeds of investments belonging to the plan. The board members or any investment manager shall discharge their duties with respect to the assets of the plan solely in the interest of the plan's members and:
 - (a) For the exclusive purposes of providing benefits to plan members and their beneficiaries and defraying reasonable expenses of administering the plan;
 - (b) With the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims; and
 - (c) In accordance with any other laws or instruments governing the administration of the plan's funds.

➔Section 475. KRS 230.3751 is amended to read as follows:

The Governor of this Commonwealth is authorized and directed to execute a compact on behalf of the Commonwealth with any of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States, legally joining therein in the form substantially as follows:

ARTICLE I

PURPOSES

SECTION 1. Purposes.

The purposes of this compact are to:

1. Establish uniform requirements among the party states for the licensing of participants in live racing with pari-mutuel wagering, and ensure that all such participants who are licensed pursuant to this compact meet a uniform minimum standard of honesty and integrity.
2. Facilitate the growth of the pari-mutuel racing industry in each party state and nationwide by simplifying the process for licensing participants in live racing, and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live racing with pari-mutuel wagering.
3. Authorize the Kentucky Horse Racing *Commission ~~Authority~~* to participate in this compact.
4. Provide for participation in this compact by officials of the party states, and permit those officials, through the compact committee established by this compact, to enter into contracts with governmental agencies and nongovernmental persons to carry out the purposes of this compact.

5. Establish the compact committee created by this compact as an interstate governmental entity duly authorized to request and receive criminal history record information from the Federal Bureau of Investigation and other state and local law enforcement agencies.

ARTICLE II

DEFINITIONS

SECTION 2. Definitions.

"Compact committee" means the organization of officials from the party states that is authorized and empowered by this compact to carry out the purposes of this compact.

"Official" means the appointed, elected, designated or otherwise duly selected member of a racing commission or the equivalent thereof in a party state who represents that party state as a member of the compact committee.

"Participants in live racing" means participants in live racing with pari-mutuel wagering in the party states.

"Party state" means each state that has enacted this compact.

"State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and each territory or possession of the United States.

ARTICLE III

ENTRY INTO FORCE, ELIGIBLE PARTIES AND WITHDRAWAL

SECTION 3. Entry into force.

This compact shall come into force when enacted by any four (4) states. Thereafter, this compact shall become effective as to any other state upon both (i) that state's enactment of this compact and (ii) the affirmative vote of a majority of the officials on the compact committee as provided in Section 8.

SECTION 4. States eligible to join compact.

Any state that has adopted or authorized live racing with pari-mutuel wagering shall be eligible to become party to this compact.

SECTION 5. Withdrawal from compact and impact thereof on force and effect of compact.

Any party state may withdraw from this compact by enacting a statute repealing this compact, but no such withdrawal shall become effective until the head of the executive branch of the withdrawing state has given notice in writing of such withdrawal to the head of the executive branch of all other party states. If as a result of withdrawals participation in this compact decreases to less than three (3) party states, this compact no longer shall be in force and effect unless and until there are at least three (3) or more party states again participating in this compact.

ARTICLE IV

COMPACT COMMITTEE

SECTION 6. Compact committee established.

There is hereby created an interstate governmental entity to be known as the "compact committee," which shall be comprised of one (1) official from the racing commission or its equivalent in each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the party state he represents. Pursuant to the laws of his party state, each official shall have the assistance of his state's racing commission or the equivalent thereof in considering issues related to licensing of participants in live racing and in fulfilling his responsibilities as the representative from his state to the compact committee. If an official is unable to perform any duty in connection with the powers and duties of the compact committee, the racing commission or equivalent thereof from his state shall designate another of its members as an alternate who shall serve in his place and represent the party state as its official on the compact committee until that racing commission or equivalent thereof determines that the original representative official is able once again to perform his duties as that party state's representative official on the compact committee. The designation of an alternate shall be communicated by the affected state's racing commission or equivalent thereof to the compact committee as the committee's bylaws may provide.

SECTION 7. Powers and duties of compact committee.

In order to carry out the purposes of this compact, the compact committee is hereby granted the power and duty to:

1. Determine which categories of participants in live horse racing, including but not limited to owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians, and farriers, and which categories of equivalent participants in dog racing and other forms of live racing with pari-mutuel wagering authorized in two (2) or more of the party states, should be licensed by the committee, and establish the requirements for the initial licensure of applicants in each such category, the term of the license for each category, and the requirements for renewal of licenses in each category. Provided, however, that with regard to requests for criminal history record information on each applicant for a license, and with regard to the effect of a criminal record on the issuance or renewal of a license, the compact committee shall determine for each category of participants in live racing which licensure requirements for that category are, in its judgment, the most restrictive licensure requirements of any party state for that category and shall adopt licensure requirements for that category that are, in its judgment, comparable to those most restrictive requirements.
2. Investigate applicants for a license from the compact committee and, as permitted by federal and state law, gather information on such applicants, including criminal history record information from the Federal Bureau of Investigation and relevant state and local law enforcement agencies, and, where appropriate, from the Royal Canadian Mounted Police and law enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the committee as provided in paragraph 1 above. Only officials on, and employees of, the compact committee may receive and review such criminal history record information, and those officials and employees may use that information only for the purposes of this compact. No such official or employee may disclose or disseminate such information to any person or entity other than another official on or employee of the compact committee. The fingerprints of each applicant for a license from the compact committee shall be taken by the compact committee, its employees, or its designee and, pursuant to Public Law 92-544 or Public Law 100-413, shall be forwarded to a state identification bureau, or to an association of state officials regulating pari-mutuel wagering designated by the Attorney General of the United States, for submission to the Federal Bureau of Investigation for a criminal history record check. Such fingerprints may be submitted on a fingerprint card or by electronic or other means authorized by the Federal Bureau of Investigation or other receiving law enforcement agency.
3. Issue licenses to, and renew the licenses of, participants in live racing listed in paragraph 1 of this section who are found by the committee to have met the licensure and renewal requirements established by the committee. The compact committee shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible for the issuance or renewal of a compact committee license, the compact committee shall notify the applicant that it will not be able to process his application further. Such notification does not constitute and shall not be considered to be the denial of a license. Any such applicant shall have the right to present additional evidence to, and to be heard by, the compact committee, but the final decision on issuance or renewal of the license shall be made by the compact committee using the requirements established pursuant to paragraph 1 of this section.
4. Enter into contracts or agreements with governmental agencies and with nongovernmental persons to provide personal services for its activities and such other services as may be necessary to effectuate the purposes of this compact.
5. Create, appoint, and abolish those offices, employments, and positions, including an executive director, as it deems necessary for the purposes of this compact, prescribe their powers, duties and qualifications, hire persons to fill those offices, employments and positions, and provide for the removal, term, tenure, compensation, fringe benefits, retirement benefits and other conditions of employment of its officers, employees and other positions.
6. Borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, corporation or other entity.
7. Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or in other similar manner, in furtherance of the purposes of this compact.
8. Charge a fee to each applicant for an initial license or renewal of a license.
9. Receive other funds through gifts, grants and appropriations.

SECTION 8. Voting requirements.

- A. Each official shall be entitled to one (1) vote on the compact committee.

- B. All action taken by the compact committee with regard to the addition of party states as provided in Section 3, the licensure of participants in live racing, and the receipt and disbursement of funds shall require a majority vote of the total number of officials (or their alternates) on the committee. All other action by the compact committee shall require a majority vote of those officials (or their alternates) present and voting.
- C. No action of the compact committee may be taken unless a quorum is present. A majority of the officials (or their alternates) on the compact committee shall constitute a quorum.

SECTION 9. Administration and management.

- A. The compact committee shall elect annually from among its members a chairman, a vice chairman, and a secretary/treasurer.
- B. The compact committee shall adopt bylaws for the conduct of its business by a two-thirds (2/3) vote of the total number of officials (or their alternates) on the committee at that time and shall have the power by the same vote to amend and rescind these bylaws. The committee shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendments thereto with the Secretary of State or equivalent agency of each of the party states.
- C. The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and his support staff.
- D. Employees of the compact committee shall be considered governmental employees.

SECTION 10. Immunity from liability for performance of official responsibilities and duties.

No official of a party state or employee of the compact committee shall be held personally liable for any good faith act or omission that occurs during the performance and within the scope of his responsibilities and duties under this compact.

ARTICLE V

RIGHTS AND RESPONSIBILITIES OF EACH PARTY STATE

SECTION 11. Rights and responsibilities of each party state.

- A. By enacting this compact, each party state:
 - 1. Agrees (i) to accept the decisions of the compact committee regarding the issuance of compact committee licenses to participants in live racing pursuant to the committee's licensure requirements, and (ii) to reimburse or otherwise pay the expenses of its official representative on the compact committee or his alternate.
 - 2. Agrees not to treat a notification to an applicant by the compact committee under paragraph 3 of Section 7 that the compact committee will not be able to process his application further as the denial of a license, or to penalize such an applicant in any other way based solely on such a decision by the compact committee.
 - 3. Reserves the right (i) to charge a fee for the use of a compact committee license in that state, (ii) to apply its own standards in determining whether, on the facts of a particular case, a compact committee license should be suspended or revoked, (iii) to apply its own standards in determining licensure eligibility, under the laws of that party state, for categories of participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee, and (iv) to establish its own licensure standards for the licensure of nonracing employees at pari-mutuel racetracks and employees to separate satellite wagering facilities. Any party state that suspends or revokes a compact committee license shall, through its racing commission or the equivalent thereof or otherwise, promptly notify the compact committee of that suspension or revocation.
- B. No party state shall be held liable for the debts or other financial obligations incurred by the compact committee.

ARTICLE VI

CONSTRUCTION AND SEVERABILITY

SECTION 12. Construction and severability.

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable, and, if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or of any party state, or the applicability of this compact to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If all or some portion of this compact is held to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

➔Section 476. KRS 230.377 is amended to read as follows:

- (1) Other provisions of the Kentucky Revised Statutes notwithstanding, a track may apply to the **racing commission**~~{authority}~~ for simulcasting and intertrack wagering dates. Applications shall be submitted in accordance with KRS 230.300. The **racing commission**~~{authority}~~ shall not approve the establishment or relocation of a receiving track within a radius of seventy-five (75) miles of a race track duly licensed as of July 15, 1992, without the prior written consent of the licensed track within whose seventy-five (75) mile radius the new receiving track would be located.
- (2) On or before November 1 of each year, the **racing commission**~~{authority}~~ shall meet and award intertrack wagering dates to all tracks for the entire succeeding calendar year. In a geographic area containing more than one (1) track within a fifty (50) mile radius of another track, intertrack wagering, except for quarter horse racing, shall be limited to simulcasting and wagering on racing of the same breed of horse as the receiving track was licensed to race on or before July 15, 1998.
- (3) The **racing commission**~~{authority}~~ shall approve no more than nine (9) tracks for participation in horse racing, intertrack wagering, and simulcasting. Any approval by the **racing commission**~~{authority}~~ of a change in location of these tracks shall be subject to the local-approval process contained in KRS 230.380.
- (4) A track may by administrative regulation be required to simulcast its races to one (1) or more receiving tracks approved for simulcasting and intertrack wagering, as a prerequisite for the issuance of a license pursuant to KRS 230.300, provided that:
 - (a) Each track shall be permitted to exempt one (1) day of racing from simulcasting to both receiving tracks and simulcast facilities, at its discretion;
 - (b) Tracks in a county containing a city of the first class or a consolidated local government and tracks in an urban-county government shall not be required to simulcast to each other or to any other facility in those counties. This provision shall not be construed as requiring tracks within the same county to simulcast to each other; and
 - (c) In the absence of a contract between a host track and a receiving track, the commission shall be split as provided for in KRS 230.378(3).
- (5) A track may receive simulcasts and conduct interstate wagering thereon subject to the following limitations which shall be in addition to the limitations set forth in KRS 230.3771:
 - (a) A track licensed to conduct thoroughbred racing may receive simulcasts and conduct interstate wagering on all thoroughbred horse races designated as graded stakes races by the Graded Stakes Committee of the Thoroughbred Owners and Breeders Association, Inc., without further consents or approvals.
 - (b) A track licensed to conduct harness racing may receive simulcasts and conduct interstate wagering on all harness horse races (both final and elimination) having a final purse in excess of seventy-five thousand dollars (\$75,000) without further consents or approvals.
 - (c) A track licensed to conduct quarter horse racing may receive simulcasts and conduct interstate wagering on all quarter horse races designated as graded stakes races by the graded stakes committee of the American Quarter Horse Association, without further consents or approvals.
 - (d) A track which applies to the **racing commission**~~{authority}~~ to receive an interstate race of a different breed than the breed for which it is licensed by the **racing commission**~~{authority}~~ shall receive any simulcast of an interstate race through the intertrack wagering system upon approval by the **racing commission**~~{authority}~~. Notwithstanding the foregoing, a track licensed to conduct horse racing may receive simulcasts and conduct interstate wagering on quarter horse races, subject to the limitations of KRS 230.3771.

- (e) A track may receive simulcasts of special event races conducted in other states or foreign countries which are determined by the ***rac***ing ***com***mission~~[authority]~~ to be of sufficient national or international significance or interest to warrant interstate wagering and if the simulcast of these races has been approved by the Kentucky Thoroughbred Owners and Breeders Association, Inc., the Kentucky Division of the Horseman's Benevolent and Protective Association, for thoroughbred races, and the Kentucky Harness Horsemen's Association for harness racing, and any track conducting live horse races of the same breed at the same time as the simulcast race.
- (f) A track may also receive simulcasts and conduct interstate wagering on thoroughbred horse races other than those described in paragraphs (a) and (e) of this subsection if the simulcast of these races has been approved by the Kentucky Thoroughbred Owners and Breeders Association, Inc., and the Kentucky Horsemen's Benevolent and Protective Association, for thoroughbred races, and the Kentucky Harness Horsemen's Association, or its successor, for harness racing.
- (g) The consent required by paragraph (f) of this subsection or by subsections (1)(g) and (2)(g) of KRS 230.3771 shall not be withheld:
 - 1. For any reason not specifically related to financial harm to live horse racing; or
 - 2. As a condition to the granting of any contractual or other concession not specifically related to the effects of interstate simulcasting on live horse racing in this Commonwealth, taken as a whole.
- (h) A host track located in this state may receive simulcasting of not more than two (2) full cards of racing from another state, if both tracks race horses of the same breed and if:
 - 1. The race date was previously granted by the Kentucky Horse Racing ***Com***mission~~[Authority]~~ to conduct live racing at the track located in this state;
 - 2. Live racing was canceled due to weather conditions; and
 - 3. The consent required by paragraph (e) of this subsection is obtained.
- (i) The in-state track receiving the simulcast specified in paragraph (h) of this subsection shall offer that simulcast to all participating tracks and simulcast facilities in the intertrack wagering system.
- (j) All interstate simulcasting shall be conducted in accordance with applicable federal laws.
- (6) The ***rac***ing ***com***mission~~[authority]~~ may promulgate necessary and reasonable administrative regulations for the purpose of administering the conduct of intertrack or interstate wagering and regulating the conditions under which wagering shall be held and conducted. Administrative regulations shall provide for the prevention of practices detrimental to the public interest and to impose penalties for violations. All administrative regulations shall be in conformity with the provisions of KRS Chapter 13A, KRS 138.510, and this chapter.

➔Section 477. KRS 230.3771 is amended to read as follows:

- (1) A thoroughbred track licensed to conduct thoroughbred racing may receive interstate simulcasts of thoroughbred horse races and quarter horse races, and conduct interstate wagering thereon, subject to the following limitations:
 - (a) A thoroughbred receiving track may receive interstate simulcasts of thoroughbred races and conduct interstate wagering thereon at any time of day and during any live thoroughbred horse race meet conducted in the Commonwealth of Kentucky so long as the thoroughbred receiving track conducting interstate wagering remits to the thoroughbred host track conducting a live meet, from the first awarded day of its live meet through the last awarded day of the same live meet, the amounts provided in paragraph (j) of this subsection.
 - (b) A thoroughbred host track which receives interstate simulcasts and conducts interstate wagering thereon during the period of time from the first awarded day of its live meet through the last awarded day of its live meet shall offer the simulcasts to all thoroughbred receiving tracks, all harness tracks not subject to the provisions of KRS 230.377(2), and all simulcast facilities through the intertrack wagering system.
 - (c) Except as otherwise prohibited by law, a receiving track shall conduct intertrack wagering on all live races of all thoroughbred host tracks on any day on which it receives an interstate simulcast for the purpose of conducting interstate wagering.

- (d) No host track shall require that any receiving track or simulcast facility receive the interstate simulcast.
- (e) If more than one (1) thoroughbred track conducts live racing at the same time on the same day, no track or simulcast facility may receive an interstate simulcast of thoroughbred races unless all thoroughbred tracks conducting live racing at the same time of day agree upon all interstate simulcasts to be received and the division of the thoroughbred host track's commission. If more than one (1) thoroughbred track conducts live racing at different times on the same day, the thoroughbred host track with the highest average daily handle, based on the preceding year, shall be the host track for purposes of splitting the commissions earned on interstate wagering at receiving tracks within the Commonwealth. For purposes of this subsection, average daily handle includes live handle, intertrack wagering handle, and simulcast facility handle. Also for purposes of this subsection, the time of day during which a host track conducts live racing commences with its first published post time and concludes ten (10) minutes after the published post time of its last race of the day, regardless of actual post times.
- (f) Each thoroughbred track which desires to conduct interstate wagering pursuant to the provisions of this subsection shall during each year make application to the **racing commission**~~authority~~ for no less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 and one hundred percent (100%) of the number of races scheduled to be run by the track in 1993.
- (g) Notwithstanding paragraph (f) of this subsection, any thoroughbred track may apply for less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 or one hundred percent (100%) of the number of races scheduled to be run by the track in 1993, if written approval is obtained from the Kentucky Horsemen's Benevolent and Protective Association and the Kentucky Thoroughbred Owners and Breeders Association, Inc.
- (h) A separate accounting on all interstate simulcasting shall be submitted to the **racing commission**~~authority~~. The accounting shall be submitted in the same format and at the same time that the report for intertrack wagering is submitted.
- (i) If the only simulcast or simulcasts a track participating as a host track makes available for interstate wagering through this state's intertrack wagering system on any race day are thoroughbred horse races designated as graded stakes races by the Graded Stakes Committee of the Thoroughbred Owners and Breeders Association, Inc., then the commission of the receiving track on these interstate wagers shall be split as prescribed by KRS 230.378(3); otherwise, the commission of the receiving track shall be split as prescribed by paragraph (j) of this subsection. Interstate simulcasts received by a thoroughbred host track under the conditions set forth in this paragraph shall not be subject to the conditions set forth in paragraphs (b), (c), (e), and (f) of this subsection.
- (j) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
 - 1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;
 - 2. Twenty-five percent (25%) to the thoroughbred host track designated by paragraphs (a) and (e) of this subsection. However, if the race does not occur between the first awarded day of a live meet and the last awarded day of the same live meet, an additional twenty-five percent (25%) shall be retained by the receiving track where the interstate wagering occurs;
 - 3. Twenty-five percent (25%) to the purse program of the receiving track where the interstate wagering occurs; and
 - 4. Twenty-five percent (25%) to the purse program of the thoroughbred host track designated by paragraphs (a) and (e) of this subsection. However, if the race does not occur between the first awarded day of a live meet and the last awarded day of the same live meet, then an additional twenty-five percent (25%) shall be paid to the purse program of the receiving track where the interstate wagering occurs.
- (k) A simulcast facility's commission on interstate wagering on thoroughbred racing, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as provided in KRS 230.380(9).

- (2) A harness track licensed to conduct harness racing may receive interstate simulcasts of harness horse races and conduct interstate wagering thereon subject to the following limitations:
- (a) A harness receiving track may receive interstate simulcasts of harness races and quarter horse races, and conduct interstate wagering thereon at any time of day and during the course of any live harness horse race meet conducted in the Commonwealth of Kentucky so long as the harness receiving track conducting interstate wagering remits to the harness host track conducting a live meet, from the first awarded day of its live meet through the last awarded day of the same live meet, the amounts provided in paragraph (j) of this subsection.
 - (b) A harness host track which receives an interstate simulcast and conducts interstate wagering thereon during its live race meet shall offer the simulcasts to all thoroughbred receiving tracks not subject to the provisions of KRS 230.377(2), all harness tracks, and all simulcast facilities through the intertrack wagering system.
 - (c) Except as otherwise prohibited by law, a harness receiving track or a simulcast facility shall conduct intertrack wagering on all live races of a harness host track on any day it receives an interstate simulcast from a harness host track.
 - (d) No host track shall require that any receiving track or simulcast facility receive the interstate simulcast.
 - (e) If more than one (1) harness track conducts live racing at the same time on the same day, no track or simulcast facility may receive an interstate simulcast on harness races unless all harness tracks conducting live racing at that time of day agree upon the interstate simulcast to be received and the division of the harness host track's commission. If more than one (1) harness track conducts live racing at different times on the same day, the harness host track with the highest average daily handle, based on the preceding year, shall be the host track for purposes of splitting the commissions earned on interstate wagering at receiving tracks within the Commonwealth. For purposes of this subsection, average daily handle includes live handle, intertrack wagering handle, and simulcast facility handle. Also for purposes of this subsection, the time of day during which a host track conducts live racing commences with its first published post time and conclude ten (10) minutes after the published post time of its last race of the day, regardless of actual post times.
 - (f) Each harness track which desires to conduct interstate wagering pursuant to the provisions of this subsection shall during each year make application to the **racine commission**~~authority~~ for no less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 and one hundred percent (100%) of the number of races scheduled to be run by the track in 1993.
 - (g) Notwithstanding paragraph (f) of this subsection, any harness track may apply for less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 or one hundred percent (100%) of the number of races scheduled to be run by the track in 1993, if written approval is obtained from the Kentucky Harness Horsemen's Association, or its successor.
 - (h) A separate accounting on all interstate simulcasting shall be submitted to the **racine commission**~~authority~~. This accounting shall be submitted in the same format and at the same time that the report for intertrack wagering is submitted.
 - (i) If the only simulcast or simulcasts a track participating as a harness host track makes available for interstate wagering through this state's intertrack wagering system on any race day are harness horse races (both final and elimination) having a final purse in excess of seventy-five thousand dollars (\$75,000), then the commission of the receiving track on these interstate wagers shall be split as prescribed by KRS 230.378(3); otherwise, the commission of the receiving track shall be split as prescribed by paragraph (j) of this subsection. Interstate simulcasts received by a harness host track under the conditions set forth in this paragraph shall not be subject to the conditions set forth in paragraphs (b), (c), (e), and (f) of this subsection.
 - (j) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
 - 1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;

2. Twenty-five percent (25%) to the harness host track designated by paragraphs (a) and (e) of this subsection. However, if no live meet is occurring, an additional twenty-five percent (25%) shall be retained by the receiving track where the interstate wagering occurs;
 3. Twenty-five percent (25%) to the purse program of the receiving track where the interstate wagering occurs; and
 4. Twenty-five percent (25%) to the purse program of the harness host track designated by paragraphs (a) and (e) of this subsection. However, if no live meet is occurring, an additional twenty-five percent (25%) shall be paid to the purse program of the receiving track where the interstate wagering occurs.
- (k) A simulcast facility's commission on interstate wagering on harness races, after deduction of applicable taxes and any amount required to be paid by contract to the track from which the interstate simulcast originated, shall be split as provided in KRS 230.380(9).
- (3) A harness track may only receive interstate simulcasts of thoroughbred horse races and conduct interstate wagering thereon as provided in subsection (1)(b) of this section. A thoroughbred track may only receive interstate simulcasts of harness horse races and conduct interstate wagering thereon as provided in subsection (2)(b) of this section. A simulcast facility may only receive interstate simulcasts of thoroughbred and harness horse races and conduct interstate wagering thereon as provided in subsections (1)(b) and (2)(b) of this section.
- (4) (a) A thoroughbred track licensed to conduct horse racing may receive interstate simulcasts of quarter horse races and conduct interstate wagering thereon, subject to the limitations stated in paragraph (b) of this subsection.
- (b) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;
 2. Twenty-five percent (25%) to the host track; and
 3. Fifty percent (50%) to the quarter horse purse program within this state, to be allocated by the American Quarter Horse Association or its successor to supplement purses for quarter horse races in this state.
- (5) (a) A harness track licensed to conduct horse racing may receive interstate simulcasts of quarter horse races and conduct interstate wagering thereon, subject to the limitations stated in paragraphs (b) and (c) of this subsection.
- (b) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
1. Twenty-five percent (25%) to the purse program of the receiving track;
 2. Twenty-five percent (25%) to the purse program of the host track;
 3. Twenty-five percent (25%) to the receiving track; and
 4. Twenty-five percent (25%) to the host track.
- (c) When a quarter horse race is run at a Kentucky race track, the commission to the Kentucky Quarter Horse Purse Program shall be twenty-two percent (22%) from the host track's purse share.
- (6) Other provisions of the Kentucky Revised Statutes notwithstanding, any track in a geographic area that contains more than one (1) track within a fifty (50) mile radius of any other track may only receive interstate simulcasts on racing of the same breed of horse as the track was licensed to race on or before July 15, 1998, except any track may receive interstate simulcasts on quarter horse races.

➔Section 478. KRS 230.3773 is amended to read as follows:

- (1) As used in this section, "interstate common wagering pool" means a pari-mutuel pool established in one (1) horse racing jurisdiction that is combined with comparable pari-mutuel pools from at least one (1) horse racing jurisdiction for the purpose of establishing payoff prices in the various jurisdictions.
- (2) Interstate wagers at a receiving track may form an interstate common wagering pool with wagers at a track in another jurisdiction, and the receiving track may adopt the commission and breakage rates of the track at which the race is being run. The **racine commission**~~authority~~ may also approve types of wagering, distribution of winnings, and rules of racing for interstate common wagering pools that are different from those that normally apply in Kentucky.
- (3) Wagers placed on any races run at track in Kentucky may be combined with wagers placed at tracks in other jurisdictions to form an interstate common wagering pool located either within or outside Kentucky.
- (4) A track's participation in an interstate common wagering pool does not cause that track to be considered to be doing business in any jurisdiction other than the jurisdiction where the track is physically located. Excise taxes and commission rates may not be imposed on any interstate common wagering pool other than on amounts actually wagered in Kentucky. The combination of pari-mutuel pools as provided in this section constitutes the communication of wagering information for purposes of calculating odds and payoffs only and does not constitute the transfer of wagers in interstate commerce.

➔Section 479. KRS 230.378 is amended to read as follows:

- (1) A receiving track may accept wagers only at the track where it is licensed to conduct its race meeting or conduct intertrack wagering. A receiving track may accept wagers through a telephone account wagering system. Wagers at a receiving track, simulcast facility, or on telephone account wagering shall form a common pool with wagers at a host track. This common pool requirement shall not apply to wagers made in connection with interstate simulcasting pursuant to KRS 230.3771; however, common pools shall be encouraged.
- (2) Except as provided in KRS 230.3771(2), the commission of a receiving track, simulcast facility, or on telephone account wagering shall be the same as the commission of the host track as determined in KRS 230.3615 or 230.750.
- (3) In the absence of a valid contract with a horsemen's organization, the commission of a receiving track, after deduction of applicable taxes and other applicable deductions, shall be split as follows: twenty-two percent (22%) to the host track, twenty-two percent (22%) to the purse program at the host track, twenty-two percent (22%) to the receiving track and twenty-two percent (22%) to the purse program at the receiving track. Twelve percent (12%) of the commission shall be allocated evenly between the host track and the receiving track to cover the cost of simulcasting, unless otherwise agreed to by contract.
- (4) The deduction for the backside improvement fund, as provided for in KRS 230.3615(4) shall not apply to the commission or pari-mutuel tax of a receiving track or telephone account wagering.
- (5) A receiving track shall be exempt from the admissions tax levied in KRS 138.480 and from any license fee imposed by statute or regulation by the **racine commission**~~authority~~.

➔Section 480. KRS 230.379 is amended to read as follows:

- (1) A track may engage in telephone account wagering, if all moneys used to place telephone account wagers are on deposit in an amount sufficient to cover the wagers at the track where the account is opened. All moneys wagered by telephone account wagering shall be subject to the applicable pari-mutuel tax levied in KRS 138.510 and shall form a common pool with other pari-mutuel pools at the track for each posted race. The **racine commission**~~authority~~ shall have authority to promulgate necessary and reasonable administrative regulations to regulate the conduct of telephone account wagering, including regulations for the deposit of funds by credit or debit cards or other means of electronic funds transfer.
- (2) A track shall accept and tabulate a telephone account wager only from the holder of a telephone wagering account. No person shall directly or indirectly act as an intermediary, transmitter, or agent in the placing of wagers for a holder of a telephone wagering account. No person shall in any manner place a wager through telephone account wagering, on behalf of a holder of a telephone wagering account. Only the holder of a telephone wagering account shall place a telephone wager. Any person violating this subsection shall be guilty of a Class A misdemeanor.
- (3) Telephone account wagering conducted in accordance with the provisions of this section shall not be considered a violation of KRS 528.110.

➔Section 481. KRS 230.380 is amended to read as follows:

- (1) Any track licensed by the **racing commission**~~{authority}~~ to conduct horse racing and desiring to establish a simulcast facility shall apply for and may receive approval from the **racing commission**~~{authority}~~ for each simulcast facility. Prior to considering an application for approval of a simulcast facility, the **racing commission**~~{authority}~~ shall notify by regular mail, each state senator, state representative, county judge/executive, and mayor in the jurisdiction in which the proposed simulcast facility is located, at least ten (10) days in advance of the **racing commission**~~{authority}~~ meeting at which the application is to be considered or voted upon. Consideration of an application shall be based on criteria contained in administrative regulations promulgated under KRS 230.300. Approval, if granted, shall be granted for a term of one (1) calendar year.
- (2) A track or tracks may proceed with the establishment of a simulcast facility unless, within sixty (60) days of the date on which the **racing commission**~~{authority}~~ approved the facility, the governing body of the local government jurisdiction in which the facility is to be located votes, by simple majority of those voting, to disapprove the establishment of the simulcast facility. For the purposes of this section, "governing body" means, in an incorporated area, the board of aldermen, city council or board of commissioners; in a county, the fiscal court; in an urban-county government, the urban-county council, or in a charter county, the legislative body created in accordance with KRS 67.825 to 67.875.
- (3) The **racing commission**~~{authority}~~ shall not approve the establishment of any simulcast facility within a radius of fifty (50) miles of a licensed track. The **racing commission**~~{authority}~~ may approve the establishment of one (1) simulcast facility within a radius of greater than fifty (50) miles but less than seventy-five (75) miles of a licensed track, but the facility shall not be approved to operate without the prior written consent of the licensed track within whose seventy-five (75) mile radius the facility is located.
- (4) The **racing commission**~~{authority}~~ may promulgate administrative regulations as it deems appropriate to protect the integrity of pari-mutuel wagering at any simulcast facility.
- (5) Licensed tracks conducting horse racing may enter into joint agreements to establish or operate one (1) or more simulcast facilities, on terms and conditions as the participating tracks may determine. Any agreements respecting these arrangements shall be filed with the **racing commission**~~{authority}~~, and applications for simulcast facilities shall be filed by and licenses may be issued to, these licensed tracks by the **racing commission**~~{authority}~~.
- (6) A simulcast facility may be established and operated on property that is owned or leased and which is not used solely for the operation of a simulcast facility; provided however, that a simulcast facility may not be established on the premises of a lottery vendor.
- (7) A simulcast facility shall not be subject to and shall not pay any excise tax imposed pursuant to KRS 138.510, any license tax imposed under KRS 137.170, or any admission tax imposed under KRS 138.480.
- (8) One percent (1%) of all moneys wagered at a simulcast facility shall be dedicated for local economic development and shall be allocated as follows:
 - (a) If a simulcast facility is located in an incorporated area, seventy-five percent (75%) shall be allocated to the governing body of the city in which the facility is located, and twenty-five percent (25%) to the governing body of the county in which the facility is located.
 - (b) If a simulcast facility is located in an unincorporated area, all moneys shall be allocated to the governing body of the county or charter county in which the facility is located.
- (9) (a) After the deduction of moneys under subsection (8), simulcast facility shall deduct a commission allowed under KRS 230.3615 with respect to all wagers made at the simulcast facility. The commission, less moneys allocated in subsection (8) of this section, shall be split as follows:
 1. Thirty percent (30%) shall be allocated to the host track;
 2. Forty-six and one-half percent (46.5%) to the purse program at the host track;
 3. Thirteen and one-half percent (13.5%) to be retained by the track or tracks owning the simulcast facility for the purpose of application to expenses incurred in connection therewith;

4. Six percent (6%) to be allocated to the Kentucky Thoroughbred Owners and Breeders, Inc., to be expended as follows:
 - a. Up to three percent (3%) for capital improvements and promotion of off-track betting; and
 - b. The remainder for marketing and promoting the Kentucky thoroughbred industry; and
5. Four percent (4%) to be allocated to the **racing commission**~~[authority]~~ to be used for purses at county fairs in Kentucky licensed and approved by the **racing commission**~~[authority]~~, and for the standardbred sires stakes program established under KRS 230.770.
 - (b) The commission of a simulcast facility derived from interstate wagering shall be reduced by any amounts required to be paid by contract to the host track or track conducting the live race before it is divided as set forth in this section. No simulcast facility may receive any interstate simulcast except with the approval of the live Kentucky host track.
 - (c) The Kentucky Thoroughbred Owners and Breeders, Inc., shall annually report to the **racing commission**~~[authority]~~ on all money expended in accordance with subsection (9)(a)4. of this section. The report shall be in the form required, and provide all information required by the **racing commission**~~[authority]~~.
- (10) Subsections (1) and (2) of this section shall also apply to the establishment by a track of a noncontiguous facility in a county in which pari-mutuel racing and wagering is not being conducted. Subsection (8) of this section shall also apply to a noncontiguous race track facility referenced in this subsection, unless there is a written agreement to the contrary between the track establishing the facility and the governing body of the local government jurisdiction in which the facility is to be established.

➔Section 482. KRS 230.398 is amended to read as follows:

All sums reported and paid to the **racing commission**~~[authority]~~ under the provisions of KRS 230.361 to 230.373 by any licensee conducting a harness race meeting shall be used by it for purses at harness racing events at county fairs within the Commonwealth of Kentucky that have been licensed and approved by it. The **racing commission**~~[authority]~~ shall have the authority to promulgate administrative regulations as may be necessary for the conduct of these races.

➔Section 483. KRS 230.400 is amended to read as follows:

- (1) There is hereby created a trust and revolving fund for the Kentucky Horse Racing **Commission**~~[Authority]~~, designated as the Kentucky thoroughbred development fund, consisting of money allocated to the fund under the provisions of KRS 138.510, together with other money contributed to or allocated to the fund from all other sources. Money to the credit of the Kentucky thoroughbred development fund shall be distributed by the Treasurer for the purposes of this section upon authorization of the Kentucky Horse Racing **Commission**~~[Authority]~~ and upon approval of the secretary of the Finance and Administration Cabinet. Money from the Kentucky thoroughbred development fund shall be allocated to each licensed association in an amount equal to the amount the association contributed to the fund. Money to the credit of the Kentucky thoroughbred development fund at the end of each fiscal year shall not lapse, but shall be carried forward in such fund to the succeeding fiscal year.
- (2) There is hereby established, under the general jurisdiction of the Kentucky Horse Racing **Commission**~~[Authority]~~, a Kentucky Thoroughbred Development Fund Advisory Committee. The advisory committee shall consist of five (5) members, all of whom shall be residents of Kentucky, to be appointed by the chairman of the Kentucky Horse Racing **Commission**~~[Authority]~~ by July 1 of each year. The committee shall consist of two (2) thoroughbred breeders recommended by the Kentucky Thoroughbred Owners and Breeders, Inc.; one (1) thoroughbred owner recommended by the Kentucky division of the Horsemen's Benevolent and Protective Association; one (1) officer or director of a licensed association conducting thoroughbred racing in Kentucky, recommended by action of all of the licensed associations conducting thoroughbred racing in Kentucky; and one (1) member of the Kentucky Horse Racing **Commission**~~[Authority]~~. If any member other than the **racing commission**~~[authority]~~ member has not been recommended for appointment by July 1 of each year, the chairman of the Kentucky Horse Racing **Commission**~~[Authority]~~ shall make an appointment for the organization or organizations failing to recommend a member of the committee. The members of the advisory committee shall serve without compensation, but shall be entitled to reimbursement for all expenses incurred in the discharge of official business. The advisory committee shall select from its membership annually a chairman and a vice chairman.

- (3) (a) The Kentucky Thoroughbred Development Fund Committee shall advise and assist the Kentucky Horse Racing **Commission**~~{Authority}~~ in the development of the supplemental purse program provided herein for Kentucky bred thoroughbreds, shall make recommendations to the **racing commission**~~{authority}~~ from time to time with respect to the establishment of guidelines, administrative regulations for the provision of supplemental purses, the amount thereof, the races for which the purses are to be provided and the conditions thereof, manner and method of payment of supplemental purses, registry of thoroughbred stallions standing within the Commonwealth of Kentucky, registry of Kentucky bred thoroughbreds for purposes of this section, nature and type of forms and reports to be employed and required in connection with the establishment, provision for, award and payment of supplemental purses, and with respect to all other matters necessary in connection with the carrying out of the intent and purposes of this section.
- (b) The Kentucky Horse Racing **Commission**~~{Authority}~~ shall employ qualified personnel as may be required to assist the **racing commission**~~{authority}~~ and the advisory committee in carrying out the provisions of this section. These persons shall serve at the pleasure of the **racing commission**~~{authority}~~ and compensation for these personnel shall be fixed by the **racing commission**~~{authority}~~. The compensation of these personnel and the necessary expenses incurred by the **racing commission**~~{authority}~~ or by the committee in carrying out the provisions of this section shall be paid out of the Kentucky thoroughbred development fund.
- (4) The Kentucky Horse Racing **Commission**~~{Authority}~~, with the advice and assistance of the Kentucky Thoroughbred Development Fund Advisory Committee, shall use the Kentucky thoroughbred development fund to promote, enhance, improve, and encourage the further and continued development of the thoroughbred breeding industry in Kentucky by providing, out of the Kentucky thoroughbred development fund, supplemental purses for designated stakes, handicap, allowance, and nonclaiming maiden races contested at licensed thoroughbred race meetings in Kentucky, the awarding and payment of which supplemental purses shall be conditioned upon the winning or placing in designated races by Kentucky bred thoroughbred horses. Any supplemental purse provided for a designated race shall be apportioned among the winning and placing horses in the same proportion as the stake or purse provided for the race by the racing association. Winning or placing as used in this section shall include those horses finishing first, second, third, and fourth in the races. That portion of the supplemental purse provided for any designated race for a winning or placing finish shall be awarded and paid to the owner of the horse so finishing only if the horse is a Kentucky bred thoroughbred duly registered with the official registrar. Any portion of the supplemental purse which is not awarded and paid over shall be returned to the Kentucky thoroughbred development fund.
- (5) (a) For purposes of this section, the term Kentucky thoroughbred stallion shall mean and include only a thoroughbred stallion standing the entire breeding season in Kentucky and registered as a Kentucky thoroughbred stallion with the official registrar of the Kentucky thoroughbred development fund.
- (b) Except for thoroughbred horses foaled prior to January 1, 1980, the term Kentucky bred thoroughbreds for purposes of this section, shall mean and include only thoroughbred horses sired by Kentucky thoroughbred stallions foaled in Kentucky and registered as a Kentucky bred thoroughbred with the official registrar of the Kentucky thoroughbred development fund.
- (c) Any thoroughbred horse foaled prior to January 1, 1980, may qualify as a Kentucky bred thoroughbred for purposes of this section if the horse was foaled in Kentucky and if the sire of the thoroughbred was standing at stud within Kentucky at the time of conception of such thoroughbred, provided the thoroughbred is duly registered as a Kentucky bred thoroughbred with the official registrar of the Kentucky thoroughbred development fund.
- (d) In order for an owner of a Kentucky sired thoroughbred to be eligible to demand, claim, and receive a portion of a supplemental purse provided by the Kentucky thoroughbred development fund, the thoroughbred horse winning or placing in a designated race for which a supplemental purse has been provided by the Kentucky thoroughbred development fund must have been duly registered as a Kentucky bred thoroughbred with the official registrar of the Kentucky thoroughbred development fund prior to entry in the race.
- (6) (a) Kentucky Thoroughbred Owners and Breeders, Inc., is hereby recognized and designated as the sole official registrar of the Kentucky thoroughbred development fund for the purposes of registering Kentucky thoroughbred stallions and Kentucky bred thoroughbreds in accord with the terms of this

section and any administrative regulations promulgated by the Kentucky Horse Racing **Commission**~~[Authority]~~. When a Kentucky bred thoroughbred is registered with the official registrar, the registrar shall be authorized to stamp the Jockey Club certificate issued for the thoroughbred with the seal of the registrar, certifying that the thoroughbred is a duly qualified and registered Kentucky bred thoroughbred for purposes of this section. The registrar may establish and charge, with the approval of the **rac***ing commission*~~[authority]~~, reasonable registration fees for its services in the registration of Kentucky thoroughbred stallions and in the registration of Kentucky bred thoroughbreds. Registration records of the registrar shall be public records and open to public inspection at all normal business hours and times.

- (b) Any interested party aggrieved by the failure or refusal of the official registrar to register a stallion or thoroughbred as a Kentucky stallion or as a Kentucky bred thoroughbred shall have the right to file with the **rac***ing commission*~~[authority]~~, within thirty (30) days of such failure or refusal of the registrar, petition seeking registration of the thoroughbred. The **rac***ing commission*~~[authority]~~ shall promptly hear the matter de novo and issue its order directing the official registrar to register or not to register as it may be determined by the **rac***ing commission*~~[authority]~~.
- (7) The Kentucky Horse Racing **Commission**~~[Authority]~~ shall promulgate administrative regulations as may be necessary to carry out the provisions and purposes of this section, including the promulgation of administrative regulations and forms as may be appropriate for the proper registration of Kentucky stallions and Kentucky bred thoroughbreds with the official registrar, and shall administer the Kentucky bred thoroughbred program created hereby in a manner best designed to promote and aid in the further development of the thoroughbred breeding industry in Kentucky, to upgrade the quality of thoroughbred racing in Kentucky, and to improve the quality of thoroughbred horses bred in Kentucky.

➔Section 484. KRS 230.750 is amended to read as follows:

The commission, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the person, corporation, or association which operates a harness horse track under the jurisdiction of the **rac***ing commission*~~[authority]~~ at which betting is conducted through a pari-mutuel or other similar system shall not exceed eighteen percent (18%) of the gross amount handled on straight wagering pools and twenty-five percent (25%) of the gross amount handled on multiple wagering pools, plus the breaks, which shall be made and calculated to the dime. Multiple wagering pools shall include daily double, perfecta, double perfecta, quinella, double quinella, trifecta, and other types of exotic betting. An amount equal to three percent (3%) of the total amount wagered and included in the commission of a harness host track shall be allocated by the harness host track in the following manner. Two percent (2%) shall be allocated to the host for capital improvements, promotions, including advertising, or purses, as the host track shall elect. Three-quarters of one percent (3/4 of 1%) shall be allocated to overnight purses. One-quarter of one percent (1/4 of 1%) shall be allocated to the Kentucky standardbred, quarterhorse, Appaloosa, and Arabian development fund. This allocation shall be made after deduction from the commission of the pari-mutuel tax but prior to any other deduction, allocation or division of the commission.

➔Section 485. KRS 230.752 is amended to read as follows:

All harness racetracks licensed by the **rac***ing commission*~~[authority]~~ shall not be required to pay the excise tax imposed under KRS 138.510(2), and the amount that would have been paid under those subsections shall be retained by the track to promote and maintain its facilities and its live meet.

➔Section 486. KRS 230.760 is amended to read as follows:

No licensee conducting a race or meet hereunder, no member of the **rac***ing commission*~~[authority]~~, judge, or assistant official appointed to act as such pursuant to this chapter, shall be liable for damages to any person, association, or corporation for any cause whatsoever arising out of or from the performance by the licensee, member of the **rac***ing commission*~~[authority]~~, judge, or assistant official of his duties and the exercise of his discretion with respect thereto, so long as he acted in good faith, without malice or improper motive.

➔Section 487. KRS 230.770 is amended to read as follows:

- (1) There is hereby created a trust and revolving fund for the Kentucky Horse Racing **Commission**~~[Authority]~~, designated as the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund, consisting of money allocated to the fund under the provisions of KRS 138.510, together with any other money contributed to or allocated to the fund from all other sources. For the purposes of this section, "development fund" or "fund" means the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund. Money to the credit of the development fund shall be distributed by the Treasurer for the purposes provided in

this section, upon authorization of the Kentucky Horse Racing *Commission*~~[Authority]~~ and upon approval of the secretary of the Finance and Administration Cabinet. Money to the credit of the fund at the end of each fiscal year shall not lapse but shall be carried forward in the fund to the succeeding fiscal year.

- (2) The Kentucky Horse Racing *Commission*~~[Authority]~~ shall use the development fund to promote races, and to provide purses for races, for horses sired by stallions standing within the Commonwealth of Kentucky or as provided in subsection (2)(b) of this section. For purposes of this section, the term "stallions standing within the Commonwealth of Kentucky" shall include only stallions registered with the Kentucky Horse Racing *Commission*~~[Authority]~~.
 - (a) The *racine commission*~~[authority]~~ shall provide for distribution of money to the credit of the development fund to persons, corporations, or associations operating licensed standardbred race tracks within Kentucky on an equitable basis, for the purpose of conducting separate races for two (2) and three (3) year old fillies and colts, both trotting and pacing, sired by standardbred stallions standing within the Commonwealth of Kentucky at the time of conception. Notwithstanding other provisions hereof, a filly or colt foaled prior to January 1, 1978, shall be eligible to participate in races, a part of the purse for which is provided by money of the development fund, if the sire of the filly or colt was standing at stud within the Commonwealth of Kentucky at the time of conception.
 - (b) The *racine commission*~~[authority]~~ shall provide for distribution of money to the credit of the development fund to persons, corporations, or associations operating licensed racetracks within Kentucky conducting quarter horse, Appaloosa, or Arabian racing, on an equitable basis as determined by the *racine commission*~~[authority]~~.
- (3) Money distributed from the development fund to licensed standardbred race tracks within the Commonwealth shall be used exclusively to promote races and provide purses for races conditioned to admit only standardbred colts and fillies sired by standardbred stallions standing within the Commonwealth of Kentucky.
- (4) The Kentucky Horse Racing *Commission*~~[Authority]~~ shall fix the amount of money to be paid from the development fund to be added to the purse provided for each race by the licensed operator of the race track; shall fix the dates and conditions of races to be held by licensed race tracks; and shall promulgate administrative regulations necessary to carry out the provisions of this section. Money from the fund shall be allocated to each breed of horse represented in the fund in an amount equal to the amount the breed has contributed to the fund.
- (5) The Kentucky Horse Racing *Commission*~~[Authority]~~ may promulgate administrative regulations necessary to determine the eligibility of horses for entry in races for which a portion of the purse is provided by money of the development fund, including administrative regulations for the registration of stallions standing within Kentucky and progeny thereof, including registration of progeny of the stallions foaled prior to June 19, 1976. Registration of stallions standing within Kentucky may occur any time during the breeding season and shall occur no later than July 1 of each year.
- (6) The Kentucky Horse Racing *Commission*~~[Authority]~~ shall appoint qualified personnel necessary to supervise registration of, or determination of eligibility of, horses entitled to entry in races, a portion of the purse of which is provided by the development fund, to assist the *racine commission*~~[authority]~~ in determining the conditions, class, and quality of the fund supported race program to be established hereunder so as to carry out the purposes of this section. These persons shall serve at the pleasure of the *racine commission*~~[authority]~~ and compensation shall be fixed by the *racine commission*~~[authority]~~. The compensation of personnel and necessary expenses shall be paid out of the development fund. The *racine commission*~~[authority]~~ shall promulgate administrative regulations to carry out the provisions of this section, and shall administer the Kentucky sire stakes program created hereby in a manner best designed to promote and aid in the development of the horse industry in Kentucky; to upgrade the quality of racing in Kentucky; and to improve the quality of horses bred in Kentucky.

➔Section 488. KRS 230.775 is amended to read as follows:

As used in KRS 230.775 to 230.785, unless the context requires otherwise:

- (1) "Hub" means an international wagering hub, a business which, through a qualified subscriber-based service, conducts pari-mutuel wagering on the horse races that it simulcasts and other races that it carries in its wagering menu;

- (2) "Qualified subscriber-based service" means any information service or system, including but not limited to a closed-loop system, that uses:
- (a) A device or combination of devices authorized and operated exclusively for placing, receiving, or otherwise making pari-mutuel wagers on horse races by a customer subscriber base through accounts established with the operator of the hub;
 - (b) An effective customer verification and age verification system; and
 - (c) Appropriate data security standards to prevent unauthorized access by nonsubscribers or minors;
- (3) "Foreign jurisdiction" means states other than Kentucky, a territory of the United States, a foreign country, or any political subdivision thereof;
- (4) "**Racing commission**~~[Authority]~~" means the Kentucky Horse Racing **Commission**~~[Authority]~~ or its successor~~[authority]~~; and
- (5) "Call center" means that portion of a qualified subscriber-based service that is physically located in the Commonwealth, where wagers are placed, received, or otherwise made by a customer subscriber base through accounts established with the operator of the hub.

➔Section 489. KRS 230.779 is amended to read as follows:

- (1) Notwithstanding KRS 230.361(1), a licensee may operate the hub either independently or in association with one (1) or more racetracks licensed by the **racing commission**~~[authority]~~ to run live races and conduct pari-mutuel wagering in Kentucky. Hub operations may be physically located on property other than that operated by a racetrack and may accept wagers at that location and shall comply with the Interstate Horseracing Act, 15 U.S.C. secs. 3001 to 3007.
- (2) As a part of the application for licensure as a hub, an applicant shall submit a detailed plan of operations in a format and containing any information as required by the **racing commission**~~[authority]~~. The application shall be accompanied by an application fee to cover incremental costs to the **racing commission**~~[authority]~~, in an amount the **racing commission**~~[authority]~~ determines to be appropriate. At a minimum, the operating plan shall address the following:
- (a) The manner in which the proposed wagering system will operate, including its proposed operating schedule;
 - (b) The requirements for a qualified subscriber-based service set out in KRS 230.775; and
 - (c) The requirements for accounts established and operated for persons whose principal residence is outside of the Commonwealth of Kentucky.
- (3) The **racing commission**~~[authority]~~ may require changes in a proposed plan of operations as a condition of licensure. Subsequent material changes in the system's operation shall not occur unless approved by the **racing commission**~~[authority]~~.
- (4) The **racing commission**~~[authority]~~ may conduct investigations or inspections or request additional information from any applicant as it deems appropriate in determining whether to approve the license application.
- (5) An applicant licensed under this section may enter into any agreements that are necessary to promote, advertise, and further the sport of horse racing, or for the effective operation of hub operations, including, without limitation, interstate account wagering, television production, and telecommunications services.
- (6) The **racing commission**~~[authority]~~ shall promulgate administrative regulations to effectuate the provisions of KRS 230.775 to 230.785. The administrative regulations shall include but not be limited to criteria for licensing, the application process, the format for the plan of operations, requisite fees, procedures for notifying the **racing commission**~~[authority]~~ of substantive changes, contents of agreements entered into under subsection (5) of this section, procedures for accounting for wagers made, and other matters reasonably necessary to implement KRS 230.775 to 230.785.
- (7) The **racing commission**~~[authority]~~ may require the hub to make the following payments to the **racing commission**~~[authority]~~:
- (a) A license fee not to exceed two hundred dollars (\$200) per operating day; and
 - (b) A fee of not more than one percent (1%) of the hub's total gross wagering receipts.

- (8) A hub's records and financial information shall not be subject to the provisions of KRS 61.870 to 61.884.
- (9) The Auditor of Public Accounts may review and audit all records and financial information of the hub, including all account information. The Auditor shall prepare a report of the review and audit which shall not contain any proprietary information regarding the hub. A copy of the report shall be sent to the Legislative Research Commission for referral to the appropriate committee.

➔Section 490. KRS 230.785 is amended to read as follows:

The *racine commission*~~[authority]~~ or its staff shall, upon request, be given access, for review and audit, to all records and financial information of the hub operator, including all account information. The *racine commission*~~[authority]~~ may require that the hub operator annually submit to the *racine commission*~~[authority]~~ audited financial statements.

➔Section 491. KRS 230.800 is amended to read as follows:

- (1) There is hereby created in the State Treasury a trust and revolving fund designated as the "Kentucky thoroughbred breeders incentive fund." The fund shall be administered by the Kentucky Horse Racing *Commission*~~[Authority]~~. For all tax periods beginning on or after June 1, 2005, eighty percent (80%) of all receipts collected under KRS 139.531(1)(a) from the sales and use tax on the fees paid for breeding a stallion to a mare in Kentucky shall be deposited in the fund together with any other money contributed, appropriated, or allocated to the fund from all other sources. The money deposited in the fund is hereby appropriated for the uses set forth in this section. Any money remaining in the fund at the close of any calendar year shall not lapse but shall be carried forward to the next calendar year. The fund may also receive additional state appropriations, gifts, grants, and federal funds. All interest earned on money in the fund shall be credited to the fund.
- (2)
 - (a) The Kentucky Horse Racing *Commission*~~[Authority]~~ shall use moneys deposited in the Kentucky thoroughbred breeders incentive fund to administer the fund and provide rewards for breeders of horses bred and foaled in Kentucky.
 - (b) ~~{By January 1, 2006, }~~The Kentucky Horse Racing *Commission*~~[Authority]~~ shall promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund.
 - (c) The Department of Revenue may promulgate administrative regulations establishing the procedures necessary to determine the correct allocation of sales tax receipts described in subsection (1) of this section.
 - (d) As soon as practicable after the close of each calendar year, ~~{beginning with the calendar year ending December 31, 2005, }~~the *racine commission*~~[authority]~~ shall disburse to breeders of horses moneys in the Kentucky thoroughbred breeders incentive fund pursuant to the administrative regulations promulgated pursuant to paragraph (b) of this subsection.

➔Section 492. KRS 230.802 is amended to read as follows:

- (1) There is hereby created in the State Treasury a trust and revolving fund designated as the "Kentucky standardbred breeders incentive fund." The fund shall be administered by the Kentucky Horse Racing *Commission*~~[Authority]~~. For tax periods beginning on or after June 1, 2005, thirteen percent (13%) of all receipts collected under KRS 139.531(1)(a) from the sales and use tax on the fees paid for breeding a stallion to a mare in Kentucky shall be deposited in the fund together with any other money contributed, appropriated, or allocated to the fund from all other sources. The money deposited in the fund is hereby appropriated for the uses set forth in this section. Any money remaining in the fund at the close of any calendar year shall not lapse but shall be carried forward to the next calendar year. The fund may also receive additional state appropriations, gifts, grants, and federal funds. All interest earned on money in the fund shall be credited to the fund.
- (2)
 - (a) The Kentucky Horse Racing *Commission*~~[Authority]~~ shall use moneys deposited in the Kentucky standardbred breeders incentive fund to administer the fund and provide rewards for breeders or owners of Kentucky-bred standardbred horses.
 - (b) ~~{By January 1, 2006, }~~The Kentucky Horse Racing *Commission*~~[Authority]~~ shall promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund.

- (c) The Department of Revenue may promulgate administrative regulations establishing the procedures necessary to determine the correct allocation of sales tax receipts described in subsection (1) of this section.
- (d) As soon as practicable after the close of each calendar year, ~~{beginning with the calendar year ending December 31, 2005, }~~the ***racine commission***~~{authority}~~ shall disburse moneys in the Kentucky standardbred breeders incentive fund to be used to promote, enhance, improve, and encourage the further and continued development of the standardbred breeding industry in Kentucky, under the administrative regulations promulgated pursuant to paragraph (b) of this subsection.

➔Section 493. KRS 230.804 is amended to read as follows:

- (1) There is hereby created in the State Treasury a trust and revolving fund designated as the "Kentucky horse breeders incentive fund." The fund shall be administered by the Kentucky Horse Racing ***Commission***~~{Authority}~~. For tax periods beginning on or after June 1, 2005, seven percent (7%) of all receipts collected under KRS 139.531(1)(a) from the sales and use tax on the fees paid for breeding a stallion to a mare in Kentucky shall be deposited in the fund together with any other money contributed, appropriated or allocated to the fund from all other sources. The money deposited in the fund is hereby appropriated for the uses set forth in this section. Any money remaining in the fund at the close of any calendar year shall not lapse but shall be carried forward to the next calendar year. The fund may also receive additional state appropriations, gifts, grants, and federal funds. All interest earned on money in the fund shall be credited to the fund.
- (2)
 - (a) The Kentucky Horse Racing ***Commission***~~{Authority}~~ shall use moneys deposited in the Kentucky horse breeders incentive fund to administer the fund and provide rewards for breeders or owners of horses bred and foaled in Kentucky.
 - (b) ~~{By January 1, 2006, }~~The Kentucky Horse Racing ***Commission***~~{Authority}~~ shall promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund.
 - (c) The Department of Revenue may promulgate administrative regulations establishing the procedures necessary to determine the correct allocation of sales tax receipts described in subsection (1) of this section.
 - (d) As soon as practicable after the close of each calendar year, ~~{beginning with the calendar year ending December 31, 2005, }~~the ***racine commission***~~{authority}~~ shall disburse to breeders of horses moneys in the Kentucky horse breeders incentive fund to be used to promote, enhance, improve, and encourage the further and continued development of the horse industry in Kentucky, under the administrative regulations promulgated pursuant to paragraph (b) of this subsection.

➔Section 494. KRS 230.990 is amended to read as follows:

- (1) Any person who violates KRS 230.070 or KRS 230.080(3) shall be guilty of a Class D felony.
- (2) Any person who violates KRS 230.090 shall be guilty of a Class A misdemeanor.
- (3) Any person who violates KRS 230.680 shall be guilty of a Class A misdemeanor.
- (4) Any person who refuses to make any report or to turn over sums as required by KRS 230.361 to 230.373 shall be guilty of a Class A misdemeanor.
- (5) Any person failing to appear before the ***racine commission***~~{authority}~~ at the time and place specified in the summons issued pursuant to KRS 230.260(12), or refusing to testify, shall be guilty of a Class B misdemeanor. False swearing on the part of any witness shall be deemed perjury and punished as such.
- (6)
 - (a) A person is guilty of tampering with or interfering with a horse race when, with the intent to influence the outcome of a horse race, he uses any device, material, or substance not approved by the Kentucky Horse Racing ***Commission***~~{Authority}~~ on or in any participant involved in or eligible to compete in a horse race to be viewed by the public.
 - (b) Any person who, while outside the Commonwealth and with intent to influence the outcome of a horse race contested within the Commonwealth, tampers with or interferes with any equine participant involved in or eligible to compete in a horse race in the Commonwealth is guilty of tampering with or interfering with a horse race.

(c) Tampering with or interfering with a horse race is a Class C felony.

➔Section 495. KRS 234.100 is amended to read as follows:

- (1) As used in KRS 234.100 to 234.160 and 234.990 the term "liquefied petroleum gas" means and includes any material which is composed predominantly of any of the following hydrocarbons, or mixtures of them, whether in the liquid or in the gaseous states: propane, propylene, butane (normal butane or isobutane), and butylene.
- (2) "~~Commissioner~~~~Executive director~~" means ~~commissioner~~~~executive director~~ of housing, buildings and construction.

➔Section 496. KRS 234.120 is amended to read as follows:

- (1) Subject to the exceptions provided in subsection (2), no person shall engage in any of the businesses set out in this subsection without first having provided proof to the ~~commissioner~~~~executive director~~ of ability to respond in damages for personal injury and property damages in the amount prescribed, and having obtained from the ~~commissioner~~~~executive director~~ the required license or licenses and paid the prescribed fee therefor:
 - (a) Selling or delivering to the ultimate consumer or user of liquefied petroleum gas; selling liquefied petroleum gas regulating equipment; repairing, installing, or connecting of containers, liquefied petroleum gas appliances, or liquefied petroleum gas utilization equipment; or filling of D.O.T. liquefied petroleum gas containers for ultimate consumer or wholesale dealer. In-state liquefied petroleum gas dealers, except those holding a valid license on July 15, 1994, shall maintain a liquefied petroleum gas storage facility with an eighteen thousand (18,000) gallon minimum capacity within the boundaries of Kentucky. Out-of-state liquefied petroleum gas dealers, except those holding a valid license on July 15, 1994, shall maintain an eighteen thousand (18,000) gallon minimum capacity liquefied petroleum gas storage facility within fifty (50) miles of the Kentucky border. Until January 1, 2002, the fee for this license shall be one hundred dollars (\$100). Beginning on January 1, 2002, the fee for this license shall be two hundred dollars (\$200), and the license shall be issued for a period of two (2) years. The minimum liability insurance for this license shall be one million dollars (\$1,000,000).
 - (b) Selling or delivering liquefied petroleum gas in prefilled or filled-on-site containers of one hundred (100) pound liquefied petroleum gas capacity or less; selling of liquefied petroleum gas regulating equipment; assembly, repairing, installing, or connecting of liquefied petroleum gas containers, liquefied petroleum gas appliances, or any liquefied petroleum gas utilization equipment. Until January 1, 2002, the fee for this license shall be fifty dollars (\$50). Beginning on January 1, 2002, the fee for this license shall be one hundred dollars (\$100), and the license shall be issued for a period of two (2) years. The minimum liability insurance for this license shall be five hundred thousand dollars (\$500,000).
 - (c) Selling or filling of D.O.T. liquefied petroleum gas containers of forty-five (45) pounds or less capacity, or selling liquefied petroleum gas at a specific site for use as a motor vehicle fuel. Until January 1, 2002, the fee for this license shall be fifty dollars (\$50). Beginning on January 1, 2002, the fee for this license shall be one hundred dollars (\$100), and the license shall be issued for a period of two (2) years. The minimum liability insurance for this license shall be five hundred thousand dollars (\$500,000).
 - (d) Storing, for resale, liquefied petroleum gas in D.O.T. containers of forty-five (45) pounds or less capacity, or selling D.O.T. containers, storage cabinets, racks, docks, for storage of forty-five (45) pound capacity or less. Until January 1, 2001, the fee for this license shall be twenty-five dollars (\$25). Beginning on January 1, 2001, the fee for this license shall be fifty dollars (\$50), and the license shall be issued for a period of two (2) years. The minimum liability insurance for this license shall be one hundred thousand dollars (\$100,000).
 - (e) Assembling, repairing, installing, or connecting of liquefied petroleum gas containers, or regulating equipment, or liquefied petroleum gas appliances, or any liquefied petroleum gas utilization equipment. Until January 1, 2001, the fee for this license shall be twenty-five dollars (\$25). Beginning on January 1, 2001, the fee for this license shall be fifty dollars (\$50), and the license shall be issued for a period of two (2) years. The minimum liability insurance for this license shall be five hundred thousand dollars (\$500,000).

- (2) Any person engaged in any business for which a license is required under the provisions of subsection (1) and who engages in the business at more than one (1) office or place of business in this state shall obtain a separate license for each such office or place of business and shall pay therefor the required license fee; except that for the purposes of issuance of licenses under subsection (1) all facilities for the storage only of liquefied petroleum gas for resale within a radius of twenty (20) miles of an office or place of business shall be considered a part of the office or place of business and shall not require separate licensure.
- (3) The **commissioner**~~{executive director}~~ shall further have the authority to promulgate and enforce reasonable administrative regulations requiring proof of ability to respond in damages for personal injury and property damages in the minimum amounts required under the provisions of subsection (1), prior to the issuance of a license. The **commissioner**~~{executive director}~~ shall also have authority to suspend or revoke any license issued under this section for willful or gross negligence or for violation of any applicable administrative regulations promulgated under KRS 227.300, but any licensee whose license is suspended or revoked shall be afforded the opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B.

➔Section 497. KRS 234.130 is amended to read as follows:

The initial license required under KRS 234.120 shall be issued by the **department**~~{office}~~ and shall expire on the last day of the licensee's birth month in the next even-numbered year. The **department**~~{office}~~ may reduce the license fee on a pro rata basis for initial licenses issued for less than twenty-four (24) months. Renewed licenses shall expire on the last day of the licensee's birth month of each numbered year after the issuance of the renewed license. Renewal fees shall be the same as the initial license fee.

➔Section 498. KRS 234.140 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~, after a public hearing thereon, shall make, promulgate, and enforce regulations setting forth minimum general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck, tank trailer, and utilizing liquefied petroleum gases, and specifying the odorization of said gases and the degree thereof. Said regulations shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and persons using such materials, and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Regulations concerning the construction of buildings relating to liquefied petroleum gases shall conform to the uniform state building code after said code is promulgated.
- (2) The **commissioner**~~{executive director}~~ shall promulgate any additional rules and regulations which he or she deems necessary to provide for the safe storage, handling, transportation and use of liquefied petroleum gas.

➔Section 499. KRS 234.160 is amended to read as follows:

All moneys collected under the provisions of KRS 234.100 to 234.160 shall be paid into the State Treasury and credited to a trust and agency fund to be used by the **Department**~~{Office}~~ of Housing, Buildings and Construction solely for the administration and enforcement of KRS 234.100 to 234.160 and 234.990.

➔Section 500. KRS 234.171 is amended to read as follows:

The **commissioner**~~{executive director}~~ of housing, buildings and construction may appoint an advisory board composed of persons actively engaged in the liquefied petroleum gas industry in the State of Kentucky. The board shall give the **commissioner**~~{executive director}~~ the benefit of its technical knowledge to aid him or her in supervising and regulating the liquefied petroleum gas industry.

➔Section 501. KRS 234.175 is amended to read as follows:

- (1) Domestic and commercial gas-consuming equipment and appliances shall not be installed unless their correctness as to design, construction, and performance is certified by:
- (a) A nationally recognized testing agency adequately equipped and competent to perform such services evidenced by the attachment of its seal or label to such gas appliances. This agency shall be one which maintains a program of national inspection of production models of gas appliances, at least once each year on the manufacturer's premises;
- (b) By the American Gas Association Laboratories, as evidenced by the attachment of its listing symbol or approval seal to gas appliances and a certificate or letter certifying approval under the above-mentioned requirements, or listing by Underwriters' Laboratories, Inc., shall be considered as constituting compliance with the provisions of this section, providing, that the manufacturer has approval and certification of same from the **Department**~~{Office}~~ of Housing, Buildings and Construction.

- (2) Equipment not subject to A.G.A. or laboratory inspection must have approval of the *Department*~~{Office}~~ of Housing, Buildings and Construction.
- (3) A person shall not install gas-consuming appliances, equipment, or other components of a gas delivery system unless the installation is made in accordance with the instructions of the manufacturer of the appliance, equipment, or component and in compliance with the applicable administrative regulations promulgated by the *Department*~~{Office}~~ of Housing, Buildings and Construction.
- (4) A person shall not alter, modify, maintain, or repair gas-consuming appliances, equipment, or other components of a gas delivery system unless the alteration, modification, maintenance, or repair is made in accordance with the instructions of the manufacturer of the appliance, equipment, or component and in compliance with the applicable administrative regulations promulgated by the *Department*~~{Office}~~ of Housing, Buildings and Construction.
- (5) A person licensed under this chapter or an agent or employee of the person shall not be liable for civil damages for injury to persons or property that result from the installation, alteration, modification, maintenance, or repair of a gas-consuming appliance, equipment, or component by a person other than the licensee or the licensee's agent or employee.
- (6)
 - (a) Except as provided in paragraph (b) of this subsection, a person licensed under this chapter or the licensee's agent or employee who provides gas to an end user shall not be liable for civil damages for injury to persons or property that result from the installation, alteration, modification, maintenance, or repair of the gas-consuming appliance, equipment, or component if the installation, alteration, modification, maintenance, or repair is done without the actual knowledge and consent of the licensee or the licensee's agent or employee.
 - (b) A person licensed under this chapter or his or her agent or employee shall not be exempt from liability for civil damages under paragraph (a) of this subsection if the person or his or her agent or employee is negligent or acts intentionally, and the negligence or intentional act causes or partially causes injury or damage.

➔Section 502. KRS 234.180 is amended to read as follows:

- (1) For plants storing liquefied petroleum gases, and used for the dispensing of liquefied petroleum gases in liquid state into container or containers, for resale, plans shall be submitted, in duplicate, to the *Department*~~{Office}~~ of Housing, Buildings and Construction, and shall be approved by the *department*~~{office}~~ before construction is started. Plans so submitted shall show the following information as a minimum:
 - (a) The name and address of the owner, and the name and purpose of the plant proposed;
 - (b) Location of the proposed plant in relation to the nearest city, highways, railroads, and built up areas;
 - (c) A plot plan showing dimensions of the area proposed to be used for the plant, distances to the nearest property lines and the location and construction of any buildings which might affect the distances required under regulations adopted by the *commissioner*~~{executive director}~~ of housing, buildings, and construction;
 - (d) Construction drawings showing the arrangement and construction of all tanks, tank supports, piping, accessories, buildings, and appurtenant items of construction. These drawings shall be in sufficient detail to allow a contractor who is familiar with tank and pipe installation but not necessarily familiar with liquefied petroleum gas installations to use such drawings to satisfactorily complete the installation without further instructions;
 - (e) A copy of the original boiler inspector's report of inspection of the tank or tanks to be used or a reference to manufacturer's name and serial number of the tank so that the report may be obtained direct;
 - (f) The date of completion of the plans, the dates of any subsequent revisions and the signature of the person assuming responsibility for the correctness of the plans.
- (2) For plants, installed for industrial or commercial usage, having a nominal water capacity of 150 gallons or over and serving an aggregate BTU usage of 150,000 BTUs or over and/or used for dispensing liquefied petroleum gas into other containers, not for resale, a report of installation, giving location and equipment installed, must

be made to the **Department**~~{Office}~~ of Housing, Buildings and Construction, not later than ten (10) days after installation.

➔Section 503. KRS 234.272 is amended to read as follows:

As used in KRS 234.270 to 234.302, unless the context otherwise requires:

- (1) "**Commissioner**~~{Executive Director}~~" means the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Housing, Buildings and Construction;
- (2) "Council" means the Kentucky Propane Education and Research Council created in accordance with KRS 234.290;
- (3) "**Department**~~{Office}~~" means the state **Department**~~{"Office"}~~ of Housing, Buildings and Construction;
- (4) "Education" means any action to provide information regarding propane, propane equipment, mechanical and technical practices relating to the use of propane, and propane uses to consumers and members of the propane industry;
- (5) "Industry" means those persons involved in the production, transportation, and sale of propane and in the manufacture and distribution of propane utilization equipment;
- (6) "Industry trade association" means an organization representing the propane industry which is exempt from tax, under Section 501(c)(3) or (c)(6) of the Internal Revenue Code;
- (7) "Odorized propane" means propane to which an odorant has been added;
- (8) "Person" means any individual, corporation, partnership, association, cooperative, or other business entity;
- (9) "Producer" means the owner of propane at the time it is recovered at a gas processing plant or refinery, without regard to the state in which actual production occurs;
- (10) "Propane" means a hydrocarbon whose chemical composition is predominately C₃H₈, whether recovered from natural gas or crude oil, and includes liquefied petroleum gases and mixtures thereof;
- (11) "Public member" means a member of the council representing significant users of propane, public safety officials, state regulatory officials, or other groups knowledgeable about propane;
- (12) "Research" means any type of study, investigation, or other activity designed to advance the image, desirability, usage, marketability, efficiency, or safety of propane and to further the development of this information;
- (13) "Retail marketer" means a person engaged primarily in the sale of odorized propane to the final user of the product or to retail propane dispensers;
- (14) "Retail propane dispenser" means a person who sells odorized propane to the final user of the product but is not engaged primarily in the business of these sales; and
- (15) "Supplier" means a person, other than a producer, who is the owner of propane in the Commonwealth at the time of odorization or who is the owner of odorized propane at the time it is imported into the Commonwealth.

➔Section 504. KRS 234.274 is amended to read as follows:

The **commissioner**~~{executive director}~~ may promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provisions of KRS 234.270 to 234.302.

➔Section 505. KRS 234.280 is amended to read as follows:

- (1) Any existing industry trade organization which is fairly representative of the propane industry in Kentucky, such as the Kentucky Propane Gas Association, may at any time after July 15, 1998, make application to the **commissioner**~~{executive director}~~ on forms prescribed by the **department**~~{office}~~ for certification and approval for the purpose of conducting a referendum among producers, suppliers, and retail marketers upon the question of levying an assessment under the provisions of KRS 234.270 to 234.302 and collecting and utilizing the assessment for the purpose stated in the referendum. The application forms shall include, but not be limited to, the following:
 - (a) Applicant's name;
 - (b) Applicant's address;

- (c) Date;
- (d) Program to be undertaken;
- (e) Brief statement of how the program is to be implemented;
- (f) Referendum to be conducted on a statewide basis;
- (g) Proposed effective date of the program; and
- (h) Signature of the applicant.

(2) Upon receipt of the application, the **commissioner**~~{executive director}~~ shall publish the application through the medium of the public press in the state within ten (10) days of receipt.

➔Section 506. KRS 234.282 is amended to read as follows:

Upon being certified by the **commissioner**~~{executive director}~~, the association in KRS 234.280(1) shall be fully authorized and empowered to hold a referendum among producers, suppliers, and retail marketers on the question of whether the industry shall levy upon itself an assessment for the purpose stated in KRS 234.270 to 234.302.

➔Section 507. KRS 234.286 is amended to read as follows:

- (1) The manner, conduct, and management of any referendum held under the provisions of KRS 234.270 to 234.302 shall be under the supervision and direction of the **commissioner**~~{executive director}~~. Any and all expenses in connection with the initial referendum shall be borne by the association conducting the referendum. Any and all expenses in connection with subsequent referenda shall be borne by the council.
- (2) With respect to any referendum conducted under the provisions of KRS 234.270 to 234.302, the association or council responsible for the referendum shall select an independent auditing firm, subject to the approval of the **commissioner**~~{executive director}~~, to conduct the referendum.
- (3) All persons voting in the referendum shall certify to the independent auditing firm the volume of propane represented by their vote. The information provided under this subsection shall be considered proprietary and shall remain confidential.
- (4) The association or council responsible for the referendum shall develop a mechanism for notifying those persons eligible to vote in the referendum. Notice of the referendum, at a minimum, shall be given to all retail marketers in Kentucky holding a "Class A" license from the **department**~~{office}~~ and notice shall be published in existing industry publications with significant circulation within the Commonwealth.

➔Section 508. KRS 234.288 is amended to read as follows:

- (1) The results of the referendum, as certified by the independent auditing firm, shall be submitted to the **commissioner**~~{executive director}~~ within thirty (30) days of certification.
- (2) For the purpose of the referendum, producers and suppliers shall be considered a single class. Upon approval of those persons representing two-thirds (2/3) of the total volume of odorized propane voted in the retail marketer class and approval of those persons representing two-thirds (2/3) of the total volume of propane voted in the producer and supplier class, the **commissioner**~~{executive director}~~ shall issue an order authorizing the assessment.
- (3) The initial assessment proposed shall be no greater than one-tenth of one cent (\$0.001) per gallon of odorized propane. Thereafter, the annual assessment shall be set by the council in an amount adequate to cover the cost of plans and programs developed by the council. In no event shall the annual assessment levied under the provisions of the referendum exceed one-half of one cent (\$0.005) per gallon of odorized propane unless approved by the majority of those voting in both the retail marketer class and the producer and supplier class in a separate referendum. The increase in the annual assessment as provided for in this subsection is limited to one-tenth of one cent (\$0.001) per year.

➔Section 509. KRS 234.290 is amended to read as follows:

- (1) There is hereby established the Kentucky Propane Education and Research Council composed of eleven (11) members appointed by the **commissioner**~~{executive director}~~. Five (5) members shall represent retail marketers, five (5) members shall represent producers and suppliers, and one (1) member shall be the public member as defined in KRS 234.272.

- (2) Council members representing retail marketers, producers, and suppliers shall be appointed based on the nomination of an industry trade association certified according to KRS 234.280. No member representing these categories may be appointed unless recommended by a certified industry trade association. Members in these categories shall be full-time employees or owners of businesses in the industry.
- (3) No employee of a certified industry trade association shall serve as a member of the council and no member of the council may serve concurrently as an officer or member of the board of directors of a certified industry trade association. A director of a certified association may serve as an ex officio nonvoting member of the council.
- (4) No more than one (1) representative from any company or its affiliate may serve on the council at any time.
- (5) In nominating members to the council, a certified association shall consider broad-based representation including:
 - (a) Gas processors and oil refiners among producers;
 - (b) Interstate and intrastate operators among retail marketers;
 - (c) Large and small companies among producers, suppliers, and retail marketers; and
 - (d) Diverse geographic regions of the state.
- (6) Council members shall serve three (3) year terms except that for initial appointments, four (4) members shall be appointed to one (1) year terms, four (4) members to two (2) year terms, and three (3) members to three (3) year terms. Within ninety (90) days after July 15, 1998, certified industry trade organizations shall submit nominations to the **commissioner**~~{executive director}~~. No member shall serve more than two (2) consecutive terms.
- (7) Council members shall receive no compensation for their services. Only the public member may be reimbursed for reasonable and necessary expenses directly related to attendance at council meetings.

➔Section 510. KRS 234.292 is amended to read as follows:

- (1) The council shall establish the annual assessment subject to the limitations of KRS 234.288(3) to be paid by the owner of odorized propane at the time of odorization or at the time of import of odorized propane into the state. The assessment shall be made based on the volume of odorized propane sold for final use within the Commonwealth.
- (2) The assessment shall be listed as a separate line item on the bill and labeled "Kentucky Propane Education and Research Assessment." Assessments collected from purchasers of propane are payable to the council on a monthly basis and are due by the twenty-fifth day of the month following the month of collection.
- (3) The council may establish an alternative means of collecting the assessment if another method is found to be more efficient or effective. The council may establish a late payment charge and rate of interest to be imposed on any person who fails to remit to the council any amount due by the date listed in subsection (2) of this section.
- (4) The council shall elect its own chair and may elect other officers as necessary. The council shall determine its business structure and adopt rules and bylaws for the conduct of its business. The council shall establish procedures for the solicitation of industry comments and recommendations on plans and programs financed by the assessments.
- (5) The council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the council. The minutes, books, and records shall be made available to the members of the council, the **commissioner**~~{executive director}~~, and persons paying the assessment.
- (6) The council shall, at the beginning of each fiscal year, prepare and submit to the **commissioner**~~{executive director}~~ a budget. The **commissioner**~~{executive director}~~ shall review and comment on the proposed budget.
- (7) The books of the council shall be audited by a certified public accountant at least once each fiscal year. Copies of the audit shall be provided to the members of the council and the **commissioner**~~{executive director}~~.
- (8) The council may contract with an industry association certified under KRS 234.280 for administrative and other services subject to the limitation in KRS 234.294(2).

➔Section 511. KRS 234.298 is amended to read as follows:

- (1) Upon petition to the *commissioner*~~[executive director]~~ by producers, suppliers, and retail marketers representing thirty-five percent (35%) of the volume of propane in each class, the council shall conduct a referendum to determine if the industry favors termination of the council and the assessment. Termination shall not take effect unless it is approved by persons representing a majority of the total volume of odorized propane voted in the retail marketer class and by persons representing a majority of the total volume of propane voted in the producer and supplier class.
- (2) The council shall conduct a referendum five (5) years after the date of the first referendum and each subsequent five (5) year period to determine if the assessment should be continued or terminated.
- (3) If the council expresses in writing its desire to the *commissioner*~~[executive director]~~ to discontinue the assessment program and terminate the program, the *commissioner*~~[executive director]~~, after reviewing the request and conducting whatever proceedings are deemed appropriate and necessary in connection with the request, may terminate the program effective at the end of the calendar year in which the action is taken.

➔Section 512. KRS 234.321 is amended to read as follows:

- (1) The tax imposed by KRS 234.320 shall not be collected when the liquefied petroleum gas sold by the dealer is used to propel motor vehicles on the public highways, either within or without this state, when the motor vehicles using the liquefied petroleum gas are equipped with carburetion systems approved by the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet.
- (2) The *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet shall establish emission standards for carburetion systems.

➔Section 513. KRS 235.010 is amended to read as follows:

As used in this chapter, unless the context clearly requires a different meaning:

- (1) "Vessel" means every description of watercraft, other than a seaplane on the water;
- (2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, except for the following:
 - (a) Boats or vessels propelled totally by a direct current battery-powered motor when used on private waters;
 - (b) Boats propelled by human power employing the use of hand or foot operation; and
 - (c) Federally regulated commercial vessels;
- (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;
- (4) "Personal watercraft" means a vessel which uses an internal combustion engine to power a jet pump for its primary source of propulsion and is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than to be operated by a person sitting or standing inside the vessel;
- (5) "Safe boating certificate" means a document attesting the successful completion of instruction, approved by the department or given by the United States Coast Guard or Coast Guard Auxiliary or the United States Power Squadron, to prepare an individual to safely operate a motorboat or personal watercraft on the waters of the Commonwealth;
- (6) "Waters of this state" means any waters within the territorial limits of this state;
- (7) "Person" means an individual, partnership, firm, corporation, association, or other entity;
- (8) "Operate" means to navigate or otherwise use a motorboat or a vessel;
- (9) "Cabinet" means the Tourism, Arts and Heritage Cabinet;
- (10) "Department" means the Department of Fish and Wildlife Resources;
- (11) "License" and "certificate of number" as used herein are synonymous;

- (12) "Clerk" means county clerk;
- (13) "Division of Law Enforcement" means the Division of Law Enforcement, Department of Fish and Wildlife Resources within the Tourism, Arts and Heritage Cabinet;
- (14) "Title" means the certificate of title;
- (15) "Commissioner" means the commissioner of the Department of Fish and Wildlife Resources;
- (16) "Federally regulated commercial vessel" means any vessel holding a United States certificate of documentation with a coastwise trade endorsement;
- (17) "Marina" means a dock or basin providing moorings for motorboats and offering supply, repair, or other services for remuneration; and
- (18) "Marine sanitation device" means equipment that is identified by the United States Coast Guard as meeting the standards of the United States Environmental Protection Agency or that is approved by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, to eliminate the discharge of untreated sewage from vessels into the waters of the Commonwealth and is a device that receives, treats, retains, or discharges sewage.

➔Section 514. KRS 236.010 is amended to read as follows:

As used in this chapter:

- (1) "Boiler" or "boilers" means and includes a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, or in which any combination of these functions is accomplished, under pressure or vacuum, for use externally to itself, by the direct application of energy from the combustion of fuels, or from electricity, solar or nuclear energy. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves:
 - (a) "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than fifteen (15) pounds per square inch gauge;
 - (b) "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty (160) pounds per square inch gauge or temperatures exceeding two hundred fifty (250) degrees Fahrenheit; and
 - (c) "Heating boiler" means a steam or vapor boiler operating at pressures not exceeding fifteen (15) pounds per square inch gauge or a hot water boiler operating at pressures not exceeding one hundred sixty (160) pounds per square inch gauge or temperatures not exceeding two hundred fifty (250) degrees Fahrenheit.
- (2) "Pressure vessel" means a vessel in which the pressure is obtained from an external source or by the application of heat other than those vessels defined in subsection (1) of this section.
- (3) "~~Commissioner~~~~Executive director~~" means the **commissioner**~~executive director~~ of housing, buildings and construction.
- (4) "~~Department~~~~Office~~" means the **Department**~~Office~~ of Housing, Buildings and Construction.
- (5) "ASME" means American Society of Mechanical Engineers.
- (6) "Board" means Board of Boiler and Pressure Vessel Rules.
- (7) "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to determine whether or not a certificate, as provided by subsection (1) of KRS 236.120, may be issued.
- (8) "Rule" or "regulation" means a general regulation adopted by the **commissioner**~~executive director~~ upon advisement of the board and filed and approved in accordance with KRS Chapter 13A designed to insure the safety of boilers and pressure vessels that affects or may affect property rights of a designated class of owners, or designed for the prevention of loss or damage to property, loss of life, or personal injury from boiler or pressure vessel explosion or from certain indicated hazards related thereto.
- (9) "Order" or "summary order" means an order of the state fire marshal, the chief boiler inspector, or a boiler inspector, made in accordance with this chapter or KRS Chapter 227 and designed for the prevention of loss or

damage to property, loss of life, or personal injury from boiler or pressure vessel malfunction or explosion, that affects or may affect the property rights of a particular owner of designated property.

- (10) "Division" means the Division of **Plumbing**~~[Fire Prevention]~~ in the **department**~~[office, headed by the state fire marshal]~~.
- (11) "Qualified welder" means a welder or welding machine operator who has passed the tests required by Section IX of the ASME code.
- (12) "Person" or "firm" means any individual, firm, partnership, or corporation.

➔Section 515. KRS 236.020 is amended to read as follows:

- (1) In the **Department**~~[Office]~~ of Housing, Buildings and Construction, Division of **Plumbing**~~[Fire Prevention]~~, there shall be a Board of Boiler and Pressure Vessel Rules, which shall hereafter be referred to as the board, consisting of seven (7) members including the chief boiler inspector who shall serve as chairman. The other members shall be appointed to the board by the Governor; one (1) for a term of one (1) year, one (1) for a term of two (2) years, two (2) for a term of three (3) years, and two (2) for a term of four (4) years, or until their successors are appointed and qualified. At the expiration of their respective terms of office they, or their successors identifiable with the same interest respectively as provided in this section, shall be appointed for terms of four (4) years each. The Governor may at any time remove any member of the board. Upon the death or incapacity of any member the Governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his or her predecessor was identified. Of these six (6) appointed members, one (1) shall be a practical steam operating engineer of high pressure boilers, or any other representative of owners and users of high pressure boilers or pressure vessels within the state; one (1) shall be a representative of the boiler manufacturers or pressure vessel manufacturers within the state; one (1) shall be a representative of a boiler insurance company licensed to do business within the state; one (1) shall be a representative of the boilermakers within the state selected from a list of five (5) names submitted by the Kentucky State Building and Construction Trades Council; one (1) shall be a representative of pipe erecting concerns doing business within the state; and one (1) shall be a metallurgist, welder, or a person representing the welding industry. The board shall meet at least four (4) times each year at the Capitol or other place designated by the board. No approval, decision, or ruling of the board shall be effective unless supported by the vote of at least five (5) members thereof.
- (2) The members of the board shall serve without salary and shall receive their actual necessary expenses, incurred while in the performance of their duties as members of the board, to be paid in the same manner as in the case of other state officers.
- (3) The division shall provide such administrative support and assistance as may be necessary for the board to carry out its duties and responsibilities under this chapter.

➔Section 516. KRS 236.030 is amended to read as follows:

After reasonable notice and opportunity to be heard in accordance with KRS Chapter 13A, the **commissioner**~~[executive director]~~ of housing, buildings and construction, upon advisement and subject to comment by the board under the requirements of KRS 198B.030(9) and (10) and 198B.040(11), shall, by administrative regulation, fix reasonable standards for the safe construction, installation, inspection, and repair of boilers, pressure vessels, and associated pressure piping in this state. Such administrative regulations shall be enforced by the **Department**~~[Office]~~ of Housing, Buildings and Construction, Division of **Plumbing**~~[Fire Prevention]~~.

➔Section 517. KRS 236.040 is amended to read as follows:

- (1) No boiler or pressure vessel which does not conform to the rules and regulations formulated by the **commissioner**~~[executive director]~~ governing new construction and installation shall be installed and operated in this state from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective.
- (2) All new connecting piping subjected to pressure emanating from a power boiler or pressure vessel shall be considered part of the boiler or pressure vessel installation, subject to the same boiler or pressure vessel code requirements, and shall be designed in accordance with the rules of ASME power piping code ANSI 31.1 or its subsequent revisions and ASME boiler and pressure vessel code Sections I, and VIII (division 1) and their subsequent revisions. Inspection of such piping shall be performed by an inspector qualified under KRS 236.070 or KRS 236.080.

- (3) All new connecting piping subjected to pressure emanating from a heating boiler shall be considered part of the heating boiler installation, subject to the same boiler code requirements and shall be designed in accordance with the rules of the ASME heating boiler code, Section 4 and its subsequent revisions and this chapter. Inspection of such piping shall be performed by a boiler and pressure vessel inspector.

➔Section 518. KRS 236.050 is amended to read as follows:

- (1) The maximum allowable working pressure of a boiler or pressure vessel carrying the ASME code symbol shall be determined by the applicable sections of the code under which it was constructed and stamped.
- (2) The maximum allowable working pressure of a boiler or pressure vessel which does not carry the ASME code symbol shall be computed in accordance with the ASME "Suggested Rules Governing Existing Installations", Section I appendix, Section IV appendix, and Section VIII appendix and the regulations adopted in accordance with KRS 236.030.
- (3) This chapter shall not be construed as in any way preventing the use or sale of a boiler referred to in this section, provided it has been made to conform to the rules and regulations of the *commissioner*~~executive director~~ governing existing installations; and provided, further, it has not been found upon inspection to be in an unsafe condition.

➔Section 519. KRS 236.060 is amended to read as follows:

- (1) KRS 236.005 to 236.150 shall not apply to boilers or pressure vessels or related piping under federal control.
- (2) KRS 236.005 to 236.150 shall not apply to the following boilers or related piping:
- (a) Boilers or pressure vessels located on farms and used solely for agricultural purposes;
 - (b) Boilers or pressure vessels located at any oil refineries;
 - (c) Boilers or pressure vessels located at any utility operating under a certificate issued pursuant to KRS 278.020, if the boilers or pressure vessels are inspected by a special boiler inspector under the provisions of KRS 236.110, except that the inspection interval provided for in KRS 236.110 shall be extended to eighteen (18) months;
 - (d) Steam or vapor boilers used for heating purposes carrying a pressure of not more than fifteen (15) pounds per square inch gauge, and which are located in private residences;
 - (e) Hot water heating boilers carrying a pressure of not more than thirty (30) pounds per square inch gauge which are located in private residences or hot water supply boilers which are located in private residences;
 - (f) Any unfired pressure vessels used as containers for liquefied petroleum gases and subject to the jurisdiction of the *Department*~~Office~~ of Housing, Buildings and Construction under KRS Chapter 234;
 - (g) Pressure vessels used for transportation of compressed gases if constructed and operated in compliance with specifications and regulations of another state or federal authority;
 - (h) Pressure vessels containing air located on vehicles operating under the regulations of another state or federal authority;
 - (i) Pressure vessels operating at a maximum pressure of fifteen (15) PSI or less;
 - (j) Single wall pressure vessels having an inside diameter of six (6) inches;
 - (k) Pressure vessels with a nominal water containing capacity of one hundred twenty (120) gallons or less, to be used for domestic supply purposes, for containing water under pressure, including those containing air, the compression of which serves only as a cushion;
 - (l) Pressure vessels containing water heated by steam or other indirect means when none of the following are exceeded:
 1. Heat input of two hundred thousand (200,000) BTU/Hr.;
 2. Water temperature of two hundred ten (210) degrees Fahrenheit;
 3. Water storage capacity of one hundred twenty (120) gallons;

- (m) Coil type hot water boilers without a steam space and where no steam is generated within the confines of the unit but where water flashes into steam when released to atmospheric pressure by the operation of a manually operated nozzle, unless one (1) of the following is exceeded:
 - 1. Three quarter (3/4) inch inside diameter tubing or pipe size with no drum or header attached;
 - 2. Six (6) gallon water containing capacity;
 - 3. Three hundred fifty (350) degrees Fahrenheit water temperature;
- (n) Water heaters which are directly fired with oil, gas, or electricity, when none of the following limitations are exceeded:
 - 1. Heat input of two hundred thousand (200,000) BTU/Hr.;
 - 2. A water temperature of two hundred ten (210) degrees Fahrenheit;
 - 3. A water containing capacity of one hundred twenty (120) gallons;
- (o) Pressure vessels which may be classified as:
 - 1. Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices such as pumps, compressors, turbines, generators, engines, and hydraulic or pneumatic cylinders where the primary design considerations or stresses are derived from the functional requirements of the device; or
 - 2. Structures whose primary function is the transport of fluids from one location to another within a system of which it is an integral part, that is, piping system.
- (3) The fees required by KRS 236.120(1) and 236.130 shall not apply to standard and miniature antique and hobby boiler-operated tractors and equipment used solely for exhibition, if the boiler uses a fifty (50) pounds per square inch or less gauge.

➔Section 520. KRS 236.070 is amended to read as follows:

The ~~department~~~~office~~ shall employ boiler and pressure vessel inspectors who shall have had at the time of appointment not less than five (5) years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and pressure vessels as a mechanical engineer, practical steam operating engineer, boilermaker, pressure vessel inspector or boiler inspector, and who shall have passed the examination provided for in KRS 236.090.

➔Section 521. KRS 236.080 is amended to read as follows:

- (1) In addition to the boiler inspectors authorized by KRS 236.070, the ~~department~~~~office~~ shall, upon the request of any company authorized to insure against loss from explosion of boilers and pressure vessels in this state, issue to any boiler inspectors of said company commissions as special boiler inspectors, provided that each such special boiler inspector before receiving such commission, shall satisfactorily pass the examination provided for in KRS 236.090, or, in lieu of such examination, shall hold a commission or certificate of competency as an inspector of boilers and pressure vessels for a state that has a standard of examination substantially equal to that of this Commonwealth or a commission as an inspector of boilers and pressure vessels issued by the National Board of Boiler and Pressure Vessel Inspectors.
- (2) Such special boiler inspectors shall receive no salary from, nor shall any of their expenses be paid by, the state and the continuance of a special inspector's commission shall be conditioned upon his or her continuing in the employ of an insurance company duly authorized as aforesaid and upon his or her maintenance of the standards imposed by this chapter.
- (3) Such special inspectors shall inspect all boilers and pressure vessels insured by their respective companies, and, when so inspected and reported as required, the owners and users of such insured boilers and pressure vessels shall be exempt from the payment to the state of the inspection fees as provided for in KRS 236.120 and 236.130.
- (4) Each company employing such special boiler inspectors shall within thirty (30) days following each certificate inspection made by such inspectors, file a report of such inspection with the division upon appropriate forms

prescribed by the division. Other than the certificate inspection report, no reporting of other inspections shall be required except when such inspections disclose that the boiler is in a dangerous condition.

- (5) Boiler and pressure vessel inspectors, whether employees of the ~~department~~~~office~~ or special inspectors, shall have free access, during reasonable hours, to any premises in the state where a boiler or pressure vessel is being constructed or is being installed, for the purpose of ascertaining whether such boiler or pressure vessel is constructed and installed or is being installed in accordance with the law, and any orders, rules, or regulations in existence at that time.

➔Section 522. KRS 236.090 is amended to read as follows:

Examination for a certificate of competency or a national board commission for boiler inspectors or special boiler inspectors shall be in writing and shall be given and monitored by the boiler inspection section *of the division*. Examinations are given on the first Wednesday and Thursday of the months of March, June, September and December of each year. The record of an applicant's examination shall be accessible to said applicant and his employer.

➔Section 523. KRS 236.100 is amended to read as follows:

- (1) Any boiler inspector's or special inspector's appointment or commission may be suspended or revoked by the ~~department~~~~office~~, after due investigation and hearing thereon, for the incompetence or untrustworthiness of the holder thereof, or for willful falsification of any matter or statement contained in his or her application or in a report of any inspection made by him or her. Written notice of and an opportunity for a hearing on any suspension or revocation under this subsection shall be given by the ~~department~~~~office~~ to the inspector, and in the case of a special boiler inspector, also to his or her employer in accordance with the provisions of KRS Chapter 13B.
- (2) A person whose appointment or commission has been suspended shall be entitled to apply to the ~~commissioner~~~~executive director~~, after ninety (90) days from the date of the suspension, for reinstatement of the appointment or commission.
- (3) Any willful falsification of an application or inspection report shall constitute a misdemeanor and shall subject the inspector or special inspector to the penalties provided in KRS 236.990.

➔Section 524. KRS 236.110 is amended to read as follows:

- (1) Each boiler or pressure vessel used or proposed to be used within this state, except boilers or pressure vessels exempt under KRS 236.060, shall be thoroughly inspected as to their construction, installation, and condition as follows:
- (a) Power boilers shall receive a certificate inspection annually which shall be an internal inspection where construction permits; otherwise it shall be as complete an inspection as possible. Such boilers shall also be externally inspected while under pressure if possible.
- (b) Low pressure steam or vapor heating boilers, hot water heating boilers, and hot water supply boilers shall receive a certificate inspection biennially; said inspection shall include internal inspection where construction permits. External inspections are required where construction does not permit internal inspection.
- (c) Pressure vessels shall be inspected at time of installation to ascertain that they are in conformance with KRS 236.040. Subsequent reinspections, if any, shall be set by regulation of the ~~department~~~~office~~.
- (d) A grace period of two (2) months beyond the periods specified in paragraphs (a), (b), and (c) of this subsection may elapse between inspections.
- (e) The ~~department~~~~office~~ may at its discretion permit longer periods between inspections.
- (f) All new boiler or pressure vessel installations to be used within this state, excepting boilers or pressure vessels exempted under KRS 236.060, shall be inspected during the installation period to ascertain that all pressure piping conforms to the requirements of KRS 236.040. An inspection certificate may not be issued on any new installation until these requirements are fulfilled.
- (g) It shall be the responsibility of the installing contractor to request the above inspection by notifying the boiler inspection section of the ~~division~~~~state fire marshal's office~~ that the installation is ready for such inspection. This must be accomplished prior to covering of any welded or mechanical joints on pressure

piping or valves by insulation, paint, or structural materials. The contractor shall provide ready access for the inspector to all parts of the piping system.

- (h) Inspection of pressure piping applies only to new boiler or pressure vessel installations, or reinstallations, or installation of secondhand boilers (as defined under "Boiler Rules and Regulations"). No annual or biennial reinspection is required once the system has been approved.
 - (i) "Existing installations," as applied to inspection of piping systems is defined as any boiler and piping system completed and approved for operation prior to July 1, 1970. Such existing installations will not be subject to the foregoing piping inspection unless adjudged patently unsafe for operation by a boiler inspector holding a commission issued by the National Board of Boiler and Pressure Vessel Inspectors. If an existing installation is so adjudged the owner will be granted full rights of appeal as set forth under KRS 236.150.
 - (j) At such time as an existing installation undergoes extensive overhaul or more than fifty (50) linear feet of pressure piping requires renewal or is added to the existing system, the entire system of piping carrying pressure emanating from the boilers shall be subject to inspection and will be brought up to standards required by KRS 236.040.
 - (k) The installing contractor of a piping system carrying pressure emanating from a boiler or pressure vessel subject to inspection under provisions of KRS 236.050 to 236.150, shall pay to the *department*~~{office}~~, upon completion of inspection, fees in accordance with a schedule set up by the board and approved by the *commissioner*~~{executive director}~~.
 - (l) Operation of a pressure piping system in conjunction with a boiler or pressure vessel, either of which has not been inspected and approved as set forth above, shall be subject to fines and penalties as set forth in KRS 236.990.
- (2) The inspections required in this section shall be made by a boiler and pressure vessel inspector or by a special boiler inspector except that all new installations shall be inspected by a boiler inspector employed by the *department*~~{office}~~.
 - (3) If at any time a hydrostatic, pneumatic, or any other nondestructive test shall be deemed necessary for ascertaining acceptability, the same shall be made by the contractor or owner-user, whoever is responsible for the condition, and be witnessed by a boiler inspector or special boiler inspector.
 - (4) All boilers to be installed in this state after July 1, 1970, and all pressure vessels installed in this state after July 15, 1980, shall be inspected during construction as required by the applicable rules and regulations of the *department*~~{office}~~ by a boiler and pressure vessel inspector authorized to inspect boilers and pressure vessels in this state, or, if constructed outside of the state, by an inspector holding a commission from the national board as an inspector of boilers and pressure vessels.
 - (5) No person shall willfully falsify any statement designed to secure the issuance, renewal or reinstatement of a certificate of inspection. Violation of this subsection shall subject such a person to the penalties stated in KRS 236.990.

➔Section 525. KRS 236.120 is amended to read as follows:

- (1) If, upon inspection, a boiler or pressure vessel is found to comply with the administrative regulations of the *department*~~{office}~~, the owner, user, or insurance company of it shall pay to the *department*~~{office}~~ the sum of fifteen dollars (\$15). When the inspection is made by a special inspector, the inspector shall attach the certificate fee to his or her report. The chief boiler inspector, or his or her duly authorized representative, shall issue to the owner or user a certificate of inspection for the boiler or pressure vessel bearing the date of inspection and specifying the maximum pressure under which the boiler may be operated. An inspection certificate shall be valid for not more than fourteen (14) months from its date in the case of power boilers, and twenty-six (26) months in the case of low pressure steam or vapor heating boilers, hot water heating boilers, or hot water supply boilers. Certificates shall be posted under glass in the room containing the boiler inspected or, in the case of a portable boiler, shall be kept in a tool box accompanying the boiler.
- (2) No certificate of inspection issued for an insured boiler, inspected by a special inspector, shall be valid after the insurance on the boiler for which it was issued terminates. Boilers shall be insured by a company duly authorized by this state to carry the insurance.

- (3) The **commissioner**~~{executive director}~~ or his or her authorized representative may at any time suspend a certificate of inspection if, in his or her opinion, the boiler or pressure vessel for which it was issued cannot be operated without menace to the public safety, or if the boiler or pressure vessel is found not in compliance with this chapter or the administrative regulations of the **department**~~{office}~~. A special boiler inspector shall have corresponding powers with respect to suspending certificates of inspection for boilers insured by the company employing him or her. The suspension of a certificate of inspection shall continue in effect until the boiler or pressure vessel conforms to this chapter and administrative regulations of the board, and until the inspection certificate is reinstated.
- (4) A suspended certificate of inspection shall be reissued on the recommendation of the boiler inspector or special boiler inspector who first caused the suspension or at the discretion of the chief boiler inspector.

➔Section 526. KRS 236.130 is amended to read as follows:

- (1) The owner or user of a boiler or pressure vessel required by this chapter to be inspected shall pay to the **department**~~{office}~~, upon completion of inspection, reasonable fees not to exceed the cost of inspection as established by the **commissioner**~~{executive director}~~ upon advice of the board pursuant to KRS Chapter 13A.
- (2) All other inspections, including shop inspections and inspection of secondhand or used boilers made by the boiler inspector shall be charged for at the rate set by regulation promulgated by the **commissioner**~~{executive director}~~ upon advice of the board pursuant to KRS Chapter 13A.
- (3) All fees received by the **department**~~{office}~~ shall be held in a trust and agency fund from which the expenses of administering this chapter and other **department**~~{office}~~ responsibilities may be paid and no portion of said fund shall lapse into the general fund at the end of each fiscal year.

➔Section 527. KRS 236.150 is amended to read as follows:

- (1) Any person aggrieved by an order or act of a boiler and pressure vessel inspector, under this chapter, may, within fifteen (15) days of notice thereof, appeal from the order or act to the **commissioner**~~{executive director}~~ who shall schedule and conduct an administrative hearing in accordance with KRS Chapter 13B.
- (2) Any person aggrieved by a final order of the **commissioner**~~{executive director}~~ may file a petition in the Franklin Circuit Court for judicial review in accordance with KRS Chapter 13B.

➔Section 528. KRS 236.210 is amended to read as follows:

- (1) No person shall engage in the business of installing, erecting, or repairing boilers unless he or she first obtains a license from the **commissioner**~~{executive director}~~ on recommendation of the board.
- (2) Each person, firm or corporation must pass an examination prepared by the board and administered by the **department**~~{office}~~.
- (3) A license shall be issued by the **commissioner**~~{executive director}~~ or the chief boiler inspector upon recommendation of the board and payment of a reasonable fee not to exceed the cost of examination and other expenses involved as established by the **commissioner**~~{executive director}~~ upon advice of the board pursuant to KRS Chapter 13A.
- (4) The license shall be renewable annually, not later than the first of the month following the expiration date, upon payment of a reasonable fee not to exceed the costs involved in such renewal as established by the **commissioner**~~{executive director}~~ upon advice of the board pursuant to KRS Chapter 13A.
- (5) All individuals in the employ of a licensee shall not be required to be licensed.

➔Section 529. KRS 236.240 is amended to read as follows:

- (1) No person shall install, erect or make major repairs affecting the strength of a boiler or pressure vessel without first securing a permit from the **department**~~{office}~~. Permits shall be issued only to persons licensed under KRS 236.210 to 236.260.
- (2) No work shall be performed except by or under the supervision of such licensed person. The permit fees shall be set by the board.
- (3) The permit fees will include one (1) interim inspection and one (1) final inspection for issuance of boiler certificate of inspection.

- (4) Special inspections and more than two (2) inspections requested by the licensee for each permit will be charged fees in accordance with KRS 236.130.

➔Section 530. KRS 236.250 is amended to read as follows:

- (1) No person shall make major repairs affecting the strength or safety of boilers or pressure vessels without first securing a permit from the *department*~~{office}~~ unless repairs have been authorized by a boiler inspector or special boiler inspector pending issuance of the permit or unless such repairs are emergency repairs authorized by the *department*~~{office}~~, a special boiler inspector or a boiler inspector pending issuance of the permit. No permit will be required for emergency items not affecting the strength of the boiler or pressure vessel, when performed by qualified persons regularly employed by firms utilizing properly qualified procedures. Permits shall only be issued to persons licensed under the provisions of this chapter. A permit fee shall be paid directly to the *department*~~{office}~~, and shall accompany the repair application.
- (2) Payment of permit to repair fees will not be required from firms utilizing properly qualified welding procedures and regularly employing qualified welders, certified by and registered with the *department*~~{office}~~, to weld on boilers owned and operated by such firms.

➔Section 531. KRS 236.260 is amended to read as follows:

The *commissioner*~~{executive director}~~, the chief boiler inspector or any deputy inspector shall have free access, during reasonable hours, to any premises in the state where a boiler or pressure vessel is being constructed, installed or repaired for the purpose of ascertaining whether the work being performed is in accordance with the provisions of KRS Chapter 236 or any orders or regulations made thereunder.

➔Section 532. KRS 236.990 is amended to read as follows:

- (1) It shall be unlawful for any person, firm, partnership, or corporation to operate in this state a boiler or pressure vessel without a valid certificate of inspection. The operation of a boiler or pressure vessel without a valid certificate, or at a pressure exceeding that specified in an inspection certificate, shall constitute a Class B misdemeanor on the part of the owner, user, or operator. Each day of unlawful operation shall constitute a separate offense.
- (2) Any person who violates the provisions of KRS 236.040(1); 236.080(4); 236.110(1), (4) and (5); 236.210(1); 236.220(1); 236.240(1) and (2); 236.250(1); or any proper order or administrative regulation made or promulgated thereunder; or who hinders or obstructs an authorized inspector in the performance of his or her duties under this chapter, shall be subject to the penalties in subsection (1) above.
- (3) Any person who willfully violates any provision of this chapter, or any administrative regulation, emergency order, or order of the state fire marshal, or an authorized deputy state fire marshal, or the chief boiler inspector, or of any authorized boiler or pressure vessel inspector, promulgated or made pursuant to this chapter, shall be subject to suspension or revocation of any appointment, commission, certification, registration, license, or permit made or issued by the *department*~~{office}~~ and held by that person, in accordance with the procedures specified in KRS 236.220, or in lieu of a suspension or revocation, shall be subject to an administrative fine of not less than ten dollars (\$10) and not exceeding five hundred dollars (\$500) after notice and hearing by the board in accordance with KRS 236.220. Each day these violations exist shall, in the discretion of the board, be considered as a separate violation.
- (4) As an aid to enforcement of the provisions of this chapter, or of any administrative regulation or order relating thereto, the state fire marshal or his or her authorized deputy or employee may take any administrative action or bring any legal action in the manner authorized in KRS Chapter 227 that is designed to prevent or correct any condition constituting or threatening to constitute a violation of any provision of this chapter.

➔Section 533. KRS 238.505 is amended to read as follows:

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

- (1) "*Department*~~{Office}~~" means the *Department*~~{Office}~~ of Charitable Gaming within the ~~{Environmental and Public Protection Cabinet}~~;
- (2) "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter.

- "Charitable gaming" shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races;
- (3) "Charitable organization" means a nonprofit entity organized for charitable, religious, educational, literary, civic, fraternal, or patriotic purposes;
 - (4) "Bingo" means a specific game of chance in which participants use cards or paper sheets, or card-minding device representations thereof, divided into horizontal and vertical spaces, each of which is designated by a letter and a number, and prizes are awarded on the basis of the letters and numbers on the card conforming to a predetermined and preannounced configuration of letters and numbers selected at random;
 - (5) "Charity game ticket" means a game of chance using a folded or banded paper ticket, or a paper card with perforated break-open tabs, the face of which is covered or otherwise hidden from view to conceal a number, letter, symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners and shall include charity game tickets that utilize a seal card. "Charity game ticket" shall include pulltabs;
 - (6) "Seal card" means a board or placard used in conjunction with charity game tickets, that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, or symbols;
 - (7) "Raffle" means a game of chance in which a participant is required to purchase a ticket for a chance to win a prize, with the winner to be determined by a random drawing;
 - (8) "Charity fundraising event" means an activity of limited duration at which games of chance approved by the ~~department~~~~office~~ are conducted, including bingo, raffles, charity game tickets, special limited charitable games, and wagering on prerecorded horse races, KRS Chapter 230 notwithstanding. Examples of such activities include events that attract patrons for community, social, and entertainment purposes apart from charitable gaming, such as fairs, festivals, carnivals, licensed charitable gaming organization conventions, and bazaars;
 - (9) "Manufacturer" means a person who assembles from raw materials or subparts any charitable gaming equipment or supplies used in the conduct of charitable gaming, including a person who converts, modifies, and adds to or removes parts from, charitable gaming equipment and supplies. The term shall not include:
 - (a) Any person who services or repairs charitable gaming supplies and equipment, so long as that person replaces or repairs an incidental, malfunctioning, or nonfunctioning part with a similar or identical part; and
 - (b) Any distributor who cuts, collates, and packages for distribution any gaming supplies and equipment purchased in bulk;
 - (10) "Distributor" means a person who sells, markets, leases, or otherwise furnishes to a charitable organization charitable gaming equipment or supplies, or both, used in the conduct of charitable gaming. "Distributor" shall not include:
 - (a) A resident printer who prints raffle tickets at the request of a licensed charitable organization; and
 - (b) A licensed charitable organization that affects a one-time donation of charitable gaming supplies or equipment to another licensed charitable organization if the donation is first approved by the ~~department~~~~office~~.
 - (11) "Charitable gaming facility" means a person, including a licensed charitable organization, that owns or is a lessee of premises which are leased or otherwise made available to two (2) or more licensed charitable organizations during a one (1) year period for the conduct of charitable gaming;
 - (12) "Gross receipts" means all moneys collected or received from the conduct of charitable gaming;
 - (13) "Adjusted gross receipts" means gross receipts less all cash prizes and the amount paid for merchandise prizes purchased;
 - (14) "Net receipts" means adjusted gross receipts less all expenses, charges, fees, and deductions authorized under this chapter;
 - (15) "Charitable gaming supplies and equipment" means any material, device, apparatus, or paraphernalia customarily used in the conduct of charitable gaming, including bingo cards and paper, charity game tickets, and other apparatus or paraphernalia used in conducting games of chance at charity fundraising events subject

to regulation under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the game, such as pencils, daubers, playing cards, or other supplies that may be purchased from normal sources of supply;

- (16) "Door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event;
- (17) "Special limited charitable game" means roulette; blackjack; poker; keno; money wheel; baccarat; pusher-type games; any dice game where the player competes against the house; and any other game of chance as identified, defined, and approved by administrative regulation of the *department*~~{office}~~;
- (18) "Special limited charity fundraising event" means any type of charity fundraising event, commonly known as and operated as a "casino night," "Las Vegas night," or "Monte Carlo night," at which the predominant number or types of games offered for play are special limited charitable games;
- (19) "Session or bingo session" means a single gathering at which a bingo game or series of successive bingo games are played, excluding bingo played at a charity fundraising event;
- (20) "Immediate family" means:
 - (a) Spouse and parents-in-law;
 - (b) Parents and grandparents;
 - (c) Children and their spouses; and
 - (d) Siblings and their spouses;
- (21) "Affiliate" means any corporation, partnership, association, or other business or professional entity or any natural person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a licensed manufacturer, distributor, or charitable gaming facility;
- (22) "Secretary" means the secretary of the ~~{Environmental and}~~Public Protection Cabinet;
- (23) "*Commissioner*~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Charitable Gaming within the ~~{Department of}~~Public Protection *Cabinet*;
- (24) "Chairperson" means the chief executive officer and any officer, member, or employee of a licensed charitable organization who will be involved in the management and supervision of charitable gaming as designated in the organization's charitable gaming license application under KRS 238.535(9)(g);
- (25) "Year" means calendar year except as used in KRS 238.545(4), 238.547(1), and 238.555(7), when "year" means the licensee's license year; and
- (26) "Card-minding device" means any mechanical, electronic, electromechanical, or computerized device that is interfaced with or connected to equipment used to conduct a game of bingo and that allows a player to store, display, and mark a bingo card face. A card-minding device shall not be designed and manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

➔Section 534. KRS 238.510 is amended to read as follows:

- (1) The *Department*~~{Office}~~ of Charitable Gaming is created as *a department*~~{an office}~~ within the ~~{Department of}~~Public Protection ~~{within the Environmental and Public Protection}~~ Cabinet. The *department*~~{office}~~ shall license and regulate the conduct of charitable gaming and license and regulate charitable organizations that desire to engage in charitable gaming, charitable gaming facilities, manufacturers, and distributors in the Commonwealth of Kentucky in accordance with the provisions of this chapter.
- (2) The *department*~~{office}~~ shall be headed by *a commissioner*~~{an executive director}~~ who shall be appointed by the ~~{secretary with the approval of the}~~ Governor. The *commissioner*~~{executive director}~~ shall employ staff as may be necessary to administer and enforce the provisions of this chapter.
- (3) All *department*~~{office}~~ staff shall be classified and employed in accordance with applicable personnel requirements of the Personnel Cabinet in accordance with KRS Chapter 18A.

- (4) No employee of the *department*~~{office}~~ during his or her term of employment shall be an officer in a charitable organization that is licensed to conduct charitable gaming or be involved in the conduct of charitable gaming as a member of a licensed charitable organization. No employee of the *department*~~{office}~~ during his or her term of employment shall be licensed as a manufacturer, distributor, or charitable gaming facility, or have a financial interest in any business that is licensed as a manufacturer, distributor, or charitable gaming facility.
- (5) The *commissioner*~~{executive director}~~ shall appoint charitable gaming investigators who shall have the powers of peace officers throughout the Commonwealth; however, those powers shall be limited to:
- (a) Enforcement of the provisions of KRS Chapter 238, relating to charitable gaming;
 - (b) Violations of KRS Chapter 528, relating to:
 1. Unlicensed and illegal charitable gaming;
 2. Gambling offenses committed on licensed charitable gaming premises; and
 3. Gambling offenses committed in conjunction with charitable gaming;
 - (c) Violations of KRS Chapter 514, relating to theft, embezzlement, or other illegal diversions of charitable gaming proceeds;
 - (d) Violations of KRS Chapters 516 and 517, relating to forgery and fraud in the conduct of charitable gaming;
 - (e) Violations relating to the damage or destruction of real or personal property owned or leased by a charitable gaming licensee; and
 - (f) Violation of any criminal felony offense committed:
 1. On licensed charitable gaming premises; and
 2. In the presence of a charitable gaming investigator.
- (6) Charitable gaming investigators shall satisfy the certification standards established by the Department of Criminal Justice Training pursuant to KRS Chapter 15. The *commissioner*~~{executive director}~~ may possess peace officer powers granted under subsection (5) of this section, if he or she is duly qualified. Charitable gaming investigators shall not qualify for hazardous duty coverage under the Kentucky Employees Retirement System.
- (7) Charitable gaming investigators so appointed shall not possess peace officer powers other than those provided in subsection (5) of this section.

➔Section 535. KRS 238.515 is amended to read as follows:

The *department*~~{office}~~ shall license and regulate the conduct of charitable gaming in the Commonwealth of Kentucky. In discharging this responsibility, the *department*~~{office}~~ shall have the following powers and duties:

- (1) Licensing charitable organizations, charitable gaming facilities, manufacturers, and distributors that desire to engage in charitable gaming;
- (2) Establishing and enforcing reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities;
- (3) Prescribing reasonable fees for licenses;
- (4) Establishing standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for;
- (5) Establishing a process for reviewing complaints and allegations of wrongdoing, and for investigating complaints with merit. In furtherance of this duty, the *department*~~{office}~~ shall have the authority to issue administrative subpoenas and summonses. The *department*~~{office}~~ shall also establish toll-free telephone service for receiving complaints and inquiries;
- (6) Taking appropriate disciplinary action and making referrals for criminal prosecution of persons who do not operate in compliance with this chapter;
- (7) Collecting and depositing all fees and fines in the charitable gaming regulatory account and administering the account;

- (8) Employing necessary staff, securing adequate office space, and executing other administrative and logistical matters as may be necessary to assure proper functioning of the *department*~~{office}~~; and
- (9) Promulgating administrative regulations, in accordance with KRS Chapter 13A, which are necessary to carry out the purposes and intent of this chapter. Any administrative regulation proposed by the *department*~~{office}~~ that changes the manner in which a charitable organization conducts charitable gaming or is likely to cause a charitable organization to incur new or additional costs shall be subject to the requirements of KRS 238.522. In promulgating administrative regulations under this subsection, the *department*~~{office}~~ shall submit any proposed regulations to the advisory commission established under KRS 238.520, and shall not promulgate the administrative regulations without giving the advisory commission the opportunity to produce written comments in accordance with KRS 238.522. If the advisory commission chooses to produce written comments, the comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.

➔Section 536. KRS 238.520 is amended to read as follows:

- (1) The Charitable Gaming Advisory Commission is created to be composed of nine (9) members consisting of:
 - (a) The secretary of the ~~{Environmental and}~~Public Protection Cabinet or his designee;
 - (b) The Attorney General or his designee;
 - (c) One (1) representative from the Kentucky Commonwealth's Attorneys Association;
 - (d) One (1) representative from the Kentucky Charitable Gaming Association;
 - (e) One (1) certified public accountant;
 - (f) One (1) member selected from the public at large;
 - (g) One (1) representative selected from the Joint Executive Council of Veterans Organizations of Kentucky;
 - (h) One (1) representative from Catholic organizations; and
 - (i) One (1) representative from Kentucky's volunteer firefighter organizations.

The certified public accountant, the one (1) at-large member, and the representatives from the Kentucky Commonwealth's Attorneys Association and the Kentucky Charitable Gaming Association shall be appointed by the Governor. The representative from each of the two (2) associations, the one (1) representative from the Joint Executive Council of Veterans Organizations of Kentucky, the one (1) representative from the Catholic organizations, and the one (1) representative from the volunteer firefighter organizations shall be selected from a list of at least three (3) names submitted to the Governor by the respective association.

- (2) Initial appointments to the commission shall be for staggered terms as follows: one (1) member for a term of one (1) year; two (2) members for a term of two (2) years; two (2) members for a term of three (3) years; and two (2) members for a term of four (4) years. Thereafter, each member shall be appointed for a term of four (4) years. No member from the public at large shall be appointed in the same year. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term. No member of the commission may serve more than two (2) full terms.
- (3) The Charitable Gaming Advisory Commission shall provide ongoing advice and input to the *department*~~{office}~~ and to the General Assembly but shall not become directly involved in the licensing and regulation of charitable gaming by the *department*~~{office}~~.
- (4) The commission shall meet quarterly, upon the request of the chair or four (4) of its members or as otherwise directed by the *department*~~{office}~~. Five (5) members shall constitute a quorum for conducting business. The commission shall annually elect a chairman from its membership, and no person elected chairman shall serve more than two (2) consecutive terms of one (1) year each. Members shall receive no compensation for serving on the commission, but shall be reimbursed for travel expenses for attending meetings and performing other official functions, consistent with state reimbursement policy for state employees.

➔Section 537. KRS 238.522 is amended to read as follows:

- (1) (a) If the *department*{office} has proposed a new or amended administrative regulation that changes the manner in which a charitable organization conducts charitable gaming or is likely to cause a charitable organization to incur new or additional costs, the *department*{office} shall not promulgate the proposed administrative regulation without first receiving comments from the Charitable Gaming Advisory Commission established in KRS 238.520, subject to the restrictions of paragraph (b) of this subsection.
- (b) 1. If the proposed administrative regulation qualifies under paragraph (a) of this subsection, the *department*{office} shall distribute the proposed administrative regulation to the advisory commission.
2. The advisory commission shall be granted a maximum of sixty (60) days to submit its comments on the proposed regulatory change. If the administrative regulation is a new emergency regulation, the advisory commission shall be granted a maximum of thirty (30) days to submit its comments on the proposed regulatory change.
3. The time limits in this paragraph shall begin from the day the *department*{office} submits the regulatory change and sets a date for a proposed hearing for the comments of the advisory commission. If the advisory commission is already scheduled to meet at a time that will give it an adequate opportunity to review the regulation and respond, the hearing may be held at that meeting.
4. If an advisory commission is not scheduled to meet, the *department*{office} shall arrange for the advisory commission to meet at a time that will provide the advisory commission an adequate opportunity to review and comment on the regulation within the time limit. If the advisory commission fails to comment within the time limit, the *department*{office} may proceed with the administrative changes at its discretion.
- (c) To the extent that any other statute relating to the *department's*{office's} authority to promulgate administrative regulations conflicts with this section, this section shall take precedence.
- (d) If the advisory commission chooses to produce written comments, these comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A, and may include majority or minority comments or both.
- (2) Any power or limitation relating to administrative regulations promulgated by the *department*{office} that are subject to subsection (1) of this section shall also apply to administrative regulations promulgated by the *commissioner*{~~executive director~~} of the *department*{office}.

➔Section 538. KRS 238.525 is amended to read as follows:

- (1) Licenses shall be issued by the *department*{office} on an annual or biennial basis, except as otherwise permitted in KRS 238.530 and 238.545. A license term may be determined by the *department*{office} in any manner it deems appropriate to facilitate efficient licensing. The *department*{office} shall charge a renewal fee not to exceed the maximum amounts established in KRS 238.530, 238.535, and 238.555.
- (2) The *department*{office} may issue a temporary license to an applicant who has met the requirements for a license. A temporary license shall be valid from the date of issuance until the regular license is issued or for a period of sixty (60) days, whichever is shorter. A temporary license shall not be renewed, except for good cause and shall not exceed a total of nine (9) months in length.
- (3) An applicant for any license to be issued under KRS 238.530 and 238.555 shall be subjected to a state and national criminal history background check by the *department*{office}, with the assistance of the Department of Kentucky State Police and the Federal Bureau of Investigation. An applicant for any license to be issued under KRS 238.535 shall be subjected to a state criminal history background check and may, if deemed reasonably necessary, be subjected to a national criminal history background check by the *department*{office} with the assistance of the Department of Kentucky State Police and the Federal Bureau of Investigation. The criminal history background check shall apply to the chief executive officer and the chief financial officer or director of an applicant; any employee or member of an applicant who has been designated as chairperson of the charitable gaming activity; the applicant itself; and any individual with a ten percent (10%) or more financial interest in the applicant. The *department*{office} shall require the fingerprinting of all applicants for licensure under KRS 238.530 and 238.555 and may require, if deemed reasonably necessary, the fingerprints of all applicants for licensure under KRS 238.535, who are natural persons in connection with the national criminal

history background check to assure the identity of the applicant or applicants. The *department*~~{office}~~ may charge a reasonable fee not to exceed the actual cost of fingerprinting and records searching.

- (4) No applicant shall be licensed and no license holder shall be able to maintain a license if an individual associated with the applicant or license holder in a capacity listed in subsection (3) of this section or the applicant or license holder itself has been convicted of a felony, gambling offense, criminal fraud, forgery, theft, falsifying business records, violation of KRS 238.995(7), or any two (2) misdemeanor crimes in federal court or the courts of any state, the District of Columbia, or any territory, consistent with the provisions of KRS Chapter 335B within ten (10) years preceding the application for licensure.
- (5) No applicant shall be licensed unless all applicants required to be fingerprinted under the provision of subsection (3) of this section have been fingerprinted. The Department of Kentucky State Police may submit fingerprints of any applicant to the Federal Bureau of Investigation for the national criminal history background check. The *department*~~{office}~~ may by administrative regulation impose additional qualifications to meet the requirements of Pub. L. 92-544.
- (6) If a change occurs in any information submitted during the license application process, the applicant or licensee shall notify the *department*~~{office}~~ in writing within thirty (30) days of the date the change occurred.

➔Section 539. KRS 238.530 is amended to read as follows:

- (1) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies or equipment unless the person is licensed by the *department*~~{office}~~ as a distributor. The *department*~~{office}~~ shall charge a license fee not to exceed one thousand dollars (\$1,000).
- (2) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies and equipment unless the person is licensed by the *department*~~{office}~~ as a manufacturer. The *department*~~{office}~~ shall charge a license fee not to exceed one thousand dollars (\$1,000).
- (3) No person who is licensed as a charitable organization, and no owner, officer, employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming facility shall be eligible for licensure as a distributor or manufacturer. No affiliate of an owner, officer, or employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming facility shall be licensed as a distributor or manufacturer. No person who is a licensed wholesaler or distributor of alcoholic beverages shall be licensed as a distributor or manufacturer. No person who is licensed as a distributor shall be licensed as a manufacturer, and no person licensed as a manufacturer shall be licensed as a distributor.
- (4) An applicant for a license as a manufacturer or distributor shall apply for license on forms provided by the *department*~~{office}~~ and shall submit as part of the application process the following:
 - (a) The full name, address, date of birth, and Social Security number of the applicant;
 - (b) If the applicant is a corporation or other business entity, the names, addresses, dates of birth, and Social Security numbers of all officers and management personnel;
 - (c) The name, address, date of birth, and Social Security number of any individual who has ten percent (10%) or more financial interest in the applicant organization;
 - (d) Federal employer tax number;
 - (e) A sworn statement by the applicant or the appropriate officer that all information provided is true and correct and that the applicant agrees to comply with the applicable provisions of this chapter and all applicable administrative regulations promulgated thereunder;
 - (f) The name, address, and telephone number of a registered agent within the Commonwealth of Kentucky, if the applicant is not a resident; and
 - (g) Any other information the *department*~~{office}~~ deems appropriate.
- (5) Each licensed manufacturer and distributor shall maintain a complete set of records as may be required by the *department*~~{office}~~ to document all activities related to the sale, rental, lease, or furnishing of charitable gaming supplies and equipment in the Commonwealth of Kentucky. These records shall be available for inspection by the *department*~~{office}~~ at reasonable times, and all records shall be maintained for a minimum of three (3) years. The *department*~~{office}~~ may require a licensed manufacturer and distributor to report on its

activity, with the content and frequency of these reports to be prescribed by administrative regulation promulgated by the *department*~~{office}~~.

- (6) A distributor who does not receive payment in accordance with the terms of its sales or lease agreement from a licensed charitable organization within thirty (30) days of the delivery of charitable gaming supplies and equipment shall notify the *department*~~{office}~~ of the delinquency in writing in a form and manner prescribed by the *department*~~{office}~~. A manufacturer who does not receive payment in full from a distributor within sixty (60) days of the delivery of charitable gaming supplies and equipment shall notify the *department*~~{office}~~ of the delinquency in writing in a form and manner prescribed by the *department*~~{office}~~.
- (7) A licensed manufacturer shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor in the Commonwealth of Kentucky.
- (8) A licensed distributor shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor or a charitable organization in the Commonwealth of Kentucky, unless the organization is exempted from licensure under the provisions of this chapter.
- (9) A licensed distributor shall not purchase charitable gaming supplies and equipment from any person not licensed as a manufacturer or distributor in the Commonwealth of Kentucky.
- (10) No officer, owner, employee, or contractee of a licensed distributor or licensed manufacturer or their affiliates and no member of the immediate family of an owner, officer, employee, or contractee of a licensed distributor or licensed manufacturer or their affiliates, shall, with respect to a licensed charitable organization:
 - (a) Manage or otherwise be involved in the conduct of charitable gaming;
 - (b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;
 - (c) Handle any moneys generated in the conduct of charitable gaming;
 - (d) Advise a licensed charitable organization on the expenditure of net receipts;
 - (e) Provide transportation services in any manner to patrons of a charitable gaming activity;
 - (f) Provide advertisement or marketing services in any manner to a licensed charitable organization;
 - (g) Provide, coordinate, or solicit the services of personnel or volunteers in any manner;
 - (h) Provide training or consulting on the conduct of charitable gaming, except in connection with the use of its own equipment or supplies;
 - (i) Store its charitable gaming equipment or supplies in or on the premises of a licensed charitable gaming facility; or
 - (j) Donate or give any prize to be awarded in the conduct of charitable gaming.

➔Section 540. KRS 238.535 is amended to read as follows:

- (1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the *department*~~{office}~~. A charitable organization qualifying under subsection (8) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable gaming activities:
 - (a) Bingo in which the gross receipts do not exceed a total of twenty-five thousand dollars (\$25,000) per year;
 - (b) A raffle or raffles for which the gross receipts do not exceed twenty-five thousand dollars (\$25,000) per year; and
 - (c) A charity fundraising event or events that do not involve special limited charitable games and the gross gaming receipts for which do not exceed twenty-five thousand dollars (\$25,000) per year.

However, at no time shall a charitable organization's total limitations under this subsection exceed twenty-five thousand dollars (\$25,000).

- (2) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the *department*~~{office}~~ in writing, on a simple form issued by the *department*~~{office}~~, of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable

organization exempt from the process of applying for a license under subsection (1) of this section, shall comply with all other provisions of this chapter relating to the conduct of charitable gaming, except:

- (a) Payment of the fee imposed under the provisions of KRS 238.570; and
- (b) The quarterly reporting requirements imposed under the provisions of KRS 238.550(7), unless the exempt charitable organization obtains a retroactive license pursuant to subsection (5) of this section.

Before the last day of each year, a charitable organization exempt from licensure under the provisions of subsection (1) of this section shall file with the *department{office}* a financial report detailing the type of gaming activity in which it engaged during that year, the total gross receipts derived from gaming, the amount of charitable gaming expenses paid, the amount of net receipts derived, and the disposition of those net receipts. This report shall be filed on a form issued by the *department{office}*. Upon receipt of the yearly financial report, the *department{office}* shall notify the charitable organization submitting it that its exemption is renewed for the next year. If the *department{office}* determines that information appearing on the financial report renders the charitable organization ineligible to possess an exemption, the *department{office}* shall revoke the exemption. The organization may request an appeal of this revocation pursuant to KRS 238.565. If an exemption is revoked because an organization has exceeded the limit imposed in subsection (1) of this section, the organization shall apply for a retroactive license in accordance with subsection (3) of this section.

- (3) If an organization exceeds the limit imposed by any subsection of this section it shall:
 - (a) Report the amount to the *department{office}*; and
 - (b) Apply for a retroactive charitable gaming license.
- (4) Upon receipt of a report and application for a retroactive charitable gaming license, the *department{office}* shall investigate to determine if the organization is otherwise qualified to hold the license.
- (5) If the *department{office}* determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.
- (6) If the *department{office}* determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.
- (7) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to continue charitable gaming activities, unless the charitable organization has not exceeded the exemption limitations of subsection (1) of this section for a period of two (2) years prior to its exemption request.
- (8) In order to qualify for licensure, a charitable organization shall:
 - (a)
 1. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or
 2. Be organized within the Commonwealth of Kentucky as a common school as defined in KRS 158.030, as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290;
 - (b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure. For purposes of this paragraph, an applicant shall demonstrate establishment and continuous operation in Kentucky by its conduct of charitable activities from an office physically located within Kentucky both during the three (3) years immediately preceding its application for licensure and at all times during which it possesses a charitable gaming license. However, a charitable organization that operates for charitable purposes in more than ten (10) states and whose principal place of business is physically located in a state other than Kentucky may satisfy the requirements of this paragraph if it can document that it has:
 1. Been actively engaged in charitable activities and has made reasonable progress, as defined in paragraph (c) of this subsection, in the conduct of charitable activities or the expenditure of funds within Kentucky for a period of three (3) years prior to application for licensure; and

2. Operated for charitable purposes from an office or place of business in the Kentucky county where it proposes to conduct charitable gaming for at least one (1) year prior to application for licensure, in accordance with paragraph (d) of this subsection;
- (c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the ~~department~~~~office~~, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, "reasonable progress in accomplishing its charitable purposes" means the regular and uninterrupted conduct of activities within the Commonwealth or the expenditure of funds within the Commonwealth to accomplish relief of poverty, advancement of education, protection of health, relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(3). In order to demonstrate reasonable progress in accomplishing its charitable purposes when applying to renew an existing license, a licensed charitable organization shall additionally provide to the ~~department~~~~office~~ a detailed accounting regarding its expenditure of charitable gaming net receipts for the purposes described in this paragraph; and
 - (d) Have maintained an office or place of business, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. The office or place of business shall be a separate and distinct address and location from that of any other licensee of the ~~Department~~~~Office~~ of Charitable Gaming; except that up to three (3) licensed charitable organizations may have the same address if they legitimately share office space. For the conduct of a raffle, the county in which charitable gaming is to be conducted shall be the county in which the raffle drawing is to be conducted. However, a charitable organization that has established and maintained an office or place of business in the county for a period of at least one (1) year may hold a raffle drawing or a charity fundraising event, including special limited charity fundraising events, in a Kentucky county other than that in which the organization's office or place of business is located. For raffles, the organization shall notify the ~~Department~~~~Office~~ of Charitable Gaming in writing of the organization's intent to change the drawing's location at least thirty (30) days before the drawing takes place. This written notification may be transmitted in any commercially reasonable means, authorized by the ~~department~~~~office~~, including facsimile and electronic mail. The notification shall set out the place and the county in which the drawing will take place. Approval by the ~~department~~~~office~~ shall be received prior to the conduct of the raffle drawing at the new location. Any charitable organization that was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered. Any licensed charitable organization that qualifies to conduct charitable gaming in an adjoining county under this paragraph, shall be permitted to conduct in its county of residence a charity fundraising event.
- (9) In applying for a license, the information to be submitted shall include but not be limited to the following:
 - (a) The name and address of the charitable organization;
 - (b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;
 - (c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;
 - (d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations' bylaws shall satisfy this requirement;
 - (e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;
 - (f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;
 - (g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the

management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;

- (h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;
 - (i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;
 - (j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming;
 - (k) An agreement that the charitable organization's records may be released by the Federal Internal Revenue Service to the *department*~~{office}~~; and
 - (l) Any other information the *department*~~{office}~~ deems appropriate.
- (10) An organization or a group of individuals that does not meet the licensing requirements of subsection (8) of this section may hold a raffle if the gross receipts do not exceed one hundred fifty dollars (\$150) and all proceeds from the raffle are distributed to a charitable organization. The organization or group of individuals may hold up to three (3) raffles each year, and shall be exempt from complying with the notification, application, and reporting requirements of subsections (2) and (9) of this section.
- (11) The *department*~~{office}~~ may issue a license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.
- (12) The *department*~~{office}~~ shall charge a fee for each license issued and renewed, not to exceed three hundred dollars (\$300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.
- (13) (a) A licensed charitable organization may place its charitable gaming license in escrow if:
- 1. The licensee notifies the *department*~~{office}~~ in writing that it desires to place its license in escrow; and
 - 2. The license is in good standing and the *department*~~{office}~~ has not initiated disciplinary action against the licensee.
- (b) During the escrow period, the licensee shall not engage in charitable gaming, and the escrow period shall not be included in calculating the licensee's retention rate under KRS 238.536.
- (c) A charitable organization may apply for reinstatement of its active license and the license shall be reinstated provided:
- 1. The charitable organization continues to qualify for licensure;
 - 2. The charitable organization has not engaged in charitable gaming during the escrow period; and
 - 3. The charitable organization pays a reinstatement fee established by the *department*~~{office}~~.

➔Section 541. KRS 238.536 is amended to read as follows:

- (1) The net receipts from charitable gaming retained by a charitable organization for the previous calendar year, provided the charitable organization was licensed at the start of the calendar year, shall be equal to or greater than forty percent (40%) of the adjusted gross receipts of the charitable organization for the same period. A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the benefits or financial gain of an individual. Any charitable organization which permits its license to expire or otherwise lapse shall still be subject to the retention requirement. The following fees and taxes shall be excluded from the calculation of the percentage retained, retroactive to calculations made for calendar year 1999:

- (a) All fees paid to the *department*~~{office}~~ during the calendar year;
 - (b) Any sales or use taxes levied under KRS Chapter 139 on charitable gaming supplies and equipment that are paid by a licensed charitable organization during the calendar year; and
 - (c) Any federal excise taxes levied under 26 U.S.C. secs. 4401 and 4411 and paid by a licensed charitable organization during the calendar year.
- (2) The following actions shall be imposed on a licensed charitable organization that fails to retain the requisite percentage of adjusted gross receipts required in subsection (1) of this section. The calculation of percentages shall be rounded to the nearest tenth of a percent:
- (a) If the percentage retained is between thirty-five percent (35%) and thirty-nine and nine-tenths percent (39.9%), the licensee shall be placed on probation for a period of six (6) months and shall be required to submit to the *department*~~{office}~~ an acceptable financial plan detailing corrective actions to be taken by the licensee to achieve the forty percent (40%) threshold by the end of the calendar year in which the probation is imposed;
 - (b) If the percentage retained is between thirty percent (30%) and thirty-four and nine-tenths percent (34.9%), the licensee shall be placed on probation for a period of one (1) year and shall be required to submit to the *department*~~{office}~~ a financial plan as described in paragraph (a) of this subsection. The *department*~~{office}~~ shall conduct a six (6) month review of the charitable gaming activities of a licensee placed on probation pursuant to this subsection to evaluate the licensee's compliance with its financial plan;
 - (c) If the percentage retained falls between twenty-nine and nine-tenths percent (29.9%) and twenty-five percent (25%), the licensee shall be placed on probation for a period of one (1) year, shall submit to the *department*~~{office}~~ an acceptable financial plan as described in paragraph (a) of this subsection, and shall participate in a mandatory training program designed by the *department*~~{office}~~. The *department*~~{office}~~ shall conduct a quarterly review of the licensee's activities to evaluate the licensee's compliance with its financial plan and its progress toward achievement of the forty percent (40%) threshold during the probationary period;
 - (d) If the percentage falls below twenty-five percent (25%) or if the licensee fails to attain the forty percent (40%) threshold for a second consecutive calendar year, the licensee shall have its license suspended for a period of one (1) year; and
 - (e) For purposes of paragraphs (a), (b), (c), and (d) of this subsection, periods of probation and suspension shall commence, unless appealed, from the date the *department*~~{office}~~ notifies the licensee of its failure to satisfy the retention requirement for the previous calendar year. If a probation or suspension is appealed, the action shall commence on the date final adjudication of the matter is complete.
- (3) Any licensee that has had its license suspended under the provisions of subsection (2)(d) of this section shall be required to submit to the *department*~~{office}~~ an acceptable financial plan as described in subsection (2)(a) of this section, upon applying for reinstatement of its license. As a condition of reinstatement, the licensee shall be on probation for a period of one (1) year and shall be subject to quarterly review by the *department*~~{office}~~ in accordance with subsection (2)(c) of this section.
- (4) Any licensee that has had its license revoked, has had its renewal application denied, or has had action initiated to revoke, suspend, or deny its license for failure to meet the forty percent (40%) retention threshold prior to July 14, 2000, may petition the *department*~~{office}~~ for reconsideration of its action or proposed action. Upon petition for reconsideration, the *department*~~{office}~~ shall apply the standards contained in subsection (2) of this section and shall adjust the license status of the petitioner accordingly. The *department*~~{office}~~ shall give credit for the amount of time a license has been revoked in assessing penalties under subsection (2) of this section not to exceed the amount of time imposed under the new penalty.

➔Section 542. KRS 238.540 is amended to read as follows:

- (1) Except as provided in KRS 238.535(8)(d), charitable gaming shall be conducted by a licensed charitable organization at the location, date, and time which shall be stated on the license. The licensee shall request a change in the date, time, or location of a charitable gaming event by mail, electronic mail, or facsimile transmission, and shall submit a lease and an original signature of an officer. The *department*~~{office}~~ shall process this request and issue or deny a license within ten (10) days.

- (2) All premises or facilities on which or in which charitable gaming is conducted shall meet all applicable federal, state, and local code requirements relating to life, safety, and health.
- (3) A license to conduct charitable gaming shall be prominently displayed on or in the premises where charitable gaming is conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the *department*~~{office}~~, law enforcement officials, and other interested officials.
- (4) At least one (1) chairperson who is listed on the application for licensure shall be at each charitable gaming activity conducted by the charitable organization and shall be responsible for the administration and conduct of the charitable gaming activity. No person shall serve as chairperson for more than one (1) charitable organization. The chairperson shall be readily identifiable as the chairperson and shall be present on the premises continuously during the charitable gaming activity. Charitable gaming shall be conducted and administered solely by officers, members, and bona fide employees of the licensed charitable organization. Volunteer personnel, who may or may not be members of the licensed charitable organization, may be utilized if each volunteer is readily identifiable as a volunteer. No person engaged in the conduct and administration of charitable gaming shall receive any compensation for services related to the charitable gaming activities, including tipping. No net receipts derived from charitable gaming shall inure to the private benefit or financial gain of any individual. Any effort or attempt to disguise any other type of compensation or private inurement shall be considered an unauthorized diversion of funds and shall be actionable under KRS 238.995.
- (5) No licensed charitable organization shall contract with, or otherwise utilize the services of, any management company, service company, or consultant in managing or conducting any aspect of charitable gaming.
- (6) A licensed charitable organization shall not purchase or lease charitable gaming supplies and equipment from any person not licensed as a distributor in the Commonwealth of Kentucky.
- (7) A licensed charitable organization shall not accept any merchandise prizes donated by any owner, officer, employee, or contractee of a licensed manufacturer, distributor, charitable gaming facility, or any of their affiliates, or any member of their immediate families.
- (8) Any advertisement of charitable gaming, regardless of the medium used, shall contain the name of the charitable organization conducting the charitable gaming and its license number. An advertisement for a bingo session or sessions shall not advertise a bingo prize in excess of the limitation of five thousand dollars (\$5,000) per twenty-four (24) hour period set forth in KRS 238.545(1).

➔Section 543. KRS 238.545 is amended to read as follows:

- (1) A licensed charitable organization shall be limited by the following:
 - (a) In the conduct of bingo, to one (1) session per day, two (2) sessions per week, for a period not to exceed five (5) consecutive hours in any day and not to exceed ten (10) total hours per week. No licensed charitable organization shall conduct bingo at more than one (1) location during the same twenty-four (24) hour period. No licensed charitable organization shall award prizes for bingo that exceed five thousand dollars (\$5,000) in fair market value per twenty-four (24) hour period, including the value of door prizes. No person under the age of eighteen (18) shall be permitted to purchase bingo supplies or play bingo. A charitable organization may permit persons under age eighteen (18) to play bingo for noncash prizes if they are accompanied by a parent or legal guardian and only if the value of any noncash prize awarded does not exceed ten dollars (\$10);
 - (b) A licensed charitable organization may provide card-minding devices for use by players of bingo games. If a licensed charitable organization offers card-minding devices for use by players, the devices shall be capable of being used in conjunction with bingo cards or paper sheets at all times. The *department*~~{office}~~ shall have broad authority to define and regulate the use of card-minding devices and shall promulgate an administrative regulation concerning use and control of them;
 - (c) Charity game tickets shall be sold only at the address of the location designated on the license to conduct charitable gaming;
 - (d) Charity game tickets may be sold, with prior approval of the *department*~~{office}~~:
 1. At any authorized special charity fundraising event conducted by a licensed charitable organization at any off-site location; or

2. By a licensed charitable organization possessing a special limited charitable gaming license at any off-site location; and
 - (e) An automated charity game ticket dispenser may be utilized by a licensed charitable organization, with the prior approval of the *department*~~{office}~~, only at the address of the location designated on the license to conduct charitable gaming, and only during bingo sessions. The *department*~~{office}~~ shall promulgate administrative regulations regulating the use and control of approved automated charity game ticket dispensers.
- (2) No prize for an individual charity game ticket shall exceed five hundred ninety-nine dollars (\$599) in value, not including the value of cumulative or carryover prizes awarded in seal card games. Cumulative or carryover prizes in seal card games shall not exceed two thousand four hundred dollars (\$2,400). Information concerning rules of the particular game and prizes that are to be awarded in excess of fifty dollars (\$50) in each separate package or series of packages with the same serial number and all rules governing the handling of cumulative or carryover prizes in seal card games shall be posted prominently in an area where charity game tickets are sold. A legible poster that lists prizes to be awarded, and on which prizes actually awarded are posted at the completion of the sale of each separate package shall satisfy this requirement. Any unclaimed money or prize shall return to the charitable organization. No charity game ticket shall be sold in the Commonwealth of Kentucky that does not conform to the standards for opacity, randomization, minimum information, winner protection, color, and cutting established by the *department*~~{office}~~. No person under the age of eighteen (18) shall be permitted to purchase, or open in any manner, a charity game ticket.
- (3) Tickets for a raffle shall be sold separately, and each ticket shall constitute a separate and equal chance to win. All raffle tickets shall be sold for the price stated on the ticket, and no person shall be required to purchase more than one (1) ticket or to pay for anything other than a ticket to enter a raffle. Raffle tickets shall have a unique identifier for the ticket holder. Winners shall be drawn at random at a date, time, and place announced in advance or printed on the ticket. All prizes for a raffle shall be identified in advance of the drawing and all prizes identified shall be awarded.
- (4) With respect to charity fundraising events, a licensed charitable organization shall be limited as follows:
 - (a) No licensed charitable organization shall conduct a charity fundraising event or a special limited charity fundraising event unless they have a license for the respective event issued by the *department*~~{office}~~;
 - (b) No special license shall be required for any wheel game, such as a cake wheel, that awards only noncash prizes the value of which does not exceed one hundred dollars (\$100);
 - (c) The *department*~~{office}~~ may grant approval for a licensed charitable organization to play bingo games at a charity fundraising event. Cash prizes for bingo games played during a charity fundraising event may not exceed five thousand dollars (\$5,000) for the entire event. No person under the age of eighteen (18) shall be permitted to play bingo at a charity fundraising event unless accompanied by a parent or legal guardian;
 - (d) The *department*~~{office}~~ may grant approval for a licensed charitable organization to play special limited charitable games at a charity fundraising event authorized under this section. The *department*~~{office}~~ shall not grant approval for the playing of special limited charitable games under the provisions of a charity fundraising event license unless the proposed event meets the definition of a charity fundraising event held for community, social, or entertainment purposes apart from charitable gaming in accordance with KRS 238.505(8); and
 - (e) Except for state, county, city fairs, and special limited charity fundraising events, a charity fundraising event license issued under this section shall not exceed seventy-two (72) consecutive hours. A licensed charitable organization shall not be eligible for more than four (4) total charity fundraising event licenses per year, including two (2) special limited charity fundraising event licenses. No person under eighteen (18) years of age shall be allowed to play or conduct any special limited charitable game. The *department*~~{office}~~ shall have broad authority to regulate the conduct of special limited charity fundraising events in accordance with the provisions of KRS 238.547.
- (5) Presentation of false, fraudulent, or altered identification by a minor shall be an affirmative defense in any disciplinary action or prosecution that may result from a violation of age restrictions contained in this section, if the appearance and character of the minor were such that his or her age could not be reasonably ascertained by other means.

➔Section 544. KRS 238.550 is amended to read as follows:

- (1) All adjusted gross receipts from charitable gaming shall be handled only by chairpersons, officers, or employees of the licensed charitable organization.
- (2) Within two (2) business days after the completion of a charitable gaming event or session, all gross receipts and adjusted gross receipts shall be deposited into one checking account devoted exclusively to charitable gaming. This checking account shall be designated the "charitable gaming account," and the licensed charitable organization shall maintain its account at a financial institution located in the Commonwealth of Kentucky. No other funds may be deposited or transferred into the charitable gaming account.
- (3) All payments for charitable gaming expenses, payments made for prizes purchased, and any charitable donations from charitable gaming receipts shall be made from the charitable gaming account and the payments or donations shall be made only by bona fide officers of the organization by checks having preprinted consecutive numbers and made payable to specific persons or organizations. No check drawn on the charitable gaming account may be made payable to "cash," or "bearer," except that a licensed charitable organization may withdraw start-up funds for a charitable gaming event or session from the charitable gaming account by check made payable to "cash" or "bearer," if these start-up funds are redeposited into the charitable gaming account together with all adjusted gross receipts derived from the particular event or session. Checks shall be imprinted with the words "charitable gaming account" and shall contain the organization's license number on the face of each check. Payments for charitable gaming expenses, prizes purchased, and charitable donations may be made by electronic funds transfer if the payments are made to specific persons or organizations. The ~~department~~~~office~~ may by administrative regulation adopt alternative reporting requirements for charitable gaming of limited scope or duration, if these requirements are sufficient to ensure accountability for all moneys handled.
- (4) A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the private benefit or financial gain of any individual.
- (5) Accurate records and books shall be maintained by each organization exempt from licensure under KRS 238.535(1) and each licensed charitable organization for a period of three (3) years. ~~Department~~~~Office~~ staff shall have access to these records at reasonable times. Licensed charitable organizations and exempt organizations shall maintain their charitable gaming records at their offices or places of business within the Commonwealth of Kentucky as identified in their license applications or applications for exempt status. An exempt organization shall submit a yearly financial report in accordance with KRS 238.535(2), and failure to file this report shall constitute grounds for revocation of the organization's exempt status.
- (6) All licensed charitable organizations that have annual gross receipts of two hundred thousand dollars (\$200,000) or less and do not have a weekly bingo session shall report to the ~~department~~~~office~~ annually at the time and on a form established in administrative regulations promulgated by the ~~department~~~~office~~.
- (7) All other licensed charitable organizations shall submit reports to the ~~department~~~~office~~ at least quarterly at the time and on a form established in administrative regulations promulgated by the ~~department~~~~office~~.
- (8) Failure by a licensed charitable organization to file reports required under this chapter shall constitute grounds for revocation of the organization's license or denial of the organization's application to renew its license in accordance with KRS 238.560(3). Reports filed by a licensed charitable organization shall include but shall not be limited to the following information:
 - (a) All gross receipts received from charitable gaming for the reporting period, classified by type of gaming activity;
 - (b) The names and addresses of all persons who are winners of prizes having a fair market value of six hundred dollars (\$600) or more;
 - (c) All expenses paid and the names and addresses of all persons to whom expenses were paid;
 - (d) All net receipts retained and the names and addresses of all charitable endeavors that received money from the net receipts; and

- (e) Any other information the *department*~~{office}~~ deems appropriate.
- (9) No licensed charitable organization shall incur charitable gaming expenses, except as provided in this chapter. No licensed charitable organization shall be permitted to expend amounts in excess of prevailing market rates for the following charitable gaming expenses:
- (a) Charitable gaming supplies and equipment;
 - (b) Rent;
 - (c) Utilities;
 - (d) Insurance;
 - (e) Advertising;
 - (f) Janitorial services;
 - (g) Bookkeeping and accounting services;
 - (h) Security services;
 - (i) Membership dues for its participation in any charitable gaming trade organization; and
 - (j) Any other expenses the *department*~~{office}~~ may determine by administrative regulation to be legitimate.
- (10) No licensed charitable organization shall expend receipts from charitable gaming activities nor incur expenses to form, maintain, or operate as a labor organization.

➔Section 545. KRS 238.555 is amended to read as follows:

- (1) No person shall operate a charitable gaming facility unless the person is licensed under the provisions of this chapter. The *department*~~{office}~~ shall charge a license fee not to exceed two thousand five hundred dollars (\$2,500). Specific license fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulation and based on the number of sessions which the facility holds per week or other applicable factors or combination of factors. Charitable gaming may be conducted in a charitable gaming facility only by a licensed charitable organization in accordance with the provisions of this chapter.
- (2) In the application process, an applicant for a charitable gaming facility license shall submit the following information:
- (a) The address of the facility;
 - (b) A description of the facility to include square footage of the gaming area, capacity levels, and available parking;
 - (c) The names, addresses, dates of birth, and Social Security numbers of all individuals employed by or contracted with the applicant to manage the facility or provide other authorized services;
 - (d) The name, address, date of birth, and Social Security number of any individual who has a ten percent (10%) or greater financial interest in the facility;
 - (e) A copy of the lease agreement used by the applicant; and
 - (f) Any other information the *department*~~{office}~~ deems appropriate.
- (3) No owner, officer, employee, or contractee of a licensed charitable gaming facility or an affiliate, or any member of the immediate family of any officer, employee, or contractee of a licensed charitable gaming facility or an affiliate shall, concerning a lessee:
- (a) Manage or otherwise be involved in the conduct of charitable gaming;
 - (b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;
 - (c) Handle any moneys generated in the conduct of charitable gaming;
 - (d) Advise a licensed charitable organization on the expenditure of net receipts;
 - (e) Provide transportation services in any manner to patrons of a charitable gaming activity;
 - (f) Provide advertisement or marketing services in any manner to a licensed charitable organization;

- (g) Provide, coordinate, or solicit the services of personnel or volunteers in any manner;
 - (h) Influence or require a licensed charitable organization to use a certain distributor or any particular gaming supplies; or
 - (i) Donate or give any prize to be awarded in the conduct of charitable gaming.
- (4) A licensed charitable gaming facility shall execute a lease agreement with each licensed charitable organization that desires to conduct charitable gaming at the facility. The licensed charitable gaming facility shall agree in the lease to provide gaming space, utilities, insurance for the premises, parking, tables and chairs, and other nongaming equipment necessary for the conduct of charitable gaming, adequate storage space, security, and janitorial services. The costs of the goods and services provided shall be itemized in the lease. A licensed charitable organization may elect to provide for itself any of the goods and services that a charitable gaming facility is required to provide under this subsection, provided these arrangements are clearly noted in the lease agreement, and provided the total compensation to be paid the charitable gaming facility is reduced commensurate with the cost of the goods and services as itemized in the lease. The amount of rent, goods, and services charged shall be reasonable and shall be based on prevailing market values in the general locality for the goods and services to be provided. Rent shall not be based in whole or in part, on a percentage of gross receipts or net proceeds derived from the conduct of charitable gaming or by reference to the number of people in attendance. The *department*{office} by administrative regulation may establish standards for the determination of prevailing market values. A copy of each signed lease agreement shall be filed with the *department*{office}. The provisions of this subsection shall apply to any lease agreement for a facility where charitable gaming is to be conducted, whether or not it is with a licensed charitable gaming facility.
- (5) The number of bingo sessions conducted at a charitable gaming facility shall be limited to the following:
- (a) No more than eighteen (18) sessions per week if the charitable gaming facility is located in a city of the first class, in a city of the second class, in an urban-county, in a consolidated local government, or charter county government, or in a county containing a city of the first class or second class;
 - (b) No more than eight (8) sessions per week if the charitable gaming facility is located in a city of the third class, fourth class, fifth class, or sixth class, or in a county that does not contain a city of the first class or second class.
- (6) A licensed charitable gaming facility shall report at least quarterly to the *department*{office} and shall provide any information concerning its operation that the *department*{office} may require.
- (7) A charity fundraising event at which special limited charitable games are played may be conducted at a licensed charitable gaming facility, but no licensed charitable gaming facility shall be permitted to hold more than one (1) such event per week or more than seven (7) per year.
- (8) A licensed charitable gaming facility shall conspicuously display a sign bearing the name and the license number of the charitable organization that is conducting charitable gaming activities in the facility.
- (9) The license to operate the charitable gaming facility shall be prominently displayed on or in the premises where charitable gaming activity is being conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the *department*{office}, law enforcement officials, and other interested officials.

➔Section 546. KRS 238.560 is amended to read as follows:

- (1) The *department*{office} may investigate allegations of wrongdoing upon complaint or upon its own volition. The *department*{office} by administrative regulation shall establish procedures for receiving and investigating complaints in an expeditious manner.
- (2) In carrying out its enforcement responsibilities, the *department*{office} may:
 - (a) Inspect and examine all premises in which or on which charitable gaming is conducted or charitable gaming supplies or equipment are manufactured or distributed;
 - (b) Seize and remove from premises and impound charitable gaming supplies and equipment for the purposes of examination and inspection pursuant to an appropriate court order;

- (c) Demand access to, inspect, and audit books and records of licensees for the purpose of determining compliance with laws and administrative regulations relative to charitable gaming; and
 - (d) Conduct in-depth audits and investigations, when warranted.
- (3) (a) As used in this subsection, "willful" means that the conduct constituting the violation was committed with intent, not accidentally or inadvertently.
- (b) The *department*{office} may take appropriate administrative action against any person licensed under this chapter for any violation of the provisions of this chapter or administrative regulations promulgated thereunder subject to the conditions established by this subsection.
- (c) The *department*{office} may deny a license, suspend or revoke a license, issue a cease and desist order, place a license holder on probation, issue a letter of reprimand or letter of warning, and levy a fine. An administrative fine shall not exceed one thousand dollars (\$1,000) for each offense. The *department*{office} may deny the issuance of a license or a license renewal if the applicant or licensee has failed to pay a fine levied by the *department*{office}. The *department*{office} shall by administrative regulation classify types of offenses and the recommended administrative action. The type of action to be taken shall be based on the history of previous violations and the nature, severity, and frequency of the offense. Administrative action authorized in this section shall be in addition to any criminal penalties provided in this chapter or under other provisions of law.
- (d) 1. Notwithstanding any other provisions of this section, the *department*{office} shall review, within two (2) months of receipt, timely filed organization quarterly reports that include payment of the fee due as reflected on the organization quarterly report. If the *department*{office} discovers reporting errors that are not willful, the *department*{office} shall, prior to taking any other administrative action, issue a letter of warning to the licensee and allow the licensee thirty (30) days from the issuance of the letter to correct the identified violation. The purpose of this subparagraph is for the *department*{office} to identify correctable reporting errors in a timely manner, and to notify the licensee of the errors prior to the due date of the next organization quarterly report so that the errors are corrected and are not repeated in subsequent organization quarterly reports.
2. A review conducted under subparagraph 1. of this paragraph shall not be considered an audit or final review and acceptance of an organization quarterly report and payment. The *department*{office} shall have four (4) years from the date of filing to fully audit and review an organization quarterly report, and may pursue administrative actions against the licensee related to an organization quarterly report or the information reported on an organization quarterly report within the four (4) year period if violations or errors that are not willful are discovered. This subparagraph shall not be construed to require records that are not needed to audit or review an organization quarterly report to be kept longer than is required elsewhere in this chapter or in any related administrative regulations.
3. Notwithstanding the provisions of subparagraph 2. of this paragraph, for a violation that is determined to be willful, the *department*{office} may pursue the administrative actions authorized by this section at any time.
4. A letter of warning issued under this section shall:
- a. Identify the violation;
 - b. Describe the corrective action necessary;
 - c. Identify the administrative actions that can be taken if the violation is not addressed; and
 - d. Provide that the person shall have thirty (30) days to correct the action leading to the violation.
- (4) The *department*{office} may reinstate a license that has been revoked at any time after two (2) years from the date of revocation. A license may be reinstated only upon a finding that the violations for which the license was revoked have been corrected.
- (5) All departments, divisions, boards, agencies, officers, and institutions of the Commonwealth of Kentucky and all subdivisions thereof, in particular local law enforcement entities, shall cooperate with the *department*{office} in carrying out its enforcement responsibilities.

- (6) The ~~department~~~~office~~ shall report any activity or action which would constitute a criminal offense to the appropriate authorities in the county where the activity or action occurred and to the Attorney General.

➔Section 547. KRS 238.565 is amended to read as follows:

- (1) A license holder may appeal any administrative action taken under KRS 238.560. A license holder shall be notified in writing of any action to be taken against him. The notification may be delivered in person or mailed by certified mail, return receipt requested, to the last known address of the license holder. Service of notification of administrative action, whether by hand delivery or by certified mail, shall be deemed complete if the license holder fails or refuses to accept delivery. For service by hand delivery, notification shall be deemed received upon acceptance of delivery or upon failure or refusal to accept delivery, and the person affecting service on behalf of the ~~department~~~~office~~ shall record the fact of the failure or refusal. For service by certified mail, the notification of administrative action shall be deemed received when the license holder accepts delivery or fails or refuses to accept delivery at the last known address. The notification shall specify the charges against the license holder, specify the proposed administrative sanction, and advise him of his right to appeal the decision within ten (10) days of the date of receipt of the notification.
- (2) Upon receipt of an appeal, the ~~department~~~~office~~ shall schedule the matter for an administrative hearing that shall be conducted in accordance with KRS Chapter 13B.
- (3) Any provisions of KRS Chapter 13B notwithstanding, within twenty (20) days after the conclusion of a hearing, the hearing officer shall prepare and present to the ~~commissioner~~~~executive director~~ a recommended order based on findings of fact and conclusions of law. Within thirty (30) days of receipt of the recommended order, the ~~commissioner~~~~executive director~~ shall affirm, reject, or modify, in whole or in part, the recommended order and shall issue a final order. The final order shall be the final administrative action on the matter and a copy of the final order shall be mailed to the license holder, by certified mail, return receipt requested.
- (4) Any administrative action taken under this section shall, upon appeal, be stayed until a final order is issued, with the exception of a summary suspension. The ~~department~~~~office~~ may issue an emergency order pursuant to KRS 13B.125 to summarily suspend a license upon finding that continued operation of the license holder pending a hearing would constitute a threat to the public health, safety, or welfare.
- (5) A final order of the ~~commissioner~~~~executive director~~ may be appealed to Franklin Circuit Court in accordance with KRS Chapter 13B. If the license holder against whom administrative action is proposed does not request an appeal of the action, the ~~department~~~~office~~ shall enter a final order imposing the proposed administrative action.

➔Section 548. KRS 238.570 is amended to read as follows:

- (1) A fee is imposed on charitable gaming in the amount of fifty-three hundredths of one percent (0.53%) of gross receipts derived from all charitable gaming conducted by charitable organizations required to be licensed in the Commonwealth of Kentucky. The amount of the fee shall be adjusted by October 1 of each odd-numbered year in accordance with subsection (3) of this section. Each licensed charitable organization shall remit to the ~~department~~~~office~~ all moneys due as set forth in administrative regulations promulgated by the ~~department~~~~office~~. Failure by a licensed charitable organization to timely remit the fee required under this subsection upon notice of delinquency shall constitute grounds for disciplinary action in accordance with KRS 238.560.
- (2) The charitable gaming regulatory account is hereby created as a revolving account within the agency revenue fund and under the control of the ~~Environmental and~~ Public Protection Cabinet. All revenues generated from the fee levied in subsection (1) of this section from license fees and from administrative fines imposed by the ~~department~~~~office~~ shall be deposited in this account. Fund amounts attributable to the fee levied in subsection (1) of this section that are not expended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year.
- (3) (a) No later than July 31 of each odd-numbered year, the ~~Environmental and~~ Public Protection Cabinet shall determine:
 1. The amount of gross receipts during the prior biennium against which the fee collected under subsection (1) of this section was assessed; and

2. The final budgeted amount as determined by the enacted budget for the upcoming biennium for the administration and enforcement of the provisions of this chapter. If a budget is not enacted, the amount shall be the corresponding amount in the last enacted budget.
- (b) On October 1 of each odd-numbered year, the fee assessed under subsection (1) of this section shall be proportionally adjusted by the ~~Environmental and~~ Public Protection Cabinet. The new rate shall be calculated by multiplying one hundred ten percent (110%) by the amount determined in paragraph (a)2. of this subsection, and subtracting from that amount one-half (1/2) of any remaining balance in the account. The total shall then be divided by the amount determined in paragraph (a)1. of this subsection. The result shall be expressed as a percentage and shall be rounded to the nearest thousandth of a percent (0.000%).

➔Section 549. KRS 241.010 is amended to read as follows:

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

- (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced;
- (2) "Alcoholic beverage" means every liquid or solid, whether patented or not, containing alcohol in an amount in excess of more than one percent (1%) of alcohol by volume, which is fit for beverage purposes. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products:
 - (a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
 - (b) Patented, patent, and proprietary medicines;
 - (c) Toilet, medicinal, and antiseptic preparations and solutions;
 - (d) Flavoring extracts and syrups;
 - (e) Denatured alcohol or denatured rum;
 - (f) Vinegar and preserved sweet cider;
 - (g) Wine for sacramental purposes;
 - (h) Alcohol unfit for beverage purposes that is to be sold for legitimate external use; and
 - (i) Malt beverages, containing not more than three and two-tenths percent (3.2%) of alcohol by weight, in territory that has voted to allow the sale thereof;
- (3) (a) "Alcohol vaporizing device" or "AWOL device" means any device, machine, or process that mixes liquor, spirits, or any other alcohol product with pure oxygen or by any other means produces a vaporized alcoholic product used for human consumption;
- (b) "Alcohol vaporizing device" or "AWOL device" does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended by the manufacturer to dispense a prescribed or over-the-counter medication or a device installed and used by a licensee under this chapter to demonstrate the aroma of an alcoholic beverage;
- (4) "Board" means the State Alcoholic Beverage Control Board created by KRS 241.030;
- (5) "Bottle" means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail;
- (6) "Brewer" means any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery, either by himself or by his agent;
- (7) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept;

- (8) "Building containing licensed premises" means the licensed premises themselves and includes the land, tract of land, or parking lot in which the premises are contained, and any part of any building connected by direct access or by an entrance which is under the ownership or control of the licensee by lease holdings or ownership;
- (9) "Caterer" means a corporation, partnership, or individual that operates the business of a food service professional by preparing food in a licensed and inspected commissary, transporting the food and alcoholic beverages to the caterer's designated and inspected banquet hall or to a location selected by the customer, and serving the food and alcoholic beverages to the customer's guests;
- (10) "Charitable organization" means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501(c)) or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes;
- (11) "Cider" means any fermented fruit-based beverage containing more than one-tenth of one percent (0.1%) alcohol by volume and includes hard cider and perry cider;
- (12) "City administrator" means city alcoholic beverage control administrator;
- (13) "Commissioner" means the commissioner of the *Department of Alcoholic Beverage Control* ~~—Kentucky Department of Revenue~~;
- (14) "Convention center" means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions;
- (15) "Convicted" and "conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment;
- (16) "County administrator" means county alcoholic beverage control administrator;
- (17) **"Department" means the Department of Alcoholic Beverage Control;**
- (18) "Distilled spirits" or "spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, hard cider, and malt beverages;
- ~~(19)~~~~(18)~~ "Distiller" means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky;
- ~~(20)~~~~(19)~~ "Distillery" means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse;
- ~~(21)~~~~(20)~~ "Distributor" means any person who distributes malt beverages for the purpose of being sold at retail;
- ~~(22)~~~~(21)~~ "Dry territory" means a county, city, district, or precinct in which a majority of voters have voted in favor of prohibition;
- ~~(23)~~~~(22)~~ "Election" means:
- (a) An election held for the purpose of taking the sense of the people as to the application or discontinuance of alcoholic beverage sales under KRS Chapter 242; or
 - (b) Any other election not pertaining to alcohol;
- ~~(23) "Executive director" means the executive director of the Office of Alcoholic Beverage Control;~~
- (24) "Field representative" means any employee or agent of the *department*~~{office}~~ who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting taxpayers, and any employee or agent of the *department*~~{office}~~ who is assigned, temporarily or permanently, by the

commissioner~~{executive director}~~ to duty outside the main office of the *department*~~{office}~~ at Frankfort, in connection with the administration of alcoholic beverage statutes;

- (25) "License" means any license issued pursuant to KRS 243.020 to 243.670;
- (26) "Licensee" means any person to whom a license has been issued, pursuant to KRS 243.020 to 243.670;
- (27) "Limited restaurant" means:
- (a) A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross income from the sale of food, which maintains a minimum seating capacity of one hundred (100) persons for dining, and which is located in a territory where prohibition is no longer in effect under KRS 242.185(6); or
 - (b) A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross income from the sale of food, which maintains a minimum seating capacity of fifty (50) persons for dining, which has no open bar, which requires that alcoholic beverages be sold in conjunction with the sale of a meal, and which is located in a territory where prohibition is no longer in effect under KRS 242.1244;
- (28) "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and having an alcoholic content greater than that permitted under subsection (2)(i) of this section;
- (29) "Manufacture" means distill, rectify, brew, bottle, and operate a winery;
- (30) "Manufacturer" means a vintner, distiller, rectifier, or brewer, and any other person engaged in the production or bottling of alcoholic beverages;
- (31) "Minor" means any person who is not twenty-one (21) years of age or older;
- (32) ~~["Office" means the Office of Alcoholic Beverage Control;~~
- ~~(33)}~~ "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. "Premises" shall not include as a single unit two (2) or more separate businesses of one (1) owner on the same lot or tract of land, in the same or in different buildings if physical and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on July 15, 1998 shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal, of the license;
- ~~(33){(34)}~~ "Prohibition" means the application of KRS 242.190 to 242.430 to a territory;
- ~~(34){(35)}~~ "Qualified historic site" means a contributing property with dining facilities for at least fifty (50) persons and lodging on the premises as authorized by KRS 219.021 within a commercial district listed in the National Register of Historic Places, or a site that is listed as a National Historic Landmark with dining facilities for at least fifty (50) persons and lodging on the premises as authorized by KRS 219.021. Notwithstanding the provisions of this subsection, a distillery which is listed as a National Historic Landmark and which has a souvenir retail liquor license under KRS 243.0305, shall be deemed a "qualified historic site" under this section;
- ~~(35){(36)}~~ "Rectifier" means any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name;
- ~~(36){(37)}~~ "Repackaging" means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made;
- ~~(37){(38)}~~ "Restaurant" means a facility where the usual and customary business is the serving of meals to consumers, that has a bona fide kitchen facility, and that receives at least fifty percent (50%) of its gross receipts from the sale of food;

- (38)~~(39)~~ "Retail container" means any bottle, can, barrel, or other container which, without a separable intermediate container, holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery to the consumer or not;
- (39)~~(40)~~ "Retail outlet" means retailer, hotel, motel, restaurant, railroad dining car, club, and any facility where alcoholic beverages are sold directly to the consumers;
- (40)~~(41)~~ "Retail sale" means any sale where delivery is made in Kentucky to any consumers;
- (41)~~(42)~~ "Retailer" means any person who sells at retail any alcoholic beverage for the sale of which a license is required;
- (42)~~(43)~~ "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage;
- (43)~~(44)~~ "Service bar" means a bar, counter, shelving, or similar structure used for storing or stocking supplies of alcoholic beverages that is a workstation where employees prepare alcoholic beverage drinks to be delivered to customers away from the service bar. A service bar shall be located in an area where the general public, guests, or patrons are prohibited;
- (44)~~(45)~~ "Sell" includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage;
- (45)~~(46)~~ "Small farm winery" means a winery producing wines, in an amount not to exceed fifty thousand (50,000) gallons in a calendar year;
- (46)~~(47)~~ "Souvenir package" means a special package of Kentucky straight bourbon whiskey available for retail sale at a licensed Kentucky distillery where the whiskey was produced or bottled that is available from a licensed retailer;
- (47)~~(48)~~ "State director" means the director of the Division of Distilled Spirits or the director of the Division of Malt Beverages, or both, as the context requires;
- (48)~~(49)~~ "Supplemental bar" means a bar, counter, shelving, or similar structure used for serving and selling distilled spirits or wine by the drink for consumption on the licensed premises to guests and patrons from additional locations other than the main bar. A supplemental bar shall be continuously constructed and accessible to patrons for distilled spirits or wine sales or service without physical separation by walls, doors, or similar structures;
- (49)~~(50)~~ "Vehicle" means any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages;
- (50)~~(51)~~ "Vintner" means any person who owns, occupies, carries on, works, conducts, or operates any winery, either by himself or by his agent, except persons who manufacture wine for sacramental purposes exclusively;
- (51)~~(52)~~ "Warehouse" means any place in which alcoholic beverages are housed or stored;
- (52)~~(53)~~ "Wholesale sale" means a sale to any person for the purpose of resale;
- (53)~~(54)~~ "Wholesaler" means any person who distributes alcoholic beverages for the purpose of being sold at retail, but it shall not include a subsidiary of a manufacturer or cooperative of a retail outlet;
- (54)~~(55)~~ "Wine" means the product of the normal alcoholic fermentation of the juices of fruits, with the usual processes of manufacture and normal additions, and includes champagne and sparkling and fortified wine of an alcoholic content not to exceed twenty-four percent (24%) by volume. It includes cider, hard cider, and perry cider and also includes preparations or mixtures vended in retail containers if these preparations or mixtures contain not more than fifteen percent (15%) of alcohol by volume. It includes ciders, perry, or sake having an alcohol content greater than that permitted under subsection (2)(i) of this section; and
- (55)~~(56)~~ "Winery" means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded.

➔Section 550. KRS 241.015 is amended to read as follows:

There is created *a Department*~~an Office~~ of Alcoholic Beverage Control, which shall constitute a statutory administrative *department*~~office~~ of the state government within the meaning of KRS Chapter 12. The

department{office} consists of the *commissioner*{~~executive director~~} of alcoholic beverage control and the Alcoholic Beverage Control Board. The *commissioner*{~~executive director~~} shall head the *department*{office}, shall be its executive officer, and shall have charge of the administration of the *department*{office} and perform all functions of the *department*{office} not specifically assigned to the board. The {~~secretary of the Environmental and Public Protection Cabinet, with the approval of the~~} Governor[,] shall appoint as *commissioner*{~~executive director~~} a person with administrative experience in the field of alcoholic beverage control. The *commissioner*{~~executive director~~} shall be appointed for a term of four (4) years.

➔Section 551. KRS 241.020 is amended to read as follows:

- (1) The *department*{office} shall administer statutes relating to, and regulate traffic in, alcoholic beverages, except that the collection of taxes shall be administered by the Department of Revenue.
- (2) A Division of Distilled Spirits, under the supervision of the board, shall administer the laws in relation to traffic in distilled spirits and wine.
- (3) A Division of Malt Beverages, under the supervision of the board, shall administer the laws in relation to traffic in malt beverages.

➔Section 552. KRS 241.030 is amended to read as follows:

The Alcoholic Beverage Control Board shall consist of the *commissioner*{~~executive director~~} of alcoholic beverage control and two (2) persons appointed by the secretary of the {~~Environmental and~~} Public Protection Cabinet with the approval of the Governor, who shall be persons with administrative experience in the field of alcoholic beverage control and who shall serve for terms of four (4) years each. One (1) of such persons shall serve as director of the Division of Distilled Spirits, and the other shall serve as director of the Division of Malt Beverages. The *commissioner*{~~executive director~~} shall be chairman of the board.

➔Section 553. KRS 241.060 is amended to read as follows:

The board shall have the following functions, powers, and duties:

- (1) To promulgate reasonable administrative regulations governing procedures relative to the applications for and revocations of licenses, the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages, and all other matters over which the board has jurisdiction. Administrative regulations need not be uniform in their application but may vary in accordance with reasonable classifications;
- (2) To limit in its sound discretion the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed premises. To this end, the board may make reasonable division and subdivision of the state or any political subdivision into districts. Administrative regulations relating to the granting, refusal, and revocation of licenses may be different within the several divisions or subdivisions;
- (3) To hold hearings in accordance with the provisions of KRS Chapter 13B. The *department*{office} may pay witnesses the per diem and mileage provided in KRS 421.015;
- (4) To conduct hearings and appeals under KRS 241.150, 241.200, 243.470, and 243.520 and render final orders upon the subjects of the hearings and appeals;
- (5) To destroy evidence in the *department's*{office's} possession after all administrative and judicial proceedings are conducted;
- (6) To suspend, revoke, or cancel for cause, after a hearing in accordance with KRS Chapter 13B, any license issued under KRS 243.020 to 243.670;
- (7) To prohibit the issuance of a license for the premises until the expiration of two (2) years from the time the offense was committed if a violation of KRS Chapter 241, KRS 243.020 to 243.670, or KRS Chapter 244 has taken place on the premises which the owner knew of or should have known of, or was committed or permitted in or on the premises owned by the licensee; and
- (8) To suspend a license for any cause for which the board is authorized to exercise its discretion as to revoking a license.

➔Section 554. KRS 241.100 is amended to read as follows:

- (1) No member of the board or member of his *or her* immediate family or employee of the ~~department~~~~office~~ shall have any interest in any premises or business where alcoholic beverages are manufactured, stored or sold. Nor shall he *or she* receive any commission or profit from any person applying for or receiving any license or permit.
- (2) No person shall be disqualified under this section solely by reason of his *or her* membership in a club.
- (3) If a member of the board is disqualified or fails to give bond and take the oath of office, the Governor shall fill the vacancy by appointment for the period during which that member of the board remains disqualified or fails to qualify.

➔Section 555. KRS 241.140 is amended to read as follows:

The functions of each county administrator shall be the same, with respect to local licenses and regulations, as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by a county administrator may be less stringent than statutes relative to alcoholic beverage control or than the regulations of the board. If any city appoints its own administrator under KRS 241.170, the county administrator in that county shall have jurisdiction over only that portion of the county which lies outside the corporate limits of that city, unless the ~~department~~~~office~~ determines that the city does not have an adequate police force of its own or under KRS 70.540, 70.150, 70.160, and 70.170.

➔Section 556. KRS 241.170 is amended to read as follows:

- (1) The city administrator in each city of the first class or the administrator in a consolidated local government, and such investigators and clerks as are deemed necessary for the proper conduct of his office, shall be appointed by the mayor. The city administrator in each city of the first class or the administrator in a county containing a consolidated local government, and his investigators, shall have full police powers of peace officers, and their jurisdiction shall be coextensive with boundaries of the city of the first class or the boundaries of the county in a county containing a consolidated local government. They may inspect any premises where alcoholic beverages are manufactured, sold, stored, or otherwise trafficked in, without first obtaining a search warrant. If any city of the second, third, or fourth class in a county containing a consolidated local government appoints its own administrator under KRS 241.160, the administrator of a consolidated local government in that county shall have jurisdiction over only that portion of the county which lies outside the corporate limits of such a city, unless the ~~department~~~~office~~ determines that the city does not have an adequate police force of its own or pursuant to KRS 70.150, 70.160, 70.170, and 70.540.
- (2) The city administrator in each city of the second, third, or fourth class shall be appointed by the city manager if there is one. If there is no city manager, the city administrator shall be appointed by the mayor.
- (3) No person shall be an administrator, an investigator, or an employee of the city or a consolidated local government under the supervision of the administrator, who would be disqualified to be a member of the board under KRS 241.100.

➔Section 557. KRS 241.990 is amended to read as follows:

Any person who after an opportunity to be heard is found by the ~~commissioner~~~~executive director~~ to have violated any of the provisions of KRS 241.100, or acted as county administrator in violation of subsection (1) of KRS 241.120, or acted as city administrator or a city employee in violation of subsection (3) of KRS 241.170, or acted as an urban-county administrator in violation of KRS 241.230, shall automatically vacate his office or position, and upon conviction by a court, he shall be guilty of a Class D felony.

➔Section 558. KRS 242.123 is amended to read as follows:

- (1) To promote economic development and tourism in a county containing a city that has, in whole or in part, voted to discontinue prohibition, with the exception of a territory that has discontinued prohibition in accordance with KRS 242.1292, a local option election for the limited sale of alcoholic beverages may be held in any precinct containing a nine (9) or an eighteen (18) hole golf course that meets United States Golf Association criteria as a regulation golf course, notwithstanding any other provisions of the Kentucky Revised Statutes.
- (2) A local option election for the limited sale of alcoholic beverages held under subsection (1) of this section shall be conducted in the same manner specified in KRS 242.020 to 242.120, except that the form of the proposition

to be voted upon shall be "Are you in favor of the sale of alcoholic beverages by the drink at (name of golf course) in the (name of precinct)?".

- (3) Upon approval of the proposition, the **Department**{~~Office~~} of Alcoholic Beverage Control may issue a license to the golf course for the sale of alcoholic beverages by the drink as provided in KRS 243.030 and KRS 243.040.
- (4) No alcoholic beverage license shall be issued to any applicant within the precinct except the nine (9) or the eighteen (18) hole regulation golf course named in the proposition.

➔Section 559. KRS 242.1232 is amended to read as follows:

- (1) The **Department**{~~Office~~} of Alcoholic Beverage Control shall not issue a license to an applicant authorized to apply for a license to sell alcoholic beverages by the drink under KRS 242.123 unless the applicant and the golf course, if different from the applicant, agree to voluntarily comply with the provisions of KRS Chapter 344, whether or not the applicant and the golf course would otherwise be covered by the provisions of KRS Chapter 344.
- (2) The **department**{~~office~~} shall revoke or suspend any license issued under KRS 242.123 if the **department**{~~office~~} or the Kentucky Commission on Human Rights makes a finding that the applicant or the golf course, if different from the applicant, has violated a requirement specified in this section.

➔Section 560. KRS 242.1242 is amended to read as follows:

- (1) To promote economic development and tourism in any county or city in which prohibition is in effect, in whole or in part, and a qualified historic site is located, a local option election for the limited sales of alcoholic beverages by the drink may be held in the precinct of the county where the qualified historic site is located, notwithstanding any other provision of the Kentucky Revised Statutes.
- (2) A local option election for the limited sale of alcoholic beverages by the drink held under subsection (1) of this section shall be conducted in the same manner as specified in KRS 242.020; 242.030(1), (2), and (5); 242.040; and 242.060 to 242.120. The form of the proposition to be voted upon shall be "Are you in favor of the sale of alcoholic beverages by the drink at qualified historic sites in the (name of precinct)?"
- (3) Upon approval of the proposition, the **Department**{~~Office~~} of Alcoholic Beverage Control shall issue a license to qualified historic sites that meet the criteria included in the proposition for the sale of alcoholic beverages by the drink as provided in KRS 243.030.

➔Section 561. KRS 243.025 is amended to read as follows:

- (1) All of the fees paid into the State Treasury for licenses issued under KRS 243.030 and 243.040 shall be credited to a revolving trust and agency account, as provided in KRS 45.253, for the **Department**{~~Office~~} of Alcoholic Beverage Control.
- (2) All fees associated with the **department's**{~~agency's~~} server training program, except for board-ordered fees, shall be collected on a cost recovery basis and shall be credited to the revolving trust and agency account established under subsection (1) of this section.
- (3) These moneys shall be used solely for the administration and enforcement of KRS Chapters 241, 242, 243, and 244. The moneys in the account shall not lapse at the close of the fiscal year.

➔Section 562. KRS 243.030 is amended to read as follows:

The following kinds of distilled spirits and wine licenses may be issued by the director of the Division of Distilled Spirits, the fees for which shall be:

- (1) Distiller's license, per annum \$2,500.00
- (2) Rectifier's license, per annum \$2,500.00
- (3) Blender's license, per annum \$2,500.00
- (4) Vintner's license, per annum \$1,000.00
- (5) Small farm winery license, per annum \$100.00
 - (a) Small farm winery off-premises retail license, per annum \$25.00
- (6) Wholesaler's license, per annum \$2,000.00

- (7) Retail package license, per annum:
 - (a) In counties containing cities of the first class or a consolidated local government \$800.00
 - (b) In counties containing cities of the second class \$700.00
 - (c) In counties containing cities of the third class \$600.00
 - (d) In counties containing cities of the fourth class \$500.00
 - (e) In all other counties \$400.00
 - (8) Retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum:
 - (a) In counties containing cities of the first class or a consolidated local government \$1,000.00
 - (b) In counties containing cities of the second class \$700.00
 - (c) In counties containing cities of the third class \$600.00
 - (d) In counties containing cities of the fourth class \$500.00
 - (e) The fee for each of the first five (5) supplemental bar licenses shall be the same as the fee for the drink license. There shall be no charge for each supplemental license issued in excess of five (5) to the same licensee at the same premises.
 - (9) Transporter's license, per annum \$100.00
 - (10) Dining car license, per annum \$100.00
 - (11) Special nonbeverage alcohol vendor's license, per annum \$50.00
 - (12) Special industrial alcohol license, per annum \$50.00
 - (13) Special nonindustrial alcohol license, per annum \$50.00
 - (14) Special agent's or solicitor's license, per annum \$25.00
 - (15) Special storage or warehouse license and bottling house storage license,
per annum \$500.00
 - (16) Special temporary liquor license, per event \$100.00
 - (17) Special private club license, per annum \$300.00
- The fee for each special private club license shall be the fee set out in this subsection; however, there shall be no charge for each special private club license issued in excess of six (6) that is issued to the same licensee at the same premises.
- (18) Special Sunday retail drink license, per annum \$500.00
 - (19) Nonresident special agent or solicitor's license, per annum \$100.00
 - (20) Transport permit, nonresident license, per annum \$100.00
 - (21) Through transporter's license, per annum \$100.00
 - (22) Freight forwarder's license, per annum \$100.00
 - (23) Restaurant wine license, per annum..... \$500.00
 - (24) Special temporary wine license, per event \$50.00
 - (25) Caterer's license, per annum \$800.00
 - (26) Souvenir retail liquor license, per annum \$500.00
 - (27) Special temporary distilled spirits and wine
auction license, per event \$100.00
 - (28) Airport drink license, per annum \$1,000.00

- (29) Convention center or convention hotel complex
 - license, per annum \$5,000.00
- (30) Extended hours supplemental license, per annum \$2,000.00
- (31) Horse race track license, per annum \$2,000.00
- (32) Automobile race track license, per annum \$2,000.00
- (33) Air or rail system license, per annum \$2,000.00
- (34) Riverboat license, per annum \$1,000.00
- (35) Bottling house license, per annum \$1,000.00
- (36) Hotel in-room license, per annum \$200.00
- (37) Bonded warehouse license, per annum \$1,000.00
- (38) Air transporter liquor license, per annum \$500.00
- (39) Sampling license, per annum \$100.00
- (40) Replacement or duplicate license \$25.00
- (41) Entertainment destination license, per annum \$7,500.00
- (42) (a) Limited restaurant license or limited golf course license, per annum
(includes distilled spirits, wine, and malt beverages), new applicants:
 - 1. In counties containing cities of the first class or a consolidated local government \$1,200.00
 - 2. In counties containing cities of the second class \$900.00
 - 3. In counties containing cities of the third class \$800.00
 - 4. In counties containing cities of the fourth, fifth, or sixth classes \$700.00
- (b) Renewals for limited restaurant licenses or limited golf course licenses shall be \$50.00 less than the applicable licensing fee for new applicants.
- (43) Small farm winery wholesaler's license, per annum \$100.00
- (44) Qualified historic site license (includes distilled spirits, wine, and malt beverages by the drink), per annum \$1,000.00
- (45) A nonrefundable fee of fifty dollars (\$50) shall be charged to process each new transitional license pursuant to KRS 243.045.
- (46) Other special licenses the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine and provides for by administrative regulation. In fixing the amount of license taxes that are required to be fixed by the board, it shall have regard for the value of the privilege granted.

A nonrefundable application fee of fifty dollars (\$50) shall be charged to process each new application under this section, except for subsections (5), (9), (11), (12), (13), (14), (16), (19), (20), (21), (22), (24), (27), (39), and (40). The application fee shall be applied to the licensing fee if the license is issued; otherwise it shall be retained by the ~~department~~~~office~~.

➔Section 563. KRS 243.036 is amended to read as follows:

- (1) A special temporary distilled spirits and wine auction license may be issued to a charitable organization, upon the payment of the fee set forth in KRS 243.030 and upon satisfaction of the requirements prescribed by administrative regulation promulgated by the ~~department~~~~office~~.
- (2) A special temporary distilled spirits and wine auction license shall authorize the charitable organization to:
 - (a) Purchase, transport, receive, possess, store, sell, and deliver distilled spirits and wine to be sold at auction in the manner prescribed by administrative regulation promulgated by the ~~department~~~~office~~;

- (b) Obtain distilled spirits and wine from distillers, rectifiers, vintners, wholesalers, distributors, retailers, or any other person, by gift or donation, for the purpose of charity auctions in the manner prescribed by administrative regulation promulgated by the *department*~~{office}~~; and
 - (c) Receive payment for distilled spirits and wine sold at auctions in the manner prescribed by administrative regulation promulgated by the *department*~~{office}~~.
- (3) Each distilled spirits and wine auction conducted by a charitable organization shall be subject to all restrictions and limitations contained in KRS Chapters 241 to 244 and the administrative regulations issued under those chapters and shall be authorized only on the days and only during the hours that the sale of alcoholic beverages is otherwise authorized in the county or municipality.
 - (4) The location at which the distilled spirits and wine are auctioned under this section shall not constitute a public place for the purpose of KRS Chapter 222. Distilled spirits and wine auctions may be conducted on licensed or unlicensed premises. The charitable organization possessing a special temporary distilled spirits and wine auction license shall post a copy of the license at the location of the auction. During this period not more than one (1) auction shall be held.
 - (5) A special temporary distilled spirits and wine auction license shall not be issued for any period longer than thirty (30) days. During this period not more than one (1) auction shall be held.
 - (6) Notwithstanding any other provision of KRS Chapters 241 to 244, a distiller, rectifier, vintner, wholesaler, distributor, or retailer may donate, give away, or deliver any of its products to a charitable organization possessing a special temporary distilled spirits and wine auction license under this section.
 - (7) All restrictions and prohibitions applying to a distilled spirits and wine retail package and distilled spirits and wine by the drink license, not inconsistent with this section, shall apply to a special temporary distilled spirits and wine auction license.

➔Section 564. KRS 243.040 is amended to read as follows:

The following kinds of malt beverage licenses may be issued by the director of the Division of Malt Beverages, the fees for which shall be:

- | | |
|--|------------|
| (1) Brewer's license, per annum | \$2,500.00 |
| (2) Microbrewery license, per annum | \$500.00 |
| (3) Distributor's license, per annum | \$500.00 |
| (4) Malt beverage retail license, per annum: | |
| (a) New applicants | \$200.00 |
| (b) Renewals | \$150.00 |
| (5) Dining car license, per annum | \$200.00 |
| (6) Transporter's license, per annum | \$100.00 |
| (7) Special temporary license, per event | \$50.00 |
| (8) Special off-premises retail storage license, per annum | \$100.00 |
| (9) Distributor's storage, per annum | \$250.00 |
| (10) Special beer transporter's license, per annum | \$100.00 |
| (11) Brew-on-premises license, per annum | \$500.00 |
| (12) Out-of-state brewer license, per annum | \$1,500.00 |
| (13) Malt beverage warehouse license, per annum | \$1,000.00 |
| (14) Replacement or duplicate license, per annum | \$25.00 |
| (15) Limited out-of-state brewer license, per annum | \$250.00 |
| (16) Qualified historic site, per annum | \$200.00 |

- (17) A nonrefundable fee of fifty dollars (\$50) shall be charged to process each new transitional license pursuant to KRS 243.045.
- (18) Other special licenses as the state board finds to be necessary for the administration of KRS Chapters 241, 242, 243, and 244 and for the proper regulation and control of the trafficking in malt beverages, as provided for by administrative regulations promulgated by the state board.

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

➔Section 565. KRS 243.045 is amended to read as follows:

- (1) A transitional license may be issued by the director of the Division of Malt Beverages or the director of the Division of Distilled Spirits during the time a transfer of an ongoing business is being processed under the following conditions:
 - (a) The purchaser shall file an application for a permanent license with the appropriate local alcoholic beverage authority and with the ~~department~~~~office~~;
 - (b) The purchaser shall advertise its intention to apply for a license pursuant to KRS 243.360; and
 - (c) The purchaser shall pay all application fees for the permanent license.
- (2) If the above requirements are met, the director of the Division of Malt Beverages or the director of the Division of Distilled Spirits, as appropriate, shall have the discretion to issue a transitional license with a term of up to sixty (60) days, plus one (1) thirty (30) day extension period, to the purchaser for a processing fee set forth in KRS 243.030 to 243.040. All transitional licenses immediately expire upon the issuance to the purchaser of one (1) or more permanent licenses.
- (3) Upon completion of the sale of the business, the purchaser shall not operate the business on the seller's license.
- (4) The transitional license shall not be transferable or used for an application to move a business from one (1) location to another location.

➔Section 566. KRS 243.050 is amended to read as follows:

- (1) The ~~department~~~~office~~ may issue a railroad system license to a railroad company upon the payment of the required fee. This license tax shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages.
- (2) The ~~department~~~~office~~ may issue a commercial airlines system license to a commercial airlines system or charter flight system upon the payment of the required fee. This license fee shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages and the license may be renewed annually. The license shall authorize the licensee to sell distilled spirits and wine by the drink and by miniature bottle, and malt beverages, upon regularly scheduled or charter flights of the licensee, in and out of the State of Kentucky. The license shall authorize the licensee to store alcoholic beverages for retail sale at a location or locations, if operating from more than one (1) airport in Kentucky, as designated on the license application.
- (3) The ~~department~~~~office~~ may issue a transporter's license to a commercial airline system, a charter flight system, or a commercial cargo system, upon the payment of the required fee. This license may be renewed annually. The license shall authorize the licensee to transport distilled spirits and wine and malt beverages, into and out of the State of Kentucky, upon regularly scheduled or charter flights of the licensee. The license shall authorize, for the purpose of transportation, the storage of alcoholic beverages at a location or locations, if operating from more than one (1) airport in Kentucky, as designated on the license application. This license shall authorize an airline to transport if both the consignor and consignee in each case are authorized by the laws of the states of their residence to sell, purchase, ship, or receive the alcoholic beverages.
- (4) The ~~department~~~~office~~ may issue a convention center or convention hotel complex license for the retail sale of distilled spirits, wine, and malt beverages for consumption on the premises to a convention center or hotel having seating capacity of one thousand (1,000) or more persons. The license shall cover all alcoholic beverage sales on the premises, except that a separate hotel in-room service license shall be required, where

applicable. An extended supplement license under subsection (5) of this section may also be issued where applicable. The convention center or convention hotel complex license shall be a nonquota license and shall not be transferable to other premises. The provisions of this subsection shall not apply to convention center licenses or the renewal thereof, other than those in a city of the first class or a county containing a city of the first class or a consolidated local government, if the original license was issued prior to July 15, 1998.

- (5) Where it is determined by the *department*~~{office}~~ to be in the best interest of promoting tourism, conventions, and the economic development of Kentucky or any part thereof, the *department*~~{office}~~ may issue a supplemental license for the retail sale of alcoholic beverages by the drink at convention centers, at horse race tracks licensed to conduct a race meeting under KRS Chapter 230, at commercial airports through which more than five hundred thousand (500,000) passengers arrive or depart annually, at automobile race tracks having a seating capacity of at least thirty thousand (30,000) people, and at qualified historic sites. Upon application by the holder of a retail alcoholic beverage license at a convention center, convention hotel complex, horse race track, automobile race track, commercial airport, or qualified historic site meeting the requirements of this subsection as provided above, the *department*~~{office}~~ may establish the days when the supplemental license will be valid at the specific location, including Sundays after 1 p.m. The supplemental license fee shall be established, and shall be in addition to all other licenses and fees due by the holder in connection with the retailing of alcoholic beverages. The *department*~~{office}~~ may, by administrative regulation or special conditions of the supplemental permit, establish such restrictions on the use of the license as will insure that it will be primarily for the benefit of the convention business, the horse racing industry, passengers at large commercial airports, the automobile racing industry, and qualified historic sites.

➔Section 567. KRS 243.055 is amended to read as follows:

- (1) As used in this section, the following definitions shall apply:
- (a) "Hotel" means any hotel, motel, inn, or other establishment which offers overnight accommodations to the public for hire;
 - (b) "In-room service" means the delivery of alcoholic beverages in unbroken packages by an employee of the hotel to a registered guest's room when the alcoholic beverages have been ordered by a guest and when the guest shall be billed for the cost of the alcoholic beverages at the time of delivery, with all sales of the alcoholic beverages being completed upon delivery; and, additionally, the provision of a cabinet or other facility located in a hotel guest's room which contains alcoholic beverages and which is provided upon written request of the guest and which is accessible by lock and key or remote control device only to the guest, with the sale of the alcoholic beverages contained therein being final at the time requested, except for a credit which may be given to the guest for any unused portion. The licensee may stock a cabinet or other facility located in a hotel guest's room pursuant to this section, with fifty (50) milliliter containers of distilled spirits.
- (2) The *department*~~{office}~~ may issue a hotel in-room service license to any hotel which is licensed to sell distilled spirits, wine, and malt beverages upon the payment of the fee set forth in KRS 243.030. The license shall authorize the licensee to sell distilled spirits, wine, and malt beverages by in-room service. The sale of alcoholic beverages by in-room service shall be subject to all restrictions and limitations contained in KRS Chapters 241 to 244, and the administrative regulations issued under those chapters, and shall be authorized only on the days and only during the hours as the sale of alcoholic beverages is otherwise authorized in the county or municipality. All alcoholic beverages sold pursuant to this section shall be considered by the drink sales and shall be subject to all state and local taxes imposed on alcoholic beverages and shall be purchased from a licensed wholesaler and distributor.

➔Section 568. KRS 243.090 is amended to read as follows:

- (1) All licenses issued by the *department*~~{office}~~, except special event or temporary licenses, shall be valid for a period of no more than a year. All licenses shall expire on June 30 of each year until the licensee is notified by the *department*~~{office}~~ that a renewal system with staggered dates has been implemented. The *department*~~{office}~~ shall promulgate administrative regulations establishing the year-round system for renewal of licenses. The system shall be designed to distribute the workload as uniformly as possible within the offices of the local administrators and the *Department*~~{Office}~~ of Alcoholic Beverage Control.
- (2) When any person applies for a new license authorized to be issued under KRS 243.020 to 243.670, he shall be charged, if the license is issued, the full fee for the respective license if six (6) months or more remain before

the license is due to be renewed and one-half (1/2) the fee if less than six (6) months remain before the license is due to be renewed. No abatement of license fees shall be permitted to any person who held a license of the same kind for the same premises in the preceding license period and who was actually doing business under the license during the last month of the preceding license period.

- (3) The renewal by the ~~department~~~~office~~ of the certificate or permit of any alcoholic beverage license shall not be construed to waive or condone any violation that occurred prior to the renewal and shall not prevent subsequent proceedings against the licensee.

➔Section 569. KRS 243.155 is amended to read as follows:

- (1) Any in-state or out-of-state small farm winery may apply for a small farm winery license. In addition to all other licensing requirements, an applicant for a small farm winery license shall submit with its application a copy of the small farm winery's federal basic permit and proof documenting its annual wine production. An out-of-state winery shall submit additional documentation evidencing its resident state. As part of the application process, an out-of-state winery shall publish its notice of intent, as required by KRS 243.360, in the Kentucky newspaper of highest circulation. The ~~department~~~~office~~ shall promulgate administrative regulations establishing the form the documentation of proof of production shall take.
- (2) A small farm winery license shall authorize the licensee to perform the following functions without having to obtain separate licenses, except that each small farm winery off-premises retail site shall be separately licensed:
- (a) Manufacture wines and bottle wines produced by that small farm winery;
 - (b) Bottle wines produced by another small farm winery;
 - (c) Serve on the premises or at small farm winery off-premise retail sites complimentary samples of wine produced by it in amounts not to exceed six (6) ounces per patron per day, if the small farm winery or its off-premise retail site is located in wet territory;
 - (d) Sell by the drink or by the package on premises, at small farm winery off-premise retail sites, and at fairs, festivals, and other similar types of events, wine produced on the premises of the small farm winery or produced by a licensed small farm winery, at retail to consumers if all sales sites are located in wet territory;
 - (e) Sell and transport wine produced on the premises of the small farm winery to wholesale license holders and small farm winery license holders;
 - (f) Consume on the premises wine produced by the small farm winery or a licensed small farm winery and purchased by the drink or by the package at the licensed premises, if the small farm winery is located in wet territory; and
 - (g) Ship to a customer wine produced by a small farm winery if:
 1. The wine is purchased by the customer in person at the small farm winery;
 2. The wine is shipped by licensed common carrier; and
 3. The amount of wine shipped is limited to two (2) cases per customer per visit.
- (3) If a licensed small farm winery is located in a dry territory, KRS 242.230 to 242.430 shall apply, unless a local option election is held in accordance with the provisions of this subsection. A limited sale precinct election may be held in a precinct containing a licensed small farm winery or a proposed small farm winery located in a dry territory. The election shall be held in the same manner as prescribed by KRS 242.010 to 242.040 and 242.060 to 242.120. If the precinct contains a licensed small farm winery, the proposition to be voted on shall state, "Are you in favor of the sale of wine at the (name of the licensed small farm winery or wineries)?" If the precinct contains a proposed small farm winery or wineries, the proposition voted on shall state, "Are you in favor of the sale of wine at the (name of the proposed small farm winery or wineries)?" If the proposition is approved, a licensed small farm winery within the precinct may sell wine in accordance with subsection (2) of this section.
- (4) Other provisions of this chapter and KRS Chapter 244 notwithstanding, a small farm winery license holder may also hold a restaurant wine license and a retail malt beverage license, provided the issuance of these licenses is in connection with the establishment and operation of a restaurant, hotel, inn, bed and breakfast, conference center, or any similar business enterprise the purpose of which is to promote viticulture, enology,

and tourism. The retail malt beverage license issued under this subsection shall limit the licensee to the sale of malt beverages for consumption on the premises only.

- (5) This section shall not exempt the holder of a small farm winery license from the provisions of KRS Chapters 241, 242, 243, and 244, nor from the administrative regulations of the board, nor from regulation by the board at all premises licensed by the small farm winery, except as expressly stated in this section.
- (6) Nothing contained in this section shall exempt a licensed out-of-state winery from obeying the laws of its resident state.
- (7) Any person previously licensed as a small or farm winery under this chapter prior to January 1, 2007, shall hereby be authorized to conduct business as a small farm winery licensee, until such time as the term of his or her small or farm winery license expires. Upon the expiration of the term remaining on his or her small or farm winery license, a licensee who is in good standing shall be issued a small farm winery license as part of the renewal process after he or she submits to the *department*~~{office}~~ the winery's federal basic permit and proof of its annual wine production.

➔Section 570. KRS 243.200 is amended to read as follows:

- (1) A distilled spirits and wine transporter's license shall authorize the licensee to transport distilled spirits and wine to or from the licensed premises of any licensee under KRS 243.020 to 243.670 if both the consignor and consignee in each case are authorized by the law of the states of their residence to sell, purchase, ship or receive the alcoholic beverages.
- (2) A distilled spirits and wine transporter's license shall be issued only to persons authorized by proper certificate from the Department of Vehicle Regulation to engage in the business of common carrier.
- (3) No person except a railroad company or railway express company shall transport or cause to be transported any distilled spirits or wine, unless expressly authorized to do so by law.
- (4) Distilled spirits and wine may be transported by the holder of any license authorized by KRS 243.030 from and to express or freight depots to and from the premises covered by the license of the person so transporting distilled spirits or wine.
- (5) A licensed alcoholic beverage store operator may move, within the same county, alcoholic beverages from one of the operator's licensed stores to another without a transporter's license. However, the licensed store operator shall keep and maintain, in one (1) of his or her stores in that county, adequate books and records of the transactions involved in transporting alcoholic beverages from one (1) licensed store to another in accordance with standards established in administrative regulations promulgated by the board. The records shall be available to the *department*~~{office}~~ and the Department of Revenue upon request.
- (6) Distilled spirits and wine may be transported by the holder of any retail package or drink license issued under KRS 243.030 from the premises of a licensed wholesaler to the licensed premises of the retail licensee. Any retailer transporting alcoholic beverages under this subsection shall do so in a vehicle marked in conformity with administrative regulations of the *department*~~{office}~~. Both the wholesaler and the retailer engaging in activity under this subsection shall be responsible for maintaining records documenting the transactions.

➔Section 571. KRS 243.290 is amended to read as follows:

A malt beverage special temporary license shall authorize the sale of malt beverages at retail for consumption on the premises of any regularly organized fair or racing association for a particular fair, race, or race meeting conducted by the association, or for special temporary occasions such as picnics, bazaars, and carnivals. The issuance or refusal of a malt beverage special temporary license and the exercise of the privilege granted by the license shall be subject to such regulations as the *department*~~{office}~~ may in each particular case deem necessary.

➔Section 572. KRS 243.360 is amended to read as follows:

- (1) Any person, corporation, partnership, or any other entity, except an applicant for the same license for the same premises, or an applicant for an out-of-state brewer's license, supplemental bar license, extended hours supplemental license, a special agent or solicitor's license, a bonded warehouse license, a freight forwarding license, a storage warehouse license, an industrial alcohol license, a nonindustrial alcohol license, a storage warehouse license, a nonbeverage license, a vendor license, a transporter's license, a Sunday license, or a temporary drink license shall, before applying for a license under KRS 243.030 and 243.040, advertise by publication under KRS 424.130(1)(b) his or her intention to apply for a license.

- (2) The notice shall conform in all material respects to the following requirements:
- (a) The notice shall state: the name and address of the applicant if the applicant is an individual, the name and address of each partner and the name of the business and its address if the applicant is a partnership, and the name and address of each principal officer and director and the name and business address of the corporation if the applicant is a corporation;
 - (b) The notice shall specifically state the location of the premises for which the license is sought and the type of license being requested; and
 - (c) The notice shall state the date the application will be filed and shall contain the following statement: "Any person, association, corporation, or body politic may protest the granting of the license by writing the **Department**~~{Office}~~ of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, within thirty (30) days of the date of legal publication."

- (3) Any protest received after the thirty (30) day period has expired shall not be considered a valid legal protest by the board.

➔Section 573. KRS 243.380 is amended to read as follows:

- (1) Applications for licenses provided for in KRS 243.030 and 243.050 shall be made to the director of the Division of Distilled Spirits. Applications for licenses provided for in KRS 243.040 shall be made to the director of the Division of Malt Beverages.
- (2) All applications shall be on forms furnished by the **department**~~{office}~~. They shall be verified and shall set forth in detail such information concerning the applicant and the premises for which the license is sought as the board by regulation requires. Each application shall be accompanied by payment. Payment of the license fee may be by certified check, cash, a postal or express money order, or any other method of payment approved in writing by both the Finance and Administration Cabinet and the Office of the State Treasurer. Promptly upon receipt thereof the board shall pay the same into the State Treasury, giving the Department of Revenue copies of the pay-in vouchers and such other supporting data as the Department of Revenue may require for revenue control purposes.

➔Section 574. KRS 243.390 is amended to read as follows:

- (1) In addition to other information as the board may by administrative regulation require, every application for a license under KRS 243.020 to 243.670 shall contain the following information, given under oath:
 - (a) The name, age, Social Security number, address, residence, and citizenship of each applicant;
 - (b) If the applicant is a partner, the name, age, Social Security number, address, residence, and citizenship of each partner and the name and address of the partnership;
 - (c) The name, age, Social Security number, address, residence, and citizenship of each person interested in the business for which the license is sought, together with the nature of that interest, and, if the applicant is a corporation, limited partnership company, or limited liability company, the name, age, Social Security number, address, and residence of each officer, director, member, partner, and managerial employee and the citizenship of each, and the state under the laws of which the corporate applicant is incorporated or organized. The **department**~~{office}~~ may require the names of all the stockholders and the percentage of stock held by each;
 - (d) The premises to be licensed, stating the street and number, if the premises has a street number, and otherwise such a description that will reasonably indicate the location of the premises;
 - (e) A statement that neither the applicant nor any other person referred to in this section has been convicted of; any misdemeanor directly or indirectly attributable to alcoholic beverages; any violation of KRS 218A.050, 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, or 218A.130 within the two (2) years immediately preceding the application; any felony, within five (5) years from the later of the date of parole or the date of conviction; or providing false information to the **department**~~{office}~~ preceding the application; and that the applicant or any other person referred to in this section has not had any license that has been issued to him under any alcoholic beverage statute revoked for cause within two (2) years prior to the date of the application; and
 - (f) A statement that the applicant will in good faith abide by every state and local statute, regulation, and ordinance relating to the manufacture, sale, use of, and trafficking in alcoholic beverages.

- (2) If, after a license has been issued, there is a change in any of the facts required to be set forth in the application, a verified supplemental statement in writing giving notice of the change shall be filed with the board within ten (10) days after the change.
- (3) In giving any notice or taking any action in reference to a license, the board may rely upon the information furnished in the application or in the supplemental statement connected with the application. This information, as against the licensee or applicant, shall be conclusively presumed to be correct. The information required to be furnished in the application or supplemental statement shall be deemed material in any prosecution for perjury.

➔Section 575. KRS 243.400 is amended to read as follows:

- (1) Every applicant for a brewer's, distiller's, rectifier's, bottling house or vintner's license shall file with his application a bond to the state in the amount of one thousand dollars (\$1,000). The bond shall be on a form approved by the board and shall have corporate surety registered by the **Department**~~{Office}~~ of Insurance. The applicant shall be the principal obligor and the state shall be the obligee. The bond shall be conditioned upon the prompt payment by the obligor to the Department of Revenue of any and all state taxes, with penalties and interest. The applicant may file a continuing bond provided that each renewal application is accompanied by:
 - (a) An affidavit that the bond remains in force, and
 - (b) A copy of consent of surety.

An applicant for two (2) or more licenses of the same kind may file a blanket bond covering all of his operations. The amount of such a bond shall be the same as if separate bonds were furnished.

- (2) Every applicant for a wholesaler's license shall file with his application a corporate surety bond to the state in the minimum amount of two thousand dollars (\$2,000) or an amount equal to three (3) times the monthly tax liability, whichever is less, and up to a maximum amount of twenty-five thousand dollars (\$25,000). It shall be sufficient, in the opinion of the board, which shall consider the financial reputation and rating of the applicant, to insure payment to the state of the amount of any and all taxes and penalties and interest for which the wholesaler may become liable. It shall be on a form to be approved by the board and with surety on the bond approved by the board. The applicant shall be the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt payment by the wholesaler to the Department of Revenue of any and all state taxes, with penalties and interest.

➔Section 576. KRS 243.460 is amended to read as follows:

If the payment of a license fee was erroneously made or the state director refuses to issue the license the **department**~~{office}~~ shall authorize the payment of the refundable amount, if at the expiration of thirty (30) days no appeal has been filed.

➔Section 577. KRS 243.480 is amended to read as follows:

- (1) Upon proceedings for the revocation of any license under KRS 243.520, the Alcoholic Beverage Control Board, or the local alcoholic beverage administrator, may in its or his or her discretion order a suspension of the license for any cause for which it may, but is not required to, revoke the license under the provisions of KRS 243.490 and 243.500. However, the licensee may have the alternative, subject to the approval of the Alcoholic Beverage Control Board or the local alcoholic beverage administrator, to pay in lieu of part or all of the days of any suspension period, a sum as follows: Distillers, rectifiers, vintners, brewers, and blenders, one thousand dollars (\$1,000) per day; wholesale liquor licensees, four hundred dollars (\$400) per day; wholesale beer licensees, four hundred dollars (\$400) per day; retail licensees authorized to sell distilled spirits, wine, or beer by the package or drink, fifty dollars (\$50) per day; and all remaining licensees, fifty dollars (\$50) per day.
- (2) Payments in lieu of suspension or for board-ordered agency server training, collected on a cost recovery basis, collected by the Alcoholic Beverage Control Board shall be deposited in the State Treasury and credited to the general expenditure fund. Payments in lieu of suspension collected by local alcoholic beverage administrators shall be deposited and used as local alcoholic beverage license tax receipts are deposited and used.
- (3) In addition to or in lieu of a suspension of a license, the board may order a licensee to pay for and require attendance and completion by some or all of the licensee's alcoholic beverage servers in the **department's**~~{agency's}~~ server training program.

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

➔Section 578. KRS 243.490 is amended to read as follows:

- (1) Any license issued under KRS 243.020 to 243.670 may be revoked by the state board if the licensee shall have violated any of the provisions of KRS Chapter 241, 243, or 244, or any rule or regulation of the board or of the Department of Revenue relating to the regulation of the manufacture, sale, and transportation or taxation of alcoholic beverages or if the licensee shall have violated or shall violate any Act of Congress or any rule or regulation of any federal board, agency, or commission, or any ordinance now, heretofore, or hereafter in effect relating to the regulation of the manufacture, sale and transportation or taxation of intoxicating liquors or any rules or regulations of any local alcoholic beverage authority or any similar body heretofore in existence or authorized by the terms of KRS Chapters 241, 243, and 244 to be created, or if any clerk, agent, servant, or employee of any licensee shall violate any of the laws, regulations, or ordinances above referred to, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his instructions, or any license may be revoked for any cause which the Alcoholic Beverage Control Board in the exercise of its sound discretion deems sufficient. A license may be revoked for any of the reasons for which the administrator would have been required to refuse a license if the facts had been known.
- (2) If it is determined that an applicant for a license or license renewal under the provisions of this chapter is a delinquent taxpayer as defined in KRS 131.1815, the **Department**~~{Office}~~ of Alcoholic Beverage Control may refuse to issue or renew the license to the applicant.

➔Section 579. KRS 243.502 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, a person shall not sell, purchase, deliver, give away, possess, use, or offer for sale or use an alcohol vaporizing device or assist another in selling or using an alcohol vaporizing device.
- (2) The provisions of subsection (1) of this section shall not apply to:
- A hospital that operates primarily for the purpose of conducting scientific research;
 - A public institution that is a member of the postsecondary education system or an independent institution as defined in KRS 164.001 that is conducting bona fide research;
 - A pharmaceutical or biotechnology company conducting bona fide research;
 - A manufacturer or distributor that sells an alcohol vaporizing device to one (1) of the entities set out in this subsection; or
 - A device used by a manufacturer in the manufacturing process.
- (3) Persons holding an alcohol vaporizing device in accordance with subsection (2)(a) to (d) of this section shall retain the alcohol vaporizing device in a secure location such that it is used only for research purposes. They shall not transfer the device to an entity or institution other than one covered by subsection (2) of this section and shall destroy the device when it is no longer of use. The **department**~~{office}~~ may promulgate administrative regulations authorizing additional reports if the **department**~~{office}~~ deems the reports reasonably necessary.

➔Section 580. KRS 243.510 is amended to read as follows:

- (1) The **department**~~{office}~~ shall print and furnish to each licensee under KRS 243.020 to 243.670 a statement of the causes for which licenses may be revoked. That statement shall be prepared by the state director and delivered to the licensee with his license, or as soon after that as may be practical. The director shall take from each licensee a signed receipt stating that he has received and read the statement.
- (2) Any changes in or additions to the causes for which licenses may be revoked shall also be sent by the director to each licensee at his address as it appears in his application or the last amendment to his application, as soon as may be practical after such changes in or additions to the causes for which licenses may be revoked become effective.
- (3) Failure of the **department**~~{office}~~ to furnish the statement or to send notice of changes, or the failure of the licensee to receive or read the statement, or any error contained in the statement or notice of changes shall not be an excuse or justification for any violation of law, or prevent, remit or decrease any penalty for a violation.

➔Section 581. KRS 243.540 is amended to read as follows:

- (1) The provisions of this section shall apply to any licensee who is unable to continue in business at the licensed premises because of an act of God; a casualty; an acquisition by a federal, state, city, or other governmental agency under the power of eminent domain granted to the government or agency; a voluntary or involuntary acquisition by any private corporation through the corporation's power of eminent domain; a loss of lease because the landlord fails to renew an existing lease; court action; or other verifiable business reason.
- (2) If a license issued by the *department*~~{office}~~ has been revoked, the former licensee may, under the supervision of the state director, dispose of and transfer his or her stock to another licensee if the disposition is completed within ninety (90) days and the licensee is a distiller, rectifier, vintner, or brewer. The disposition shall be completed within thirty (30) days if the licensee is a wholesaler or distributor or within twenty (20) days if the licensee is a retailer.
- (3) A retail licensee in good standing with the *department*~~{office}~~ who voluntarily ceases to operate his or her business for any reason other than revocation by the board or a court order shall dispose of all alcoholic beverage inventory within thirty (30) days of the event. The following requirements shall apply to the disposition of the licensee's inventory:
 - (a) If the premises is still open to the public and the licensee has not yet surrendered the license, the licensee shall sell alcoholic beverages only to the public and shall not sell below costs;
 - (b) If a licensee has terminated his or her business and has surrendered his or her license to the *department*~~{office}~~, he or she shall submit a written request for approval from the state director within ten (10) days in advance of the sale to dispose of the licensee's remaining inventory. The request shall identify the retailer who is purchasing the inventory, the proposed date of the sale, and the quantity, types, and brands of alcohol to be sold; and
 - (c) If a licensee has more than one (1) licensed retail premises and closes one (1) or more retail premises and seeks to transfer his or her inventory to another licensed retail premises he or she owns, he or she shall submit a request in writing to the state director at least ten (10) days before the inventory is transferred. The request shall identify the premises to which the alcohol is being transferred, the proposed date of the transfer, and the quantity, types, and brands of alcohol to be sold.
- (4) If a retail licensee files for bankruptcy or is directed by a court to dispose of inventory to satisfy a lien or judgment, the inventory may be sold only to a retail alcoholic beverage licensee. The bankrupt licensee or the licensee subject to the court order shall notify the *department*~~{office}~~ of the sale and shall attach a copy of the court order or the judgment directing the sale and a list of the quantity, types, and brands of alcohol to be sold. Any licensee who purchases the inventory shall notify the *department*~~{office}~~ within five (5) days after the transfer of the specific inventory sold.

➔Section 582. KRS 243.630 is amended to read as follows:

- (1) For purpose of this section, "transfer" means:
 - (a) The transfer to a new person or entity of ten percent (10%) or more ownership interest in any license issued under KRS 243.020 to 243.670; or
 - (b) The transfer in bulk, and not in the ordinary course of business, of a major part of the fixtures, materials, supplies, merchandise, or other inventory of a licensee's business.
- (2) Any license issued under KRS 243.020 to 243.670 to any person for any licensed premises shall not be transferable or assignable to any other person or to any other premises or to any other part of the building containing the licensed premises, unless a transfer or assignment is authorized by the state director in the exercise of his sound discretion under KRS 243.640 or 243.650. For the purposes of this section, each railroad dining car shall be deemed premises to be separately licensed.
- (3) A licensee shall not acquire or otherwise dispose of any interest in a licensed premises or any license issued by the *department*~~{office}~~, by sale of assets, stock, inventory, control or right of control, or activities on the licensed premises without prior approval of the state director. The state director shall grant approval if the person acquiring the interest meets the qualifications for a new applicant.
- (4) Any acquisition of interest in a license without prior authorization shall be void.

- (5) All applications for approval of a transfer shall be made in writing to the state director having jurisdiction over the license.
- (6) Applications for approval of a transfer shall be made under oath or affirmation, shall be signed by both the transferor and the transferee, and shall contain such other information as the *department*~~{office}~~ may prescribe.
- (7) The appropriate state director shall grant or deny the application within sixty (60) days of the date the application is substantially complete or on a later date that is mutually acceptable to the director and the transferee, but it shall not be acted upon before the end of the public protest period outlined in KRS 243.360.
- (8) No licensee or other person seeking to acquire an interest in an existing license shall transfer control or assume control of any licensed premises by agreement or otherwise without the written consent of the state director of malt beverages or the state director of distilled spirits or both.
- (9) A licensee shall not transfer his or her license or any interest in the license while any proceedings against the license or the licensee for a violation of any statute or regulation which may result in the suspension or revocation of the license are pending.
- (10) A licensee shall not transfer his or her license or any interest he or she has in the license if the licensee owes a debt on the inventory to a wholesaler responsible for the collection and payment of the tax imposed under KRS 243.884.
- (11) A licensee shall not transfer his or her license or any interest in the license if the licensee owes the Commonwealth of Kentucky for taxes as defined in KRS 243.500(5). A transfer shall not take place until the *department*~~{office}~~ is notified by the Kentucky Department of Revenue that the licensee's indebtedness has been paid or resolved to the satisfaction of the Department of Revenue. This section shall not prohibit a transfer of a license or an interest in a license by a trustee in bankruptcy if all other requirements of this section are met.

➔Section 583. KRS 243.730 is amended to read as follows:

- (1)
 - (a) Wholesalers of distilled spirits and wine shall pay and report the tax levied by KRS 243.720(1) and (2) on or before the twentieth day of the calendar month next succeeding the month in which possession or title of the distilled spirits and wine is transferred from the wholesaler to retailers or consumers in this state, in accordance with rules and regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth.
 - (b) Distributors or retailers of malt beverages, who purchase malt beverages directly from a brewer, shall pay and report the tax levied by KRS 243.720(3) on or before the twentieth day of the calendar month next succeeding the month in which the brewer sells, transfers, or passes title of the malt beverage to the distributor or retailer, in accordance with rules and regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth. The credit allowed brewers in this state, under the provisions of KRS 243.720(3)(b), shall flow through to the distributor or retailer who purchases malt beverages directly from the brewer. If a brewer sells, transfers, or passes title to malt beverages to any of its employees for home consumption or to any charitable or fraternal organization pursuant to the provisions of KRS 243.150, the brewer shall be responsible for paying and reporting the tax levied by KRS 243.720(3) in accordance with the provisions of subsection (c) of this section.
 - (c) Every brewer selling, transferring, or passing title to malt beverages to any person in this state other than a distributor or retailer, and every other person selling, transferring, or passing title of distilled spirits, wine, or malt beverages to distributors, retailers, or consumers shall report and pay the tax levied by KRS 243.720(1), (2), or (3) on or before the twentieth day of the calendar month next succeeding the month in which possession or title of distilled spirits, wine, or malt beverages is transferred to a distributor, retailer, or consumer in this state, in accordance with rules and regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth.
 - (d) Every distributor, retailer, or consumer possessing, using, selling, or distributing distilled spirits, wine, or malt beverages in this state upon which the tax levied by KRS 243.720(1), (2), or (3) and KRS 243.884 has not been paid shall be jointly and severally liable for reporting and paying the tax due, in accordance with rules and regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth. Such liability shall not be extinguished until the tax has been paid to the Department of Revenue.

- (e) Notwithstanding the provisions of paragraph (a) of this subsection, every owner of a small farm winery shall pay and report the tax levied by KRS 243.720 (1) and (2) on a quarterly basis, in accordance with administrative regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth.
- (2) Every wholesaler of distilled spirits or wine before using, selling, or distributing by sale or gift distilled spirits and wine shall qualify with the Department of Revenue. In order to so qualify, each wholesaler shall furnish to the Department of Revenue a certified copy of the bond required to be filed with the *Department*~~{Office}~~ of Alcoholic Beverage Control under the provisions of KRS 243.400(2).
- (3) Notwithstanding the provisions of KRS 243.400(1), every brewer before selling or distributing by sale or gift malt beverages, or before importing malt beverages into the state, shall qualify with the Department of Revenue in such manner as the *Department of Revenue*~~{department}~~ may require.
- (4) The *Department of Revenue*~~{department}~~ shall have the power to require a bond from any other person liable for Kentucky distilled spirits, wine, or malt beverage taxes provided such person is not otherwise required to post a bond under the provisions of this section. The amount of the bond for persons liable for Kentucky distilled spirits or wine taxes shall be computed as provided in KRS 243.400(2). The amount of the bond for persons liable for Kentucky malt beverage taxes shall be in the minimum amount of one thousand dollars (\$1,000) or an amount equal to three (3) times the person's average monthly Kentucky malt beverage tax liability, whichever is greater. The bond shall be on a form prescribed by the *Department of Revenue*~~{department}~~ and have corporate surety registered by the *Department*~~{Office}~~ of Insurance. The person liable for the tax shall be the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt payment by the person to the Department of Revenue of all malt beverage taxes due, with penalties and interest.

➔Section 584. KRS 243.895 is amended to read as follows:

- (1) All licensed retail vendors of alcoholic beverages shall post in a prominent place easily seen by patrons a printed sign at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high, supplied by the *Department*~~{Office}~~ of Alcoholic Beverage Control, and with gender-neutral language supplied by the Cabinet for Health and Family Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects.
- (2) A person who violates subsection (1) of this section shall be subject to a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50).

➔Section 585. KRS 244.040 is amended to read as follows:

- (1) A brewer or distributor shall not sell alcoholic beverages to any person in this state for any consideration except for cash paid at or before the time of delivery.

For purposes of this section, "cash" includes the sale of malt beverages by electronic transfers if the following conditions are met:

- (a) The use of electronic transfers shall be voluntary and shall be agreed to by the affected brewer, distributor, and retailer;
- (b) The brewer shall not pay or credit back in any way to the distributor any share of the cost that is attributable to the electronic transfer;
- (c) The distributor shall not pay or credit back in any way to the retailer any share of the cost that is attributable to the electronic fund transfer;
- (d) The transfer of funds shall be initiated by the brewer or the distributor;
- (e) The distributor may debit the retailer's bank account for the exact amount due based on the amount of alcoholic beverages delivered;
- (f) Electronic fund transfers that are rejected or denied at the time of sale for any reason shall be treated in the same manner as checks drawn on insufficient funds; and
- (g) Each participating retail licensee and each distributor maintain accurate records of all electronic fund transfers in accordance with *department*~~{office}~~ statutes and administrative regulations.

- (2) A brewer or distributor shall not furnish or deliver any returnable bottled malt beverage without collecting a minimum container charge or deposit of sixty cents (\$0.60) per case of twenty-four (24) twelve-ounce bottles or its equivalent in the same manner that the price of the malt beverage is collected.
- (3) This section shall not prohibit a licensee from crediting to a purchaser the actual prices charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid by the purchaser for containers or as a deposit on containers when the title is retained by the vendor, if the containers or packages have been returned to the brewer or distributor.
- (4) No right of action shall exist to collect any claim for credit extended contrary to this section.
- (5) This section shall not apply to sales by wholesalers or distributors to licensees that are private clubs or voluntary associations.

➔Section 586. KRS 244.050 is amended to read as follows:

- (1) No retail licensee shall give away any alcoholic beverage in any quantity or deliver it in any quantity for less than a full monetary consideration, except as provided by KRS 243.155, 243.157, and subsection (2) of this section.
- (2) A retailer licensed to sell distilled spirits and wine under KRS 243.030(7), (8), or (26) may, after acquiring a license under KRS 243.030(39), allow customers to sample distilled spirits and wine under the following conditions:
 - (a) Sampling shall be permitted only on licensed premises and, for licensees licensed under KRS 243.030(7), (8), or (26), during regular business hours;
 - (b) A licensee shall not charge for the samples provided to customers;
 - (c) Sample sizes shall not exceed:
 1. One (1) ounce for wine; and
 2. One-half (1/2) ounce for distilled spirits; and
 - (d) A licensee shall limit a customer to:
 1. Two (2) distilled spirits samples per day; and
 2. Six (6) wine samples per day.
- (3) Retailers licensed under KRS 243.030(7) or (8) shall:
 - (a) Notify the ~~Department~~~~Office~~ of Alcoholic Beverage Control at least seven (7) days in advance of conducting a sampling event; and
 - (b) Limit a sampling event to a period not to exceed four (4) consecutive hours between 12 noon and 8 p.m.

➔Section 587. KRS 244.085 is amended to read as follows:

- (1) As used in KRS 244.083 and this section: "Premises" has the meaning it is given in KRS 241.010 and also means the place of business of a person licensed to sell alcoholic beverages including, in the case of drive-in establishments, the entire lot upon which the business establishment is situated.
- (2) A person under 21 years of age shall not enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.
- (3) A person under 21 years of age shall not possess for his or her own use or purchase or attempt to purchase or have another purchase for him or her any alcoholic beverages. No person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages.
- (4) A person under 21 years of age shall not misrepresent his or her age for the purpose of inducing any licensee, or the licensee's agent, servant, or employee, to sell or serve any alcoholic beverages to the underage person.
- (5) A person under 21 years of age shall not use, or attempt to use any false, fraudulent, or altered identification card, paper, or any other document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.

- (6) Except as provided in KRS 244.087 and 244.090, a licensee, or his or her agents, servants, or employees shall not permit any person under twenty-one (21) years of age to remain on any premises where alcoholic beverages are sold by the drink or consumed on the premises, unless:
- (a) The usual and customary business of the establishment is a hotel, motel, restaurant, convention center, convention hotel complex, racetrack, simulcast facility, golf course, private club, park, fair, church, school, athletic complex, athletic arena, theater, small farm winery, distillery or brewery or winery tour, convenience store, grocery store, drug store, or similar establishment;
 - (b) All alcoholic beverage inventory is kept in a separate, locked department at all times when minors are on the premises;
 - (c) Written approval has been granted by the ~~department~~~~office~~ to allow minors on the premises until 10 p.m. where the sale of alcohol is incidental to a specific family or community event including but not limited to weddings, reunions, or festivals. The licensee's request shall be in writing and shall specifically describe the event for which approval is requested. The state director shall approve or deny the request in writing; or
 - (d) The usual and customary business of the establishment is an entertainment facility where prebooked concerts are held. For the purpose of this paragraph, house bands, disc jockeys, and karaoke are not considered concerts. During the times minors are on the premises under this paragraph, the licensee shall:
 1. Maintain the responsibility of all ticket sales;
 2. Sell the concert tickets directly to the patron or have a contractual agreement with a vendor or promoter to sell the concert tickets for the licensee;
 3. Maintain records of all gross concert ticket sales. The concert tickets shall have the name of a band or performer as well as the date of the concert;
 4. Permit minors to be in the area where the concert is taking place only during the time of the concert; and
 5. Prohibit minors on the premises until thirty (30) minutes prior to the concert and prohibit minors from remaining on the premises more than thirty (30) minutes after the concert performance has ended.
- (7) Except as provided in subsection (6) of this section, a licensee or the licensee's agent, servant, or employee shall not allow any person under the age of twenty-one (21) to remain on any premises that sells alcoholic beverages by the package unless the underage person is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.
- (8) Except as provided in subsection (6) of this section, a person under the age of twenty-one (21) shall not remain on any premises that sells alcoholic beverages by the package unless he or she is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.
- (9) A violation of subsection (2), (3), (4), (5), or (8) of this section shall be deemed a status offense if committed by a person under the age of eighteen (18) and shall be under the jurisdiction of the juvenile session of the District Court or the family division of the Circuit Court, as appropriate.

➔Section 588. KRS 244.150 is amended to read as follows:

- (1) Each licensee under KRS 243.020 to 243.670 shall keep and maintain upon the licensed premises, or make readily available upon request of the ~~department~~~~office~~ or the Department of Revenue, adequate books and records of all transactions involved in the manufacture or sale of alcoholic beverages, in the manner required by regulations of the ~~department~~~~office~~ and the Department of Revenue.
- (2) The ~~commissioner~~~~executive director~~ may require common carriers to provide information in such form as he or she deems wise respecting all shipments of alcoholic beverages to, from, or between persons in Kentucky.

➔Section 589. KRS 244.165 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, it shall be unlawful for any person in the business of selling alcoholic beverages in another state or country to ship or cause to be shipped any alcoholic beverage directly to any Kentucky resident who does not hold a valid wholesaler or distributor license issued by the Commonwealth of Kentucky.
- (2) A small farm winery located in another state may ship wine to a customer in Kentucky if:
 - (a) The wine is purchased by the customer in person at the winery;
 - (b) The wine is shipped by licensed common carrier; and
 - (c) The amount of wine shipped is limited to two (2) cases per customer per visit.
- (3) Any person who violates subsection (1) of this section shall, for the first offense, be mailed a certified letter by the *department*~~{office}~~ ordering that person to cease and desist any shipments of alcoholic beverages to Kentucky residents, and for the second and each subsequent offense, be guilty of a Class D felony.

➔Section 590. KRS 244.167 is amended to read as follows:

- (1) It is unlawful:
 - (a) For any distiller, rectifier, vintner, brewer, or importer to solicit, accept, or fill any order for any distilled spirits, wine, or malt beverage from any wholesaler or distributor in the Commonwealth of Kentucky unless the supplier is the primary source of supply for the brand of alcoholic beverage sold or sought to be sold.
 - (b) For any wholesaler, distributor, or any other licensee in this Commonwealth to order, purchase, or receive any alcoholic beverage from any supplier unless the supplier is the primary source of supply for the brand ordered, purchased, or received.
 - (c) For a retailer to order, purchase, or receive any distilled, vinous, or malt alcoholic beverage from any source other than any of the following:
 1. A wholesaler or distributor who has purchased the brand from the primary source of supply.
 2. A wholesaler or distributor who is the designated representative of the primary source of supply in this Commonwealth and who has purchased the alcoholic beverage from the designated representative of the primary source of supply within or without this Commonwealth.
 - (d) For alcoholic beverages to be transported from a wholesaler's or distributor's warehouse within twenty-four (24) hours of the time they are unloaded.
- (2) The *Department*~~{Office}~~ of Alcoholic Beverage Control may suspend for a period not to exceed one (1) year the license of any wholesaler, distributor, or retailer who violates the provisions of this section.
- (3) Upon determination by the *Department*~~{Office}~~ of Alcoholic Beverage Control that a primary source of supply has violated the provisions of this section, no wholesaler, distributor, or retailer may accept any shipment of alcoholic beverages from the primary source of supply for a period of one (1) year.
- (4) For the purposes of this section, "primary source of supply" or "supplier" means the distiller, producer, brewer, owner of the commodity at the time it becomes a marketable product, bottler, or authorized agent of the brand owner. In the case of imported products, the primary source of supply means either the foreign producer, owner, bottler, or agent of the prime importer from, or the exclusive agent in, the United States of the foreign distiller, producer, bottler, or owner.

➔Section 591. KRS 244.190 is amended to read as follows:

Any peace officers, state administrators, and field representatives of the *department*~~{office}~~ may, upon probable cause, without warrant seize contraband regardless of whether it is in dry territory or not, and hold it subject to the order of the court before which the owner or one in possession of the contraband has been charged with violation of KRS Chapter 242 or KRS 243.020. Upon conviction of the defendant, the court shall enter an order for the destruction of all contraband property, except firearms or ammunition, included in KRS 244.180(1), (2), (3), (4), and (5). Contraband firearms and ammunition shall be transferred to the Department of Kentucky State Police for disposition as provided in KRS 500.090.

➔Section 592. KRS 244.195 is amended to read as follows:

- (1) Title to contraband included in KRS 244.180(1), (2), (3), (4), and (5) seized shall be vested in the appropriate court within whose jurisdiction the seizure occurred, irrespective of whether such contraband was seized by peace officers of the city or county or state administrators or field representatives of the *department*~~{office}~~, notwithstanding the provisions of KRS 242.380.
- (2) The court shall order the sheriff for the county in which such contraband as included in subsection (1) of this section was seized to destroy such contraband, except firearms or ammunition, upon conviction of the defendant.
- (3) Contraband firearms and ammunition shall be transferred to the Department of Kentucky State Police for disposition as provided in KRS 500.090.

➔Section 593. KRS 244.200 is amended to read as follows:

- (1) Contraband property included in subsection (6) of KRS 244.180 shall be subject to the right of any owner or lienor, whose lien is valid and of record, to intervene and establish his rights in the property by proving that the property was being used in connection with traffic in alcoholic beverages without the knowledge, consent or approval of the owner or lienor. If the owner of the property does so prove, the court shall order the property restored to him. If the lienor so proves, the court shall order a sale of the property at public auction, unless an agreement is made between the lienor and the board, which shall not become final until it has been approved by the court. The board may deliver any property found to be contraband to a lienor whose claim has been established by order of a court of competent jurisdiction, upon payment to the board of the difference between the fair market value of the property so seized and the recorded claim of the lienor.
- (2) Where an agreement has been made between the lienor and the board and approved by the court, a public auction shall not be required. If an agreement is not entered into between the board and the lienor or approved by the court, and a public auction is required to be held, the public auction shall be conducted by the sheriff of the county in which the property is seized. The sheriff shall receive and be allowed the same fees as allowed for sales under execution.
- (3) The expenses of keeping and selling such property, and the amount of all valid recorded liens that are established by intervention as being bona fide, shall be paid out of the proceeds of the sales, whether they are private or public. The balance shall be paid into the State Treasury and be credited to the general fund.
- (4) If the defendant is acquitted, no property seized as contraband in connection with the arrest of the defendant shall be ordered returned or restored unless the person from whose possession the property was taken proves that he was in lawful possession of the property, and if no other person appears and proves that he owns the property or has a valid recorded lien on the property and that the property was being used without his knowledge and consent, title shall vest in the board at the end of ninety (90) days.
- (5) If the owners or lienholders of any contraband seized by state administrators or field representatives of the *department*~~{office}~~ or turned over to the *department*~~{office}~~ by other officials, cannot be located within ninety (90) days, and during that time fail to appear and claim the contraband, or if the owner or lienholder appears and agrees, title to the contraband shall immediately vest in the board, in which event it may sell the contraband at a private sale.

➔Section 594. KRS 244.230 is amended to read as follows:

- (1) KRS 244.260 and 244.340 notwithstanding, the regulations of the Bureau of Internal Revenue in the United States Department of the Treasury, as they are now or may be hereafter, with respect to the labeling and standards of fill of distilled spirits and wine in their original sealed packages, are adopted and any distilled spirits and wine shall be deemed to be properly labeled under all the laws of this state, if the labels and standards of fill conform to those regulations.
- (2) Distilled spirits not produced or bottled in the United States shall be labeled in the same manner that distilled spirits produced or bottled in this state are required to be labeled.
- (3) Subsections (1) and (2) shall not prevent the *department*~~{office}~~ from promulgating regulations on this subject that are in addition to but not contrary to the regulations of the Bureau of Internal Revenue in the United States Department of the Treasury.

➔Section 595. KRS 244.370 is amended to read as follows:

No whiskey produced in Kentucky, except whiskey the barrel containing which is branded "Corn Whiskey" under the internal revenue laws, shall be bottled in Kentucky or removed from this state unless such whiskey has been aged in oak barrels for a period of not less than one (1) full year; provided, however, that whiskey aged less than one (1) year may be removed from the state and bottled, or bottled in Kentucky, if the word "Kentucky" or any word or phrase implying Kentucky origin does not appear on the front label or elsewhere on the retail container or package except in the name and address of the distiller as required by federal regulation. For violations of this section, the ~~department~~~~office~~ shall revoke the permit of the licensee from whose warehouse or premises such whiskey shall have been removed or in which such whiskey shall have been bottled.

➔Section 596. KRS 244.440 is amended to read as follows:

- (1) Every resident and nonresident distiller, rectifier, blender, or vintner and nonresident wholesaler who owns or has an exclusive interest in any particular brands, which are intended for sale or sold in this state, shall register on a form to be provided by the ~~department~~~~office~~, the names of the wholesalers in this state to whom distributing rights have been granted on one or more or all of the brands of distilled spirits or wine offered for sale or sold in this state.
- (2) No distiller, rectifier, blender, or vintner shall offer to sell or sell, and no wholesaler shall offer to purchase or purchase, any brands which have not been registered as provided by this section.

➔Section 597. KRS 244.450 is amended to read as follows:

- (1) No wholesaler shall import, buy, offer for sale, or sell any brands offered for sale or sold by any nonresident distiller, rectifier, blender, vintner, or wholesaler without:
 - (a) Having previously been granted distributing rights by the nonresident distiller, rectifier, blender, vintner, or wholesaler; and
 - (b) Having previously applied for and received from the ~~department~~~~office~~ an importer's permit.
- (2) No wholesaler shall apply for or receive an importer's permit to import, buy, offer to sell, or sell any brands offered for sale or sold by any nonresident distiller, rectifier, blender, vintner, or wholesaler until the nonresident distiller, rectifier, blender, vintner, or wholesaler has granted distributing rights to the wholesaler.

➔Section 598. KRS 244.510 is amended to read as follows:

- (1) The ~~department~~~~office~~ may in its discretion adopt any regulations of the Bureau of Internal Revenue in the United States Department of the Treasury relating to labeling and advertising of malt beverages.
- (2) The adoption of regulations of the Bureau of Internal Revenue in the United States Department of the Treasury shall not become effective as to any brewer or distributor having labels on hand that would be outlawed by adoption of the regulation until a period of ninety (90) days from the date of adoption.

➔Section 599. KRS 244.585 is amended to read as follows:

- (1) It shall be unlawful for any distributor to sell any brand of malt beverage in the Commonwealth of Kentucky, except in the territory described in a written agreement between the supplier or brewer and distributor, authorizing sale by the distributor of that brand within a designated area, and within that designated area the distributor shall not refuse to sell or offer reasonable service to licensed retailers during the normal business hours of the distributor. Where a supplier or brewer sells several brands, the agreement need not apply to all brands sold by the supplier or brewer and may apply to only one (1) brand. No supplier or brewer shall provide by the written agreement for the distribution of a brand of malt beverages to more than one (1) distributor for all or any part of the designated territory. All territorial agreements shall be filed with the ~~department~~~~office~~.
- (2) Each distributor shall comply with such quality control standards as are specified in writing from time to time by the owner of the trademark of the brand of malt beverage, provided those controls are:
 - (a) Normal industry practice;
 - (b) Reasonably related to the maintenance of quality control;
 - (c) Consistent with the provisions of this chapter and all regulations promulgated pursuant thereto; and
 - (d) The distributor has received written notice of them from such owner.
- (3) A distributor may sell to only those licensed retailers, religious, charitable or fraternal organizations located within his designated geographical territory as provided in this section and to his employees and to other

distributors of the same brand. No brand of malt beverage may be sold in the Commonwealth of Kentucky without prior written approval of the brewer and supplier filed with the *department*~~{office}~~.

- (4) A territorial designation in any agreement between a distributor and brewer or supplier pursuant to this section shall be modified only in accordance with all the rights and duties of the distributor and brewer or supplier contained in any written agreement between them or by such other action of the brewer, supplier or distributor that is consistent with the terms of their agreement, and such modification shall be filed pursuant to the provisions of this section. The board shall require each party to verify that the level of service within the designated territory will not be adversely affected by such modification. When a distributor is prevented from selling or servicing retailers within his territory due to natural disasters, labor disputes or other such causes beyond his control, the distributor may allow another distributor of the same brand of malt beverages to sell and service that brand within his territory upon approval of the brewer or supplier.
- (5) No provisions of any agreement shall expressly or impliedly establish or maintain the resale price of any brand of malt beverage by the distributor.

➔Section 600. KRS 247.088 is amended to read as follows:

The College of Agriculture of the University of Kentucky, through the agricultural experiment station and the cooperative extension service shall assess the effect of agricultural practices upon groundwater resources, establish basic and applied research programs to determine agricultural management practices which may be necessary to protect groundwater resources, and establish and implement an educational program to encourage the use of agricultural practices which conserve, maintain, and improve soil productivity and to assure protection of groundwater. The college shall seek the cooperation of the Division of Conservation within the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet, the Kentucky Farm Bureau, and other organizations in implementing the educational program.

➔Section 601. KRS 247.920 is amended to read as follows:

- (1) Application for an alcohol production exemption certificate shall be filed with the Department of Revenue in such manner and in such form as may be prescribed by regulations issued by the Department of Revenue and shall contain plans and specifications of the structure or structures including all materials incorporated and to be incorporated therein and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of producing ethanol for fuel use and any additional information deemed necessary by the Department of Revenue for the proper administration of KRS 247.910 and this section. The *Department for Energy Development and Independence*~~{Office of Energy Policy}~~ shall provide technical assistance and factual information as requested in writing by the Department of Revenue. If the Department of Revenue finds that the facility qualifies as an alcohol production facility as defined by KRS 247.910, it shall enter a finding and issue a certificate to that effect. The effective date of the certificate shall be the date of issuance of the certificate.
- (2) Before issuing an alcohol production tax exemption certificate, the Department of Revenue shall give notice in writing by mail to the *Department for Energy Development and Independence*~~{Office of Energy Policy}~~, and shall afford to the applicant and to the *Department for Energy Development and Independence*~~{Office of Energy Policy}~~ an opportunity for a hearing. On like notice and opportunity for a hearing, the Department of Revenue shall on its own initiative revoke the certificate when any of the following appears:
 - (a) The certificate was obtained by fraud or misrepresentation;
 - (b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of the alcohol production facilities; or
 - (c) The structure or equipment or both to which the certificate relates has ceased to be used for the primary purpose of alcohol production for fuel use and is being used for a different purpose.
- (3) If the circumstances so require, the Department of Revenue, in lieu of revoking the certificate, may modify it.
- (4) On mailing of notice of the action of the Department of Revenue revoking or modifying a certificate as provided in subsection (5) of this section, the certificate shall cease to be in force or shall remain in force only as modified as the case may require.
- (5) An alcohol production tax exemption certificate, when issued, shall be sent by certified mail to the applicant and the notice of issuance in the form of certified copies thereof shall be sent to the *Department for Energy*

Development and Independence~~{Office of Energy Policy}~~. Notice of an order of the Department of Revenue denying, revoking, or modifying a certificate in the form of certified copies thereof shall be sent by certified mail to the applicant or the holder and shall be sent to the ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~. The applicant or holder and the ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~ shall be deemed parties for the purpose of the review afforded by subsection (6) of this section.

- (6) Any party aggrieved by the issuance, refusal to issue, revocation, or modification of an alcohol production tax exemption certificate may appeal from the final ruling of the Department of Revenue to the Kentucky Board of Tax Appeals as provided in KRS 131.340.
- (7) In the event of the sale, lease, or other transfer of an alcohol production facility, not involving a different location or use, the holder of an alcohol production tax exemption certificate for the facility may transfer the certificate by written instrument to the person who, except for the transfer of the certificate, would be obligated to pay taxes on the facility. The transferee shall become the holder of the certificate and shall have all rights pertaining thereto, effective as of the date of transfer of the certificate. The transferee shall give written notice of the effective date of the transfer, together with a copy of the instrument of transfer to the ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~ and the Department of Revenue.
- (8) In the event an alcohol production facility for which an exemption certificate is held ceases to be used for the primary purpose of alcohol production for fuel use or is used for a different purpose other than that for which the exemption certificate was granted, the holder of the certificate shall give written notice by certified mail of the change to the ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~ and to the Department of Revenue.
- (9) The alcohol production facility exemption certificate, upon approval, shall exempt said facilities from taxes outlined in the provisions of KRS 247.910 and this section and included in KRS Chapters 132, 136, 138, and 139. Each exemption certificate shall remain in force for a period of eight (8) years from the date of issuance and at the end of said period shall lapse. Any alcohol production facility previously exempted under the terms of KRS 247.910 and this section shall not be eligible for recertification upon completion of the eight (8) year certificate period.

➔Section 602. KRS 250.482 is amended to read as follows:

As used in KRS 250.483 to 250.488:

- (1) "***Department***"~~{"Office"}~~ means the ***Department***~~{Office}~~ of Insurance;
- (2) "Division" means the Division of Fire Prevention in the ***Department***~~{Office}~~ of Housing, Buildings and Construction.
- (3) "Anhydrous ammonia" refers to the compound formed by the combination of the two (2) gaseous elements, nitrogen and hydrogen, in the proportion of one (1) part nitrogen to three (3) parts of hydrogen by volume. Anhydrous ammonia is ammonia gas in compressed or liquefied form, and is not aqueous ammonia.
- (4) "Approved container" means a container for anhydrous ammonia which meets or exceeds the requirements of the Federal law or regulation for the storage and handling of anhydrous ammonia.

➔Section 603. KRS 250.483 is amended to read as follows:

The Division of Fire Prevention in the ***Department***~~{Office}~~ of Housing, Buildings and Construction shall make, promulgate, and enforce administrative regulations setting forth minimum general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck, tank trailer, and utilizing anhydrous ammonia. The administrative regulations shall be such as are reasonably necessary for the protection and safety of the public and persons using such materials, and shall be in substantial conformity with the generally-accepted standards of safety concerning the same subject matter. Administrative regulations in substantial conformity with the published standards of the Fertilizer Institute and the Compressed Gas Association for the design, installation, and construction of containers and equipment for the storage and handling of anhydrous ammonia shall be deemed to be in substantial conformity with the generally-accepted standards of safety concerning the same subject matter.

➔Section 604. KRS 262.906 is amended to read as follows:

- (1) There is hereby created the Purchase of Agricultural Conservation Easement Corporation which shall oversee all issues involving purchases of agricultural conservation easements. The corporation shall be a de jure

municipal corporation and political subdivision of the Commonwealth. The corporation shall be a public agency within the meaning of KRS 61.805 and 61.870 and shall be attached for administrative purposes to the Department of Agriculture.

- (2) (a) The corporation shall be governed by a board of directors, consisting of the following eleven (11) members: four (4) public directors who shall be the Commissioner of the Department of Agriculture, the secretary of the *Energy and Environment*~~Environmental and Public Protection~~ Cabinet, the dean of the University of Kentucky College of Agriculture, and the chair of the Soil and Water Conservation Commission, or their designees; and seven (7) private directors who shall be appointed by the Governor, as follows:
 1. One (1) private director from each of the six (6) congressional districts; and
 2. One (1) private director from a list of three (3) persons suggested by the Kentucky Farm Bureau Federation, Inc.
- (b) Initial appointment of the private directors by the Governor shall be for staggered terms.
- (c) No more than four (4) of the private directors shall be from the same political party. Members shall serve a term of four (4) years, with the exception of the initial members, and may be reappointed. Vacancies shall be filled in the same manner as the appointment is made.
- (3) (a) Any member who has an ownership interest in any of the lands eligible for the purchase of an agricultural conservation easement or other property interest and who wishes to apply to sell an easement while serving on the board of directors shall withdraw himself from all board activities prior to application and until the transaction is complete. The Governor shall appoint an interim member to fill the vacancy until the transaction is complete.
- (b) Any person who has previously applied for or sold an agricultural conservation easement may serve on the board.
- (4) Members shall not be compensated for their services but shall be reimbursed for expenses incurred in the performance of their duties.

➔Section 605. KRS 278.702 is amended to read as follows:

- (1) There is hereby established the Kentucky State Board on Electric Generation and Transmission Siting. The board shall be composed of seven (7) members as follows:
 - (a) The three (3) members of the Kentucky Public Service Commission;
 - (b) The secretary of the *Energy and Environment*~~Environmental and Public Protection~~ Cabinet or the secretary's designee;
 - (c) The secretary of the Cabinet for Economic Development or the secretary's designee;
 - (d) 1. If the facility subject to board approval is proposed to be located in one (1) county, two (2) ad hoc public members to be appointed by the Governor from a county where a facility subject to board approval is proposed to be located:
 - a. One (1) of the ad hoc public members shall be the chairman of the planning commission with jurisdiction over an area in which a facility subject to board approval is proposed to be located. If the proposed location is not within a jurisdiction with a planning commission, then the Governor shall appoint either the county judge/executive of a county that contains the proposed location of the facility or the mayor of a city, if the facility is proposed to be within a city; and
 - b. One (1) of the ad hoc public members shall be appointed by the Governor and shall be a resident of the county in which the facility is proposed to be located.
 2. If the facility subject to board approval is proposed to be located in more than one (1) county, two (2) ad hoc public members to be chosen as follows:

- a. One (1) ad hoc public member shall be the county judge/executive of a county in which the facility is proposed to be located, to be chosen by majority vote of the county judge/executives of the counties in which the facility is proposed to be located; and
- b. One (1) ad hoc public member shall be a resident of a county in which the facility is proposed to be located, and shall be appointed by the Governor.

If a member has not been chosen by majority vote, as provided in subdivision a. of this subparagraph, by thirty (30) days after the filing of the application, the Governor shall directly appoint the member.

3. Ad hoc public members appointed to the board shall have no direct financial interest in the facility proposed to be constructed.
- (2) The term of service for the ad hoc members of the board shall continue until the board issues a final determination in the proceeding for which they were appointed. The remaining members of the board shall be permanent members.
- (3) The board shall be attached to the Public Service Commission for administrative purposes. The commission staff shall serve as permanent administrative staff for the board. The members of the board identified in subsection (1)(a) to (d) of this section shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement KRS 278.700 to 278.716.
- (4) No member of the board shall receive any salary or fee for service on the board or shall have any financial interest in any facility the application for which comes before the board, but each member shall be reimbursed for actual travel and expenses directly related to service on the board.
- (5) The chairman of the Public Service Commission shall be the chairman of the board. The chairman shall designate one (1) member of the board as vice chairman. A majority of the members of the board shall constitute a quorum for the transaction of business. No vacancy on the board shall impair the right of the remaining members to exercise all of the powers of the board. The board shall convene upon the call of the chairman.

➔Section 606. KRS 278.704 is amended to read as follows:

- (1) No person shall commence to construct a merchant electric generating facility until that person has applied for and obtained a construction certificate for the facility from the board. The construction certificate shall be valid for a period of two (2) years after the issuance date of the last permit required to be obtained from the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet after which the certificate shall be void. The certificate shall be conditioned upon the applicant obtaining necessary air, water, and waste permits. If an applicant has not obtained all necessary permits and has not commenced to construct prior to the expiration date of the certificate, the applicant shall be required to obtain a valid certificate from the board.
- (2) Except as provided in subsections (3), (4), and (5) of this section, no person shall commence to construct a merchant electric generating facility unless the exhaust stack of the proposed facility is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility.
- (3) If the merchant electric generating facility is proposed to be located in a county or a municipality with planning and zoning, then setback requirements from a residential neighborhood, school, hospital, or nursing home facility may be established by the planning and zoning commission. Any setback established by a planning and zoning commission for a facility in an area over which it has jurisdiction shall:
 - (a) Have primacy over the setback requirement in subsections (2) and (5) of this section; and
 - (b) Not be subject to modification or waiver by the board through a request for deviation by the applicant, as provided in subsection (4) of this section.
- (4) The board may grant a deviation from the requirements of subsection (2) of this section on a finding that the proposed facility is designed and located to meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of this section.
- (5) If the merchant electric generating facility is proposed to be located on a site of a former coal processing plant in the Commonwealth where the electric generating facility will utilize on-site waste coal as a fuel source, then

the one thousand (1,000) foot property boundary requirement in subsection (2) of this section shall not be applicable; however, the applicant shall be required to meet any other setback requirements contained in subsection (2) of this section.

➔Section 607. KRS 286.01-011 is amended to read as follows:

- (1) There is created within the ~~{Department of Public Protection in the Environmental and}~~ Public Protection Cabinet **a Department**~~{an Office}~~ of Financial Institutions, which shall be headed by **a commissioner**~~{an executive director}~~ of financial institutions, who shall be the executive head of the **department**~~{office}~~ and shall be charged with the administration of the **department**~~{office}~~.
- (2) The **Department**~~{Office}~~ of Financial Institutions shall exercise all administrative functions of the state in relation to the regulation, supervision, chartering and licensing of banks, trust companies, savings and loan associations, consumer loan companies, investment and industrial loan companies, and credit unions, and in relation to the regulation of securities.
- (3) There ~~are~~**is** established within the **Department**~~{Office}~~ of Financial Institutions the following divisions:
 - (a) The Division of **Depository**~~{Financial}~~ Institutions, which shall be headed by a director appointed by the secretary of the ~~{Environmental and}~~ Public Protection Cabinet~~{, subject to prior written approval of the Governor}~~ in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the ~~{executive}~~ director;
 - (b) The Division of **Non-Depository Institutions**~~{Securities}~~, which shall be headed by a director appointed by the secretary of the ~~{Environmental and}~~ Public Protection Cabinet in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the ~~{executive}~~ director; and
 - (c) The Division of **Securities**~~{Administrative Services}~~, which shall be headed by a director appointed by the **secretary of the Public Protection Cabinet**~~{executive director}~~ in accordance with KRS 12.050. The division shall ~~consist~~**be composed** of ~~{organizational}~~ entities deemed appropriate by the ~~{executive}~~ director.
- (4) The **department**~~{office}~~ may accept any application or other document required to be filed with the **department**~~{office}~~ in electronic format or in any other technology acceptable to the **department**~~{office}~~.

➔Section 608. KRS 286.01-012 is amended to read as follows:

The ~~{secretary of the Environmental and Public Protection Cabinet, with the approval of the}~~ Governor, in accordance with KRS ~~12.040~~**12.050**, shall appoint as **commissioner**~~{executive director}~~ of financial institutions a person knowledgeable in banking with not less than three (3) years' banking experience. For this purpose, "banking experience" means service as an executive officer in a bank with its principal office located in Kentucky or service in a supervisory capacity in a state or federal agency having regulatory authority over banks or other financial institutions.

➔Section 609. KRS 286.01-013 is amended to read as follows:

- (1) There is created a Financial Institutions Board. The board shall consist of twelve (12) members appointed by the Governor who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided. It is recommended that the board appointments made by the Governor be selected from the following:
 - (a) Three (3) members selected from the banking industry regulated by the **department**~~{office}~~ with appropriate recognition as to bank size and geographic diversity;
 - (b) Three (3) members selected from the broker/dealer securities industry regulated by the **department**~~{office}~~;
 - (c) One (1) member selected from the credit union industry regulated by the **department**~~{office}~~;
 - (d) One (1) member selected from the consumer finance or industrial loan industry regulated by the **department**~~{office}~~;
 - (e) Three (3) members selected from the public at large who are knowledgeable concerning financial institutions, the legislative process and consumer interests, two (2) of whom are not employees, officers, or directors of any financial institution; and

- (f) The **commissioner**~~{executive director}~~, who shall also serve as chairman of the board.
- (2) All members of the board from the banking industry, securities industry, credit union industry, consumer finance, or industrial loan industry shall be persons with practical experience in the industry so represented and currently serving at the executive level of that industry at the time of their appointment.
- (3) At the first meeting of the board, a drawing by lot shall be conducted to determine the length of each original member's term. Initially, there shall be four (4) four (4) year terms, five (5) three (3) year terms, and two (2) two (2) year terms. Vacancies in the membership of the board shall be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term shall be for the remainder of the unexpired term.
- (4) No member of the board, other than the **commissioner**~~{executive director}~~, shall serve more than two (2) consecutive terms on the board.
- (5) The board shall first meet at the call of the Governor and thereafter as the chairman shall determine at a time and place determined by the chairman. The board may elect other officers for the conduct of its business. A majority of board members shall constitute a quorum, and a decision shall require the majority vote of those present. Each board member shall have one (1) vote, and voting by proxy shall be prohibited.
- (6) Board members shall receive one hundred dollars (\$100) per diem for each board meeting which they attend and shall be reimbursed for other reasonable and necessary expenses incurred while engaged in carrying out the duties of the board.
- (7) The board shall:
- Prepare and submit at the Governor's request a list of candidates qualified to serve as **commissioner**~~{executive director}~~ and recommend to the Governor a proposed salary for each nomination for **commissioner**~~{executive director}~~;
 - Recommend to the Governor a proposed salary structure for other **department**~~{office}~~ staff in order to provide competitive salaries for recruitment and retention of staff;
 - Receive and comment on various reports relating to the **department**~~{office}~~ and its activities as submitted to the board by the **commissioner**~~{executive director}~~ or the Governor; and
 - Review, consider and make recommendations to the **commissioner**~~{executive director}~~ on any matters referred to the board by the **commissioner**~~{executive director}~~ or the Governor.
- (8) In no event shall the board or its members interfere with the statutory duties of the **commissioner**~~{executive director}~~ whose decisions shall be governed by law.

➔Section 610. KRS 286.01-020 is amended to read as follows:

- The **commissioner**~~{executive director}~~ may promulgate, amend, and repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. **The commissioner**~~{He}~~ shall devise a seal for **the**~~{his}~~ department, a description of which, together with an impression thereof and a certificate of approval by the Governor, shall be filed in the office of the Secretary of State. The seal shall be renewed whenever necessary.
- The **commissioner**~~{executive director}~~ of financial institutions and his **or her** deputies shall be allowed their necessary traveling and other expenses of conducting their office.
- The **commissioner**~~{executive director}~~ of financial institutions may issue a finding of permissible activities, services, or products to authorize banks to engage in any banking activity in which the banks could engage were they operating as national banks at the time the authority is granted. Any finding shall be specifically limited to the activity, service, or products contained therein and shall be mailed to all banks. This section shall not apply to activities prohibited under Subtitle 9 of KRS Chapter 304.
- Nothing herein contained shall be construed to repeal, modify, or alter the restrictions of KRS 286.3-105 relative to the leasing of motor vehicles, or of KRS 286.3-180 relative to the establishment of branches.
- The **commissioner**~~{executive director}~~ may designate the deputy **commissioner**~~{director}~~, division directors, general counsel, or branch managers to sign documents under his **or her** instructions.

➔Section 611. KRS 286.01-025 is amended to read as follows:

The secretary of the ~~Environmental and~~ Public Protection Cabinet may appoint a deputy **commissioner**~~{director}~~ of financial institutions with the prior written approval of the Governor. The deputy **commissioner**~~{director}~~ shall, during the absence or inability of the **commissioner**~~{executive director}~~ or under his *or her* instructions, or in the event of a vacancy in the office of the **commissioner**~~{executive director}~~ and until the vacancy is filled, be vested with all the powers and perform all the duties of the **commissioner**~~{executive director}~~.

➔Section 612. KRS 286.01-440 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall appoint a sufficient number of examiners and assistant examiners to examine all institutions coming under the supervision of the **department**~~{office}~~. A salary schedule for examiners and assistant examiners shall be prepared by the **commissioner**~~{executive director}~~ and presented to the secretary of the Finance and Administration Cabinet for approval. In the event an advisory state banking board is established by law, the appointment and compensation of examiners and assistant examiners shall be with the advice of such board.
- (2) The **commissioner**~~{executive director}~~, the deputy **commissioner**~~{director}~~, and each examiner shall take the constitutional oath of office.
- (3) Neither the **commissioner**~~{executive director}~~, nor the deputy **commissioner**~~{director}~~, nor any examiner or assistant examiner shall be indebted directly or indirectly either as borrower, indorser, surety, or guarantor, to any bank or trust company under his supervision or subject to his examination, nor shall he *or she* be a director, officer or employee in such bank or trust company, nor engage or become interested in the sale of securities as a business or in the negotiation of loans for others.
- (4) No person shall be assigned to examine the affairs of any bank or trust company in a county in which he holds stock in either a state or national bank or trust company.
- (5) The **commissioner**~~{executive director}~~ may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state bank or the branch of an out-of-state state bank operating in this state to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the **commissioner's**~~{executive director's}~~ examiners to the agency at a reasonable rate of compensation. Any contract entered into pursuant to this subsection shall be deemed a sole source contract under the provisions of KRS 45A.095.

➔Section 613. KRS 286.01-485 is amended to read as follows:

All fees collected and paid into the State Treasury under the provisions of KRS Chapters 292 and 366 and of Subtitles 1, 2, 3, 4, 5, 6, 7, and 8 of KRS Chapter 286, or any industry regulated by the **department**~~{office}~~ shall be credited to a revolving trust or agency fund account, as provided in KRS 45.253, for the **Department**~~{Office}~~ of Financial Institutions and shall be separately accounted for and shall be used solely for the administration and enforcement of said KRS chapters.

➔Section 614. KRS 286.2-015 is amended to read as follows:

- (1) All political subdivisions of the Commonwealth shall be prohibited from enacting and from enforcing ordinances, resolutions, and regulations pertaining to the financial or lending activities of persons or entities which:
 - (a) Are subject to the jurisdiction of the **department**~~{office}~~ or the provisions of this chapter;
 - (b) Are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Farm Credit Administration, the Federal Deposit Insurance Corporation, or the United States Department of Housing and Urban Development; or
 - (c) Originate, purchase, sell, assign, securitize, assist, facilitate, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons or entities referred to in paragraph (a) or (b) of this subsection.
- (2) The requirements of this section shall apply to all ordinances, resolutions, or regulations pertaining to lending activities, including any ordinances, resolutions, or regulations which limit or disqualify persons or entities from doing business with a political subdivision based upon financial or lending activities or the imposition of

additional reporting requirements or other obligations on such persons or entities seeking to do business with a political subdivision.

- (3) Any provision of this chapter preempted by federal law with respect to a national bank or federal savings association shall not apply to the same extent to an operating subsidiary of a national bank or federal savings association.
- (4) The provisions of this chapter shall be interpreted and applied to the fullest extent practicable in a manner consistent with applicable federal laws and regulations and with applicable policies and orders of federal regulatory agencies and shall not be deemed to constitute an attempt to override federal law.
- (5) Nothing in this section shall be interpreted as preventing the enforcement of ordinances, regulations, or resolutions of political subdivisions of the Commonwealth pertaining to civil rights.

➔Section 615. KRS 286.2-990 is amended to read as follows:

Unless otherwise specifically provided for in this subtitle, the **commissioner**~~{executive director}~~ may levy a civil penalty against any person who violates any provision of this subtitle, any administrative regulation promulgated under this subtitle, or any order issued by the **commissioner**~~{executive director}~~ under this subtitle. The civil penalty shall be not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) per violation, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs.

➔Section 616. KRS 286.3-010 is amended to read as follows:

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

- (1) "Bank or state bank" means any bank which is now or may hereafter be organized under the laws of this state or a combined bank and trust company;
- (2) "National bank" or "national bank association" means a bank created by Congress and organized pursuant to the provisions of federal law, including savings and loan associations;
- (3) "Out-of-state bank" means a bank chartered under the laws of any state other than Kentucky;
- (4) "Home state" means:
 - (a) With respect to a state bank or out-of-state state bank, the state by which the bank is chartered; and
 - (b) With respect to a national bank, the state in which the main office of the bank is located;
- (5) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered;
- (6) "Host state" means a state, other than the home state, in which the bank maintains, or seeks to establish and maintain, a branch;
- (7) "**Commissioner**~~{Executive director}~~" means the **commissioner**~~{executive director}~~ of financial institutions;
- (8) "**Department**~~{Office}~~" means the **Department**~~{Office}~~ of Financial Institutions;
- (9) "Population" means the population as indicated by the latest regular United States census;
- (10) "Trust company" includes every corporation authorized by this subtitle to do a trust business;
- (11) "Undivided profits" means the composite of the bank's net retained earnings from current and prior years' operations;
- (12) "Capital stock" shall mean, at any particular time, the sum of:
 - (a) The par value of all shares of the corporation having a par value that have been issued;
 - (b) The amount of the consideration received by the corporation for all shares of the corporation that have been issued without par value except such part of the consideration as has been allocated to surplus in a manner permitted by law; and
 - (c) Such amounts not included in paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether through the issuance of stock dividends, resolution of the bank's board of directors under applicable corporate law or otherwise by law;

- (13) "Surplus" means the amount of consideration received by the corporation for all shares issued without par value that has not been allocated to capital stock or the amount of consideration received by the corporation in excess of par value for all shares with a par value, or both;
- (14) "Municipality" means a county, city, or urban-county government;
- (15) "Political subdivision" means a municipality, school district, or other municipal authority;
- (16) "Corporation" means either a for-profit corporation or limited liability company;
- (17) "Share" means the shares of stock or the unit of equity into which the proprietary interests in a corporation are divided;
- (18) "Stock" means the corporation's shares;
- (19) "Stockholder" or "shareholder" means an owner of the corporation's shares;
- (20) "Board of directors" means the governing body of a corporation elected or otherwise chosen by the shareholders, including the managers of a limited liability company;
- (21) "Director" means a member of the board of directors;
- (22) "Articles of incorporation" means the organizing documents of a corporation filed with the Secretary of State in accordance with KRS Chapter 271B or 275; and
- (23) "Dividends" means a distribution of money, stock, or other property to shareholders of a corporation.

➔Section 617. KRS 286.3-050 is amended to read as follows:

- (1) Before filing the articles of incorporation of any financial institution mentioned in KRS 286.3-040, the organizers shall present a copy of their proposed articles to the **commissioner**~~executive director~~ who shall investigate the financial standing, moral character, and capability of each of the organizers and proposed executive officers and directors, if known, and determine whether there is reasonable assurance of sufficient volume of business for the proposed corporation to be successful, and whether the public convenience and advantage will be promoted by the opening of the proposed corporation.
- (2) In the event that the institution for which a charter is sought is to be created solely for the purpose of effectuating a merger or consolidation to facilitate the formation of a bank holding company, the **commissioner**~~executive director~~ may waive all or any part of the requirements of this subtitle.
- (3) If the **commissioner**~~executive director~~ determines that it is expedient and desirable to permit the proposed corporation to engage in business, **the commissioner**~~he~~ shall approve the articles of incorporation in writing, and the articles then may be filed and recorded as provided in the general corporation or limited liability company law.
- (4) All amendments to the articles of incorporation of any financial institution mentioned in KRS 286.3-040 shall be approved by the **commissioner**~~executive director~~ before filing with the Secretary of State.

➔Section 618. KRS 286.3-060 is amended to read as follows:

- (1) Before any financial institution mentioned in KRS 286.3-040 may transact any banking or trust business, it shall file a written oath with the **commissioner**~~executive director~~. The oath shall be taken by each director of the institution, and shall state in substance:
 - (a) That such director is a citizen of the United States, and the State of Kentucky, or, if not, the place of his residence;
 - (b) That he will faithfully discharge the duties of his office and administer the affairs of the institution, so far as the duties of his office require;
 - (c) That he will uphold the laws of the state, and particularly the banking and trust laws.
- (2) The oath shall be taken before any officer authorized to administer oaths, and shall be taken upon the election of any subsequent director or reelection of any director. The oath shall be maintained by the bank and be subject to review at examinations.

- (3) The **commissioner**~~{executive director}~~ shall issue to the institution a certificate entitling it to transact the business for which it was organized after the following requirements have been met:
- (a) The oath mentioned in subsections (1) and (2) of this section has been filed; and
 - (b) The **commissioner**~~{executive director}~~ has received satisfactory proof that the accounts of the banking institution's depositors will be insured by the Federal Deposit Insurance Corporation; and
 - (c) The **commissioner**~~{executive director}~~ has received satisfactory proof that the institution has subscribed and paid in the required capital and has otherwise fully complied with all pertinent laws and regulations; and
 - (d) A period of thirty (30) days has elapsed since the rendition by the **commissioner**~~{executive director}~~ of a final order, as defined in KRS 13B.010, and an appeal to the appropriate court has not been taken from such order.
 - (e) If an appeal from a final order of the **commissioner**~~{executive director}~~ has been timely filed, no certificate shall be issued until all the requirements of paragraphs (a) to (c) of this subsection have been met and until:
 1. The appeal has been finally disposed of by the last possible court of review, including the United States Supreme Court; or
 2. All further opportunities for appeal have expired as a result of the failure to timely file an appeal.

➔Section 619. KRS 286.3-070 is amended to read as follows:

The minimum capital stock of any bank or trust company organized after May 30, 1938 shall be two million five hundred thousand dollars (\$2,500,000). Additional capital may be required depending upon an investigation of the application, at the discretion of the **commissioner**~~{executive director}~~.

➔Section 620. KRS 286.3-090 is amended to read as follows:

No reduction in the capital stock of a bank or trust company shall be made to an amount less than is required for organization, nor shall any reduction be valid until it has been approved by the **commissioner**~~{executive director}~~ upon his finding that the interest of creditors of the bank or trust company will not be prejudiced thereby.

➔Section 621. KRS 286.3-095 is amended to read as follows:

- (1) At least sixty (60) days prior to a change occurring in the outstanding voting stock of any bank or trust company which will result in control or in a change in the control of the bank or trust company, the proposed acquiring party or parties shall report such facts to the **commissioner**~~{executive director}~~ for approval unless the **commissioner**~~{executive director}~~ finds that:
 - (a) The terms of the acquisition are not in accordance with the laws of this state; or
 - (b) The financial condition, or the competence, experience, and integrity of the acquiring party or parties are such as will jeopardize the financial stability of the bank; or
 - (c) The public convenience and advantage will not be served by the acquisition.
- (2) As used in subsection (1) of this section, the term "control" means the power to directly or indirectly direct or cause the direction of the management or policies of the bank or trust company. A change in ownership of voting stock which would result in direct or indirect ownership by a stockholder or an affiliated group of stockholders of less than twenty-five percent (25%) of the outstanding voting stock shall not be considered a change of control. If there is any doubt as to whether a change in the outstanding voting stock is sufficient to result in control thereof or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the **commissioner**~~{executive director}~~.
- (3) Whenever a bank makes a loan or loans, secured, or to be secured, by twenty-five percent (25%) or more of the outstanding voting stock of a bank, the president or other chief executive officer of the lending bank shall promptly report such fact to the **commissioner**~~{executive director}~~ upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one (1) year or more, or the stock is that of a newly organized bank prior to its opening.

- (4) The reports required by subsections (1), (2), and (3) of this section shall contain the following information to the extent that it is known by the person making the report:
- (a) The number of shares involved;
 - (b) The names of the sellers (or transferors);
 - (c) The names of the purchasers (or transferees);
 - (d) The names of the beneficial owners if the shares are registered in another name;
 - (e) The purchase price;
 - (f) The total number of shares owned by the seller (or transferors), the purchasers (or transferees) and the beneficial owners both immediately before and after the transaction; and in the case of a loan:
 1. The name of the borrower;
 2. The amount of the loan; and
 3. The name of the bank issuing the stock securing the loan and the number of shares securing the loan.

In addition to the foregoing, such reports shall contain such other information as may be available to inform the **commissioner**~~[executive director]~~ of the effect of the transaction upon control of the bank or trust company whose stock is involved.

- (5) Whenever such a change as described in subsection (1) of this section occurs, each bank or trust company shall report promptly to the **commissioner**~~[executive director]~~ any changes or replacement of its chief executive officer or of any director occurring in the next twelve (12) month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

➔Section 622. KRS 286.3-100 is amended to read as follows:

A bank may:

- (1) Hold personal property that has been transferred to it as collateral for the payment of any debt;
- (2) Acquire and hold title to real estate, provided:
 - (a) The real estate is necessary or appropriate for the transaction of legitimate business; and
 - (b) The cost of the real estate, including furniture and fixtures, shall not exceed forty percent (40%) of the total paid-in capital, unimpaired surplus and undivided profits (determined on accrual basis). The investment may exceed the bank's forty percent (40%) limit with prior written approval of the **commissioner**~~[executive director]~~;
- (3) Acquire and hold for not longer than ten (10) years, any real estate conveyed to it in satisfaction of debts previously contracted in the course of its business, or that it may purchase under a judgment in its favor. A bank acquiring real estate in satisfaction of debts previously contracted in the course of business shall write down the acquisition at ten percent (10%) per year;
- (4) Invest in the bonds of any federal home loan bank;
- (5) Invest in obligations issued separately or collectively by or for federal land banks, federal intermediate credit banks and banks for cooperatives under the Act of Congress known as the Farm Credit Act of 1971, 85 Stat. 583, 12 U.S.C. sec. 2001 and amendments thereto;
- (6) Invest, subject to the approval of the **commissioner**~~[executive director]~~, in the capital stock or bonds or both of any domestic realty corporation organized or existing for the sole purpose of acquiring and holding title to real property used by the bank, through lease or otherwise, for the transaction of the bank's legitimate business;
- (7) Purchase, hold, and convey the shares of any open end registered investment company registered under the Investment Company Act of 1940, or a series of the company, whose shares are registered under the Securities Act of 1933 and whose investments are limited to:
 - (a) Bonds or other interest-bearing obligations of the United States, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged;

- (b) Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or dividend by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;
 - (c) General obligation bonds or revenue bonds issued and guaranteed as to payment of principal and interest by any state, county, or municipal governments legally authorized to issue these instruments of indebtedness;
 - (d) Any other obligations in which national banking associations organized under the laws of the United States are permitted to invest in directly;
- (8) Purchase and hold shares of a bank service corporation as that term is used in the Bank Service Corporation Act (12 U.S.C. sec. 1861) and any amendments thereto;
- (9) Invest in:
- (a) Bonds or other interest-bearing obligations of the United States, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged;
 - (b) Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or dividend by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;
 - (c) General obligation bonds or revenue bonds issued and guaranteed as to payment of principal and interest by any state, county, or municipal governments legally authorized to issue such instruments of indebtedness;
- (10) (a) Invest in other real estate in the bank's generally accepted banking market. For purposes of this section, "the bank's generally accepted banking market" means the geographic banking market at the time the investment is made as defined by the Federal Reserve Bank in the Federal Reserve District in which the bank is located. The investment shall not exceed ten percent (10%) of the bank's actual paid-in capital and surplus, calculated at the time the investment is made, for each real estate investment; and
- (b) Investment in other real estate not to exceed ten percent (10%) of the bank's actual paid-in capital and surplus, calculated at the time the investment is made, for each real estate investment, if the bank has acquired the real estate in satisfaction of a debt previously contracted and the investment is for the purpose of improving the real estate for sale. Any real estate acquired in satisfaction of a debt previously contracted and improved by the bank shall be disposed of within five (5) years of the date of acquisition, with the **commissioner**~~executive director~~ authorized to extend the disposition upon written request of the bank for good cause shown on a year-to-year basis not exceeding an additional five (5) years;
- (11) Own or operate a discount brokerage service either through the bank or a bona fide subsidiary of the bank;
- (12) Own or operate a travel agency either through the bank or a bona fide subsidiary of the bank;
- (13) Invest, with the prior approval of the **commissioner**~~executive director~~, in the capital stock or bonds of a trust company; and
- (14) Own or operate a courier service, either through the bank or a bona fide subsidiary of the bank, in any county where the bank has its principal office or a branch.

Investments in accordance with subsections (7) and (9) of this section are subject to KRS 286.3-280 and 286.3-290. For purposes of computing the maximum investment of a bank in bonds, notes, and other investments, book value shall be used. For deep discount bonds or zero coupon bonds, accreted book value shall be used.

➔Section 623. KRS 286.3-102 is amended to read as follows:

- (1) As used in this section, a CAMEL rating means a system of rating used by examiners of financial institutions to rate the institutions in five (5) categories: capital adequacy, asset quality, management effectiveness, quantity and quality of earnings, and liquidity.
- (2) In addition to all other banking activities permitted by this subtitle, a state bank receiving a CAMEL rating of 1 or 2 at its most recent state or federal bank regulatory examination may engage in any banking activity in which the bank could engage and is exempted from any statutes or administrative regulations which would be preempted if:
 - (a) It was operating as a national bank in Kentucky;

- (b) It was operating as a state bank, state thrift, or state savings bank in any state; or
 - (c) It meets the qualified thrift lender test as determined by the Office of Thrift Supervision or its successor, or was operating as a federally chartered thrift or federal savings bank in any state.
- (3) Before a state bank may engage in any of the banking activities permitted by subsection (2) of this section, the state bank shall obtain a legal opinion specifying the statutory or regulatory provisions that permit the activity in which the state bank intends to engage and the conditions under which such activity is allowed. This legal opinion shall be maintained by the bank and provided to the *department*~~office~~ upon request.
- (4) This section shall not apply to exempt any laws which regulate Kentucky state banks pertaining to deferred deposit transactions in Subtitle 9 of this chapter, title pledge lending in Subtitle 10 of this chapter, visitorial or examination powers, and interest rates.

➔Section 624. KRS 286.3-115 is amended to read as follows:

- (1) With the approval of the *commissioner*~~executive director~~ a bank or trust company may, at any time, by resolution of its board of directors, which resolution shall have been approved at a stockholders' meeting by two-thirds (2/3) of the outstanding capital stock of the bank, issue and sell its capital notes or debentures in an amount not in excess of one hundred percent (100%) of its unimpaired paid-in capital stock plus fifty percent (50%) of its unimpaired surplus. The aggregate amount of such capital notes or debentures issued or sold by a bank or trust company shall be exempt from the limitations and restrictions on indebtedness, as may be provided in its articles of incorporation.
- (2) Such capital notes and debentures shall be subordinate to the claims of creditors and depositors, and shall be provided in any such capital notes or debentures that in the event of liquidation all depositors and other creditors of the bank shall be entitled to be paid in full, with such interest as may be provided by law, before any payment shall be made on account of principal of or interest on said capital notes or debentures, and may provide that after payment in full of all sums owing to such depositors and creditors the holders of such capital notes shall be entitled to be paid from the remaining assets of the bank, the unpaid principal amount of the capital notes or debentures, plus accrued and unpaid interest thereon, before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any capital stock of the bank.
- (3) The capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be liable for any debts, contracts, or engagements of such bank, nor for assessments to restore impairments in the capital of such bank, unless the holder is a stockholder in such bank.
- (4) Such capital notes or debentures issued or sold by a bank or trust company shall be considered as a portion of the capital and unimpaired surplus or capital structure of the issuing bank or trust company and shall be considered as such in determining the bank's legal lending or investment limits, and for other purposes, when based upon the capital and unimpaired surplus of the bank or trust company; except that such capital notes and debentures shall not be considered in determining the amount of ad valorem taxes payable by the bank or trust company.
- (5) No such capital notes or debentures may be retired or paid by the bank or trust company if at the time of retirement or payment or immediately after, there be an existing deficiency of the bank's or trust company's capital stock, as determined by the *commissioner*~~executive director~~.
- (6) No such capital notes or debentures shall be issued or sold by a bank or trust company except for cash, and no bank or trust company which issues such capital notes or debentures shall acquire or hold any of its capital notes or debentures in its own assets or in fiduciary capacity. Any of its own notes or debentures acquired by a bank contrary to the provisions of this section shall be forthwith disposed of by sale or charged to its undivided profits account.
- (7) Wherever the terms "capital," "capital stock," or "capital structure" are used in this section, they shall be construed to have reference only to capital actually paid in and capital stock actually issued.

➔Section 625. KRS 286.3-135 is amended to read as follows:

- (1) Notwithstanding any other provisions of law, any bank doing business in the Commonwealth, whether state or nationally chartered, may purchase for its own account shares of a bank or bank holding company which owns or controls such a bank provided:

- (a) The stock of such bank or bank holding company is owned exclusively (except to the extent director's qualifying shares are required by law) by depository institutions; and
 - (b) Such bank or bank holding company and all subsidiaries thereof are engaged exclusively in providing services for depository institutions, their parent companies, their subsidiaries, the officers, directors, and employees of each.
- (2) In no event shall the total amount of stock held by a bank in any bank or bank holding company described in subsection (1) above exceed at any time ten percent (10%) of a bank's capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in a bank acquiring more than five percent (5%) of any class of voting securities of such bank or bank holding company.
- (3) The **commissioner**~~{executive director}~~ is authorized to receive applications, hold hearings on such applications, and issue charters for a banker's bank.

➔Section 626. KRS 286.3-140 is amended to read as follows:

- (1) A bank may, with the consent of a majority in number and interest of its stockholders, amend its articles of incorporation or reorganize to permit it to engage in a trust business. The stock of the old corporation, if unimpaired, may be converted into stock in the new corporation.
- (2) Any bank or trust company may consolidate and the consolidated corporation shall issue stock for an equivalent amount in value of the stock of the constituent corporations.
- (3) Upon written approval of the **commissioner**~~{executive director}~~, a bank or trust company may transfer one (1) or more fiduciary accounts under its administration to an affiliate of the trust company or bank, as defined in KRS 286.3-230(6), located in the Commonwealth, if the transferring bank or trust company shall also:
 - (a) Not later than thirty (30) days prior to the date of the transfer of the fiduciary accounts, send written notice to the person or entity that was the recipient of the last report of the status of the account. The notice shall include notification of the recipient's rights to object to the transfer in the probate division of District Court and shall be deemed effective when mailed by the bank or trust company; and
 - (b) Within ten (10) days after the date of a transfer of the fiduciary accounts, file an affidavit recording the transfer in the District Court, probate division, of the county in which its main office is located.

➔Section 627. KRS 286.3-172 is amended to read as follows:

- (1) A national banking association may convert into or merge with a state bank under a state charter, provided that the action taken complies with federal law.
- (2) In the case of each conversion, a written plan of conversion shall be submitted, in duplicate, to the **commissioner**~~{executive director}~~. Such plan shall be in form satisfactory to the **commissioner**~~{executive director}~~, shall prescribe the terms and conditions of the conversion and the mode of carrying it into effect, and shall have annexed thereto and forming a part thereof the proposed articles of incorporation of the state bank which is to result from the conversion. Such articles of incorporation shall be in the form prescribed by law for the organization of state banks, with such variations, if any, as shall be satisfactory to the **commissioner**~~{executive director}~~. With such plan of conversion there shall be submitted, in duplicate, to the **commissioner**~~{executive director}~~ a certificate of the president, secretary, or cashier of the national banking association certifying that all steps have been taken which are necessary under federal law to the consummation of the conversion. The **commissioner**~~{executive director}~~ shall approve or disapprove such plan of conversion within sixty (60) days of the submission thereof to him. In considering the approval or disapproval of the conversion plan the **commissioner**~~{executive director}~~ shall take into account:
 - (a) Any pending administrative or judicial action to which the bank or any officer or director of the bank is a party;
 - (b) The performance of the converting national bank for the five (5) years preceding the application for conversion as compared to similarly situated state-chartered banks; and
 - (c) The proposed name of the bank after conversion which shall not be the same as or deceptively similar to any existing state-chartered bank.

If the **commissioner**~~{executive director}~~ shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of such certificate submitted therewith and the original of the approval of the **commissioner**~~{executive director}~~, in the office of the **commissioner**~~{executive director}~~, and the other

duplicate of such plan, together with a duplicate of such certificate and a duplicate of the **commissioner's**~~executive director's~~ approval, shall be filed in the office of the clerk of the county in which the principal office of the state bank is to be located. After such filing in the office of the commission, the conversion shall become effective upon the filing and recording of the articles of incorporation as provided in KRS 286.3-050, unless a later date is specified in the plan, in which event the conversion shall become effective upon such later date. If the **commissioner**~~executive director~~ shall disapprove the conversion plan, he shall state his reasons for such disapproval in writing to which the converting national bank shall have the right of appeal as permitted by law.

- (3) In the case of each merger, a written plan of merger shall be submitted, in duplicate, to the **commissioner**~~executive director~~. Such plan shall be in form satisfactory to the **commissioner**~~executive director~~ and shall prescribe the terms and conditions of the merger and the mode of carrying it into effect. Such plan may provide the name to be borne by the state bank, as receiving corporation, if such name is to be changed. Such plan may also name the persons who shall constitute the first board of directors of the state bank after the merger shall have been accomplished, provided that the number and qualifications of such person shall be in accordance with the provisions of Subtitle 3 of KRS Chapter 286 relating to the number and qualifications of directors of a state bank; or such plan may provide for a meeting of the stockholders to elect a board of directors within sixty (60) days after such merger, and may make provision for conducting the affairs of the state bank meanwhile. With such plan of merger there shall be submitted, in duplicate, to the **commissioner**~~executive director~~ the following:
 - (a) By the national banking association, a certificate of the president, secretary, or cashier of such association certifying that all steps have been taken which are necessary under federal law to the consummation of their merger;
 - (b) By the state bank, a certificate of the president, secretary, or cashier certifying that such plan of merger has been approved by the board of directors of the state bank by a majority vote of all the members thereof, that such plan has been submitted to the stockholders of the state bank at a meeting thereof held; upon notice of at least fifteen (15) days, specifying the time and place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the state bank and published pursuant to KRS Chapter 424, and that such plan of merger has been approved at such meeting by the vote of the stockholders owning at least two-thirds (2/3) in amount of the stock of the state bank.
- (4) The **commissioner**~~executive director~~ shall approve or disapprove such plan of merger within sixty (60) days of such submission thereof to him. If the **commissioner**~~executive director~~ shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of each of such certificates and the original of the approval of the **commissioner**~~executive director~~, in the office of the **commissioner**~~executive director~~, and the other duplicate of such plan, together with a duplicate of each of such certificates and a duplicate of the **commissioner's**~~executive director's~~ approval, shall be filed in the office of the clerk of the county in which the principal office of the state bank is to be located. Upon such filing in the office of the **commissioner**~~executive director~~, the merger shall become effective, unless a later date is specified in the plan, in which event the merger shall become effective upon such later date.
- (5) At the time when such conversion or merger becomes effective:
 - (a) The resulting state bank shall be considered the same business and corporate entity as the national banking association, although as to rights, powers, and duties, the resulting bank is a state bank;
 - (b) All of the property, rights, and powers and franchises of the national banking association shall vest in the resulting state bank and the resulting state bank shall be subject to and deemed to have assumed all of the debts, liabilities, obligations, and duties of the national banking association and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties, and relationships had been originally acquired, incurred, or entered into by the resulting state bank; provided, however, that the resulting state bank shall not, through such conversion or merger, acquire power to engage in any business or to exercise any right, privilege, or franchise which is not conferred by the provisions of Subtitle 3 of KRS Chapter 286 upon such resulting state bank;
 - (c) Any reference to the national banking association in any contract, will, or document, whether executed or taking effect before or after the conversion or merger, shall be considered a reference to the resulting state bank if not inconsistent with the other provisions of the contract, will, or document;

- (d) A pending action or other judicial proceeding to which the national banking association is a party, shall not be deemed to have abated or to have discontinued by reason of the conversion or merger, but may be prosecuted to final judgment, order, or decree in the same manner as if the conversion or merger had not been made; or the resulting state bank may be substituted as a party to such action or proceeding, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against the national banking association if the conversion or merger had not occurred.

➔Section 628. KRS 286.3-180 is amended to read as follows:

- (1) Banks authorized under the laws of this state may, except as provided in subsections (2) or (3) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange, and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest on these items, buying and selling exchange, coin, and bullion, and lending money on personal or real security.
- (2) A bank may establish within any state, the District of Columbia, or a territory of the United States a branch and may exercise all of the powers conferred in subsection (1) of this section at the branch. A bank, except for a bank that the *commissioner*~~{executive director}~~ may designate by the promulgation of administrative regulations, shall apply to the *commissioner*~~{executive director}~~ for permission to establish a branch. Before the *commissioner*~~{executive director}~~ shall approve or disapprove any application made under this subsection the *commissioner*~~{executive director}~~ shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is reasonable probability of the successful operation of the branch based upon the financial and managerial impact of the branch on the bank establishing the branch. The following conditions shall apply to applications for branches:
 - (a) The permission to open a branch shall lapse one (1) year after the *commissioner*~~{executive director}~~ has rendered a final order as defined in KRS 13B.010, unless it shall have been opened and business actually begun in good faith. If, for reasons beyond the control of the applicant, the branch is not opened within this time period, permission to open the branch may, with the approval of the *commissioner*~~{executive director}~~, be extended for any period of time the *commissioner*~~{executive director}~~ deems to be necessary; and
 - (b) An application to establish a branch office shall be approved or disapproved by the *commissioner*~~{executive director}~~ based upon the facts existing at the date of filing of the application, except for the financial condition of the bank proposing to establish a branch office, which condition shall be subject to review until an order ruling on the application is made.
- (3) Any corporation which on January 1, 1966, was engaged in operating an agency or branch bank may continue to retain and operate the agency or branch bank under the general banking laws, and the requirements set forth in this section in respect to capital shall not apply to any existing agency or branch bank but only as to those agencies or branch banks which may be established in the future in accordance with the terms of this section.
- (4) The provisions of this section shall not be construed to prohibit the merger of banks in the same county and the operation by the merged corporation of the banks, nor to prohibit the sale of any bank to, and the purchase by, any other bank in the same county and the operation of the bank by the purchasing bank as a branch, provided the *commissioner*~~{executive director}~~ shall determine that the public convenience and necessity will be served by the operation. The bank which does not survive the merger shall surrender its charter.
- (5) Any national banking association or any state bank member of the Federal Reserve system whose principal office is located in this state may do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of these powers.
- (6) When a branch or agency bank has once been established any operation of the branch or agency bank shall not be discontinued, and the branch or agency bank shall not be closed until after ninety (90) days' notice in writing to the *commissioner*~~{executive director}~~. In the discretion of the *commissioner*~~{executive director}~~ the branch or agency bank proposing to discontinue operation may be required to give notice of the date when its operation will cease.

➔Section 629. KRS 286.3-185 is amended to read as follows:

A bank may move its principal office or a branch from one (1) location to another. A bank, except for a bank that the *commissioner*~~{executive director}~~ may designate through the promulgation of administrative regulations, shall apply

to the *commissioner*~~{executive director}~~ for approval to relocate its principal office or a branch. Before the *commissioner*~~{executive director}~~ shall approve or disapprove any change of location, he shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is a reasonable probability of the successful operation of the branch or principal office at the new location.

➔Section 630. KRS 286.3-187 is amended to read as follows:

- (1) Except as set forth in subsection (7) of this section, with prior approval of the *commissioner*~~{executive director}~~ and upon compliance with the requirements of this section, any state bank may agree to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, and perform other services as may be authorized by administrative regulations, as an agent for any national bank, savings and loan, or savings bank having its principal office in Kentucky or any state bank.
- (2) A state bank that proposes to enter into an agency agreement under this section shall file with the *commissioner*~~{executive director}~~, at least thirty (30) days before the effective date of the agreement:
 - (a) A notice of intention to enter into an agency agreement with a national bank, savings and loan, or savings bank having its principal office in Kentucky or a state bank;
 - (b) A description of the services to be performed under the agency agreement; and
 - (c) A copy of the agency agreement.
- (3) The *commissioner*~~{executive director}~~ shall decide whether to approve the agency agreement within thirty (30) days of the receipt of the notice required by subsection (2) of this section; except if the *commissioner*~~{executive director}~~ requests additional information after receiving such notice, the time limit for the *commissioner's*~~{executive director's}~~ decision shall be thirty (30) days after receiving the additional information.
- (4) The *commissioner*~~{executive director}~~ may order a state bank to cease acting as an agent or principal under any agency agreement with a state bank or a national bank, savings and loan, or savings bank having its principal office in Kentucky that the *commissioner*~~{executive director}~~ finds to be inconsistent with safe and sound banking practices.
- (5) A state bank acting as an agent for a state bank or a national bank, savings and loan, or savings bank having its principal office in Kentucky in accordance with this section shall not be considered to be a branch of that institution.
- (6) Except as set forth in subsection (7) of this section, a state bank may act as an agent for a national bank, savings and loan, or savings bank having its principal office outside Kentucky to the same extent it could act were it operating as a national bank at the time.
- (7) Nothing in this section authorizes a state bank to conduct any activity as an agent under this section which the bank is not permitted to conduct as a principal under any applicable federal or state law.

➔Section 631. KRS 286.3-199 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "*Commissioner*~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of financial institutions and any other person lawfully exercising the powers of the *commissioner*~~{executive director}~~.
 - (b) "Officers" means the person or persons designated by the board of directors of a bank to act for the bank in carrying out the provisions of this section.
 - (c) "Emergency" means any condition which interferes with the conduct of normal business operations at one (1) or more or all offices of a bank or banks, or which poses an imminent or existing threat to the safety and security of persons or property, or both. Without limiting the generality of the foregoing an emergency may arise as a result of any one (1) or more of the following: fire, flood, wind, rain or snowstorms, labor disputes, power failures, transportation failures, war and riots, civil commotions, and other acts of lawlessness or violence.
 - (d) "Office" means any place at which a bank transacts business or conducts operations related to the transaction of business.

- (e) "Person" includes natural persons, corporations, partnerships and associations.
- (2) Whenever the **commissioner**~~[executive director]~~ is of the opinion that an emergency exists in this state or in any part or parts of this state, **the commissioner**~~[he]~~ shall, by proclamation, authorize those banks which, in the opinion of their officers, are directly or indirectly affected by such emergency to close one (1) or more or all their offices.
- (3) Whenever the officers of a bank are of the opinion that an emergency exists which affects one (1) or more or all the bank's offices, they shall have authority to close one (1) or more or all such offices even though the **commissioner**~~[executive director]~~ has not issued a proclamation of emergency, and they may provide that the business normally transacted at a closed office will be transacted at another office designated by the bank until further notice. The office or offices so closed shall remain closed until the **commissioner**~~[executive director]~~ proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that one (1) or more offices, theretofore closed because of the emergency, should reopen, or, if the **commissioner**~~[executive director]~~ has issued no proclamation of emergency, until the officers of the bank determine that such office or offices should reopen. The discretion of the officers in acting pursuant to this section, when exercised in good faith, shall not be questioned in any court or place.
- (4) A bank closing an office or offices pursuant to this section shall give prompt notice to the **commissioner**~~[executive director]~~ as conditions will permit.
- (5) No bank and no director, officer or employee of a bank shall be liable to any person for any direct or indirect loss suffered by reason of the bank's failure or inability to make access to the bank's premises and facilities available to such person or by reason of the bank's failure or delay in performing any contractual, statutory or other duty assumed by or imposed upon the bank in any capacity when such failure, inability or delay is caused by an emergency as defined by this section. The immunity from liability provided for herein shall endure during the period of such emergency and for such time thereafter as may reasonably be necessary to afford such access or perform such duty.
- (6) The provisions of this section shall be construed and applied as being in addition to any other law of this state or United States excusing delays by banks in the performance of duties or obligations, or authorizing the closing of banks because of emergencies or conditions beyond the bank's control, or otherwise.
- (7) The **commissioner**~~[executive director]~~ may make such orders and regulations, not inconsistent with this section, as he **or she** shall deem necessary during an emergency to provide for the uninterrupted continuance of business by banks to the extent consistent with the safety and security of persons and property.

➔Section 632. KRS 286.3-212 is amended to read as follows:

- (1) Notwithstanding any other provision of law, any bank, when acting as a fiduciary or when holding securities as custodian for a fiduciary, is authorized to deposit, or arrange for the deposit, with the federal reserve bank in its district of any securities, the principal and interest of which the United States or any department, agency or instrumentality thereof has agreed to pay, or has guaranteed payment, to be credited to one (1) or more accounts on the books of said federal reserve bank in the name of such bank, to be designated fiduciary for safekeeping accounts, to which account other similar securities may be credited. A bank so depositing securities with a federal reserve bank shall be subject to such rules and regulations with respect to the making and maintenance of such deposit as, in the case of a bank organized under the laws of this state, the **commissioner**~~[executive director]~~, and, in the case of the national banking associations, the comptroller of the currency, may from time to time issue. The records of such bank shall at all times show the ownership of the securities held in such account. Ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of said federal reserve bank without physical delivery of any securities. A bank acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank with such federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party, to its accounting or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary with such federal reserve bank for its account as such fiduciary.
- (2) This section shall apply to any fiduciary, and any custodian for fiduciaries, acting on June 21, 1974, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed.
- (3) As used in this section, "fiduciary" includes an executor, administrator, trustee under any trust, express, implied, resulting or constructive, guardian, conservator, receiver, trustee in bankruptcy, assignee for the

benefit of creditors, partner, agent, officer of a corporation, public or private, public officer or any other person acting in a fiduciary capacity for any person, trust or estate.

➔Section 633. KRS 286.3-230 is amended to read as follows:

- (1) Any trust company or bank empowered to act as a fiduciary under the laws of this state and subject to examination by state or federal banking authorities may establish and maintain one (1) or more common trust funds for the collective investment of funds held in any fiduciary capacity by such trust company or bank or by an affiliate of the trust company or bank including, without limitation, funds held as agent where the trust company, bank, or affiliate exercises investment discretion and assumes fiduciary responsibilities.
- (2) Before establishing a common trust fund as provided in subsection (1) of this section, the trust company or bank shall file with the **commissioner**~~{executive director}~~ a statement of the plan under which it proposes to establish, maintain, operate, and ultimately liquidate the trust fund, and shall secure the written approval of the plan by the **commissioner**~~{executive director}~~.
- (3) After such a trust fund has been established, it may be modified or amended by filing with the **commissioner**~~{executive director}~~ a statement setting forth the proposed modification or amendment, and securing the written approval of the change by the **commissioner**~~{executive director}~~.
- (4) The bank, trust company, or affiliate shall at all times maintain definite records showing all securities and properties held in such fund.
- (5) The trust company, bank, or affiliate may invest funds held by it in any fiduciary capacity in one (1) or more common trust funds established as provided in subsection (1) of this section, or one (1) or more common trust funds wherever located established, owned, or controlled by an affiliate of the trust company, bank, or affiliate so long as:
 - (a) The investment is not specifically prohibited by the instrument, judgment decree, or order creating the fiduciary relationship; and
 - (b) In the case of cofiduciaries, the trust company, bank, or affiliated bank procures the written consent of its cofiduciary or cofiduciaries to the investment, which consent the cofiduciary or cofiduciaries are hereby authorized to grant.
- (6) As used in subsection (1) of this section, "affiliate of the trust company or bank" means any trust company, bank, or other entity that controls, is controlled by, or is under common control with the trust company, bank, or other entity.

➔Section 634. KRS 286.3-290 is amended to read as follows:

In the case of obligations to banks and trust companies, the limitations and restrictions of KRS 286.3-280 shall not apply to:

- (1) Obligations of the United States or of the State of Kentucky;
- (2) Obligations guaranteed as to principal and interest by the United States or the State of Kentucky; or all obligations to the extent secured or covered by guarantees or by commitments or agreements to take over or to purchase the same made by any federal reserve bank or by the United States or by any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States; or consolidated bonds issued by or for federal land banks or consolidated debentures issued by or for federal intermediate credit banks under the Act of Congress known as the "Federal Farm Loan Act," and amendments thereto; or consolidated debentures issued by or for banks for cooperatives under the Act of Congress known as the "Farm Credit Act of 1933," and amendments thereto; or obligations issued by the federal home loan banks; or obligations which are insured by the federal housing administrator pursuant to Title 12, Section 12, Section 1713, United States Code, if the debentures to be issued in payment of such insured obligations are guaranteed as to the principal and interest by the United States; or obligations of national mortgage associations; except that the **commissioner**~~{executive director}~~ may make, alter and repeal regulations respecting the total liabilities of any person which:
 - (a) Are secured by direct obligations of the United States or the State of Kentucky, and
 - (b) Have a face value at least equal to the amount of such liabilities, and

(c) Will mature within five (5) years from the date such liabilities were incurred.

- (3) Obligations of Kentucky counties and school districts incurred through borrowing in anticipation of the current year's tax receipts as authorized by KRS 68.320 and 160.540.

➔Section 635. KRS 286.3-330 is amended to read as follows:

- (1) Banks, subject to statutory or charter limitations, may pledge such portion of their assets or provide surety bonds as may be required by law as collateral security for government deposits made with them, or any of them, by or under the authority of the United States, or for any other deposit required by law to be secured.
- (2) Notwithstanding any law requiring security for deposits in the form of collateral, surety bond, or in any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of Section 12B of the Federal Reserve Act (38 Stat. 251) as amended.
- (3) If a bank proposes to sell its assets and transfer its deposit liability to another bank and the purchasing bank is unwilling to accept a sufficient amount of the assets to cover the liability to depositors and other creditors, the selling bank may, with the consent of the **commissioner**~~{executive director}~~, pledge all or a part of its remaining or unacceptable assets to secure a loan for an amount sufficient to cover the remaining liability to the depositors and other creditors.

➔Section 636. KRS 286.3-350 is amended to read as follows:

- (1) The board of directors of any bank or trust company organized under the laws of this state may declare a dividend of so much of the net profits as they deem expedient. The net profits shall be computed by deducting all expenses, losses, and interest and taxes accrued or due from the bank.
- (2) The approval of the **commissioner**~~{executive director}~~ shall be required if the total of all dividends declared by such institution in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two (2) years, less any required transfers to surplus or a fund for the retirement of preferred stock or debt.

➔Section 637. KRS 286.3-375 is amended to read as follows:

- (1) Every bank shall retain its business records for such periods as are or may be prescribed by or in accordance with the terms of this section.
- (2) Each bank shall retain permanently the minute book of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, its general ledger, its daily statements of condition, its general journal, its investment ledger, its copies of bank examination reports, and all records which the **commissioner**~~{executive director}~~ shall, in accordance with the terms of this section, require to be retained permanently.
- (3) All other bank records shall be retained for such periods as the **commissioner**~~{executive director}~~ shall, in accordance with the terms of this section, prescribe.
- (4) The **commissioner**~~{executive director}~~ shall from time to time issue regulations classifying all records kept by banks and prescribing the period for which records of each class shall be retained. Such periods may be permanent or for a lesser term of years. Such regulations may from time to time be amended or repealed. Prior to issuing any such regulation the **commissioner**~~{executive director}~~ shall consider:
 - (a) Actions at law and administration proceedings in which the production of bank records might be necessary or desirable;
 - (b) State and federal statutes of limitation applicable to such actions or proceedings;
 - (c) The availability of information contained in bank records from other sources;
 - (d) Such other matters as the **commissioner**~~{executive director}~~ shall deem pertinent in order that its regulations will require banks to retain their records for as short a period as is commensurate with the interests of bank customers and shareholders and of the people of this state in having bank records available.
- (5) Any bank may dispose of any record which has been retained for the period prescribed by or in accordance with the terms of this section for retention of records of its class, and shall thereafter be under no duty to produce such record in any action or proceeding.

- (6) Any bank, including the **Department**~~{Office}~~ of Financial Institutions, may cause any or all records at any time in its custody to be reproduced by the microphotographic process, nonerasable optical image discs (CD's), or other records retention technology approved by the **department**~~{office}~~, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.
- (7) To the extent that they are not in contravention of any law of the United States, the provisions of this section shall apply to all banks doing business in this state.

➔Section 638. KRS 286.3-420 is amended to read as follows:

Within ten (10) days after the **commissioner**~~{executive director}~~ calls upon a bank or trust company, it shall publish pursuant to KRS Chapter 424 on a form furnished by the **commissioner**~~{executive director}~~, a condensed statement of its financial condition, at the close of business on the date named in the call. The **commissioner**~~{executive director}~~ may make the call at any time he *or she* desires. Such published statement shall contain all information as the **commissioner**~~{executive director}~~ shall require. The reports shall be signed and sworn to either by the president, vice president, cashier, or one (1) of the directors. A copy of the report, certified to by the publisher, shall be kept in the files of the bank or trust company for review by the **department**~~{office}~~.

➔Section 639. KRS 286.3-450 is amended to read as follows:

- (1) Every state bank, branch of an out-of-state state bank, or trust company doing business under the laws of this state shall be subject to inspection by the **commissioner**~~{executive director}~~ or by an examiner appointed by the **commissioner**~~{executive director}~~. Examination shall be made of each institution at least once every twenty-four (24) months, unless other examinations are accepted as provided in subsections (3), (4), and (5) of this section, and not more than twice unless it appears from examination or from the reports of the institution that it has failed to comply with laws or regulations relating to banks or trust companies, or has engaged in unsafe or unsound banking practices.
- (2) The **commissioner**~~{executive director}~~, deputy **commissioner**~~{director}~~, and each examiner may compel the appearance of any person for the purpose of the examination, which shall be made in the presence of one (1) of the officers of the institution being examined.
- (3) Any bank that becomes a member of a Federal Reserve Bank shall be subject to the examination required by the Federal Reserve Act, (38 Stat. 251) as amended, and the **commissioner**~~{executive director}~~ may, in his discretion, accept examinations made by the Federal Reserve authorities in lieu of examinations made under state laws. The **commissioner**~~{executive director}~~ shall furnish to the Federal Reserve agent of the district in which the member bank is situated, copies of reports and examinations made of the member bank.
- (4) The **commissioner**~~{executive director}~~ may, in his discretion, accept examinations made by the Federal Deposit Insurance Corporation in lieu of examinations made under state laws.
- (5) The **commissioner**~~{executive director}~~ may, in his discretion, enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch of an out-of-state state bank, or any branch of a state bank in any host state. The **commissioner**~~{executive director}~~ may accept reports of examinations and reports of investigation from other bank supervisory agencies and home state regulators in lieu of examinations made under state law. The **commissioner**~~{executive director}~~ may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any bank, bank holding company, branch of an out-of-state state bank or any branch of a state bank located in any host state. Information produced or provided under this section shall be considered confidential as provided in KRS 286.3-470.

➔Section 640. KRS 286.3-460 is amended to read as follows:

In examinations under KRS 286.3-450 the examining officer shall investigate:

- (1) The cash, bills, collateral, securities, other assets, books of account, and all other papers and books of the bank or trust company;
- (2) The condition and resources of the bank, the mode of conducting and managing its affairs, the actions of its directors, the investment and disposition of its funds, the safety and prudence of its management and the security afforded to those by whom its engagements are held;

- (3) Whether the requirements of its charter and of the laws of this state have been complied with in the administration of its affairs; and
- (4) Such other matters as the **commissioner**~~[executive director]~~ deems necessary.

➔Section 641. KRS 286.3-470 is amended to read as follows:

- (1) Reports of examination, and correspondence that relates to the report of examination, of a bank or trust company shall be considered confidential information. No officer or director of a bank or trust company, employee of the **department**~~[office]~~, or employee of a state or federal regulatory authority shall release any information contained in the examination, except when:
 - (a) Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality has been issued by a court of competent jurisdiction; or
 - (b) The information is referred to an appropriate prosecuting attorney for possible criminal proceedings, to outside persons providing professional services to the bank, or to outside persons for the purpose of evaluating the bank for possible acquisition. Reports of examination released to outside persons providing professional services to the bank or for the purpose of evaluating the bank for possible acquisition, shall require a written request from such outside persons and prior approval by the board of directors or an executive committee of the bank.
- (2) The **department**~~[office]~~ may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities, including the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of the Comptroller of the Currency.
- (3) Every official report concerning a bank or trust company, and every report of examination, shall be prima facie evidence of the facts therein stated for all purposes in any action in which the **department**~~[office]~~, bank, or trust company is a party.

➔Section 642. KRS 286.3-480 is amended to read as follows:

- (1) The following fees shall be paid to the **commissioner**~~[executive director]~~ by corporations engaged in a banking or trust business:
 - (a) For the investigation incident to the approval of articles of incorporation, applications for branch banks and loan production offices, and applications to relocate a main or branch office, the fee shall be sufficient to cover the cost of the investigation based upon fair compensation for time and actual expense;
 - (b) For each state bank and branch of an out-of-state state bank subject to inspection and examination by the **commissioner**~~[executive director]~~, an annual assessment based on the assets of the banks and branches, other than assets held by it in a fiduciary capacity, as reported to the **department**~~[office]~~ by the banks and branches as of the thirty-first day of December of the previous year. The assessment schedule shall be at the rates the **commissioner**~~[executive director]~~ shall determine to be necessary to carry out the duties of the **department**~~[office]~~ and shall be reasonably related to the costs incurred by the **department**~~[office]~~ in regulating banks and branches. The assessment schedule shall be set by administrative regulation;
 - (c) For the examination of the assets held by the institution in a fiduciary capacity, the fee shall be sufficient to cover the cost of the investigation based upon fair compensation for time and actual expense. The **commissioner**~~[executive director]~~ may accept examinations made of the trust department in combined banks and trust companies by examiners for the Federal Reserve System, Federal Deposit Insurance Corporation, or a certified public accountant; and
 - (d) Extraordinary services performed, in addition to examinations, for any financial institution, including institutions in liquidation under the supervision of the **commissioner**~~[executive director]~~, shall be paid for by the institution upon the basis of fair compensation for time and actual expense.
- (2) The **commissioner**~~[executive director]~~, in his discretion, may enter into cooperative agreements with other bank supervisory agencies having concurrent jurisdiction over any bank, bank holding company, branch of an out-of-state state bank or any branch of a state bank located in any host state, or any organization affiliated with one (1) or more bank supervisory agencies for the collection, remittance, and sharing of fees authorized in subsection (1) of this section.

➔Section 643. KRS 286.3-490 is amended to read as follows:

- (1) Every institution under the supervision of the **department**~~{office}~~ shall make a report to the **commissioner**~~{executive director}~~ whenever required by **the commissioner**~~{him}~~ to do so. The **commissioner**~~{executive director}~~ shall not require more than five (5) reports from any one (1) institution in any one (1) year, unless he *or she* deems it necessary in order to obtain complete information.
- (2) The reports shall show the actual condition of the bank making the report at the close of business on a date designated by the **commissioner**~~{executive director}~~ and shall specify any information required by the **commissioner**~~{executive director}~~.
- (3) Any officer, director, or board of directors of a bank or trust company shall immediately notify the **commissioner**~~{executive director}~~ concerning any information relating to that financial institution of which they have personal knowledge, involving fraud, defalcation, misfeasance, or violations of this subtitle. Failure to so notify the **commissioner**~~{executive director}~~ shall be grounds for officer or director removal pursuant to KRS 286.3-690.

➔Section 644. KRS 286.3-530 is amended to read as follows:

The **department**~~{office}~~ shall examine banks and trust companies in the hands of a receiver, as other banks and trust companies, until its affairs are wound up, and a copy of the examination shall be filed with the circuit clerk in the county where the bank is located. The receiver or person in charge of the insolvent bank or trust company shall make reports to the **department**~~{office}~~, and shall submit the affairs of the institution under his control to examination in the same manner as required in the case of other banks and trust companies.

➔Section 645. KRS 286.3-660 is amended to read as follows:

Each June, the **commissioner**~~{executive director}~~ shall make a report to the Governor setting forth:

- (1) A summary of the condition of every bank or trust company organized and doing business under the laws of this state, subject to examination and inspection under this subtitle, and such other information relating to such banks and trust companies, as, in **the commissioner's**~~{his}~~ judgment, may be useful;
- (2) A statement of every bank or trust company whose business has been closed during the year, that has failed or voluntarily retired during the year;
- (3) The name of banks or trust companies placed in **the commissioner's**~~{his}~~ hands in process of liquidation, and the amount of dividends paid thereon;
- (4) Any proposed amendment of the laws relating to banks and trust companies, by which the system, in **the commissioner's**~~{his}~~ judgment, may be improved, and by which the security of creditors, depositors, and stockholders may be increased.

➔Section 646. KRS 286.3-690 is amended to read as follows:

- (1) If the **commissioner**~~{executive director}~~ has knowledge or reasonable cause to believe that any bank or trust company, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the bank or trust company has engaged in violations of law, or charter, or administrative regulation promulgated by the **department**~~{office}~~, or in unsafe or unsound business practices, **the commissioner**~~{he}~~ may issue and serve upon the bank, trust company, director, officer, employee, agent, or other person a notice of charges containing a statement of facts with respect to alleged violations or practices, and shall fix the time and place at which an administrative hearing shall be held to determine whether an order to cease and desist should issue against the bank, trust company, director, officer, employee, agent, or other person. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (2) Unless the party or parties so served shall appear at the hearing personally or by a duly-authorized representative, they shall be deemed to have consented to the issuance of the cease and desist order.
- (3) If the parties consent, or if upon the record made at the hearing the **commissioner**~~{executive director}~~ shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, **the commissioner**~~{he}~~ may issue and serve upon the bank, trust company, director, officer, employee, agent, or other person an order to cease and desist from any violation or practice and, further, to take affirmative action to correct the conditions resulting from any violation or practice.

- (4) If the **commissioner**~~{executive director}~~ shall determine that the violation or practice, as specified in the notice of charges pursuant to subsection (1) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company, or is likely to otherwise seriously prejudice the interests of its depositors or investors, **the commissioner**~~he~~ may issue an emergency order pursuant to KRS 13B.125 requiring the bank or trust company, director, officer, employee, agent, or other person to cease and desist from any violation or practice.
- (5) A cease and desist order or an emergency cease and desist order shall become effective upon service upon the bank or trust company. Unless set aside, limited or suspended, as provided by subsection (6) of this section, a cease and desist order shall remain effective and enforceable pending completion of an administrative hearing conducted in accordance with KRS Chapter 13B.
- (6) Within ten (10) days after service of an emergency cease and desist order, the party or parties served may apply to the Circuit Court for the county in which the bank is located, or the Circuit Court of Franklin County, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending completion of the administrative hearing, and the court shall have jurisdiction to issue an injunction.
- (7) In the case of violation or threatened violation of, or failure to obey, an emergency cease and desist order or a cease and desist order issued pursuant to this section, the **commissioner**~~{executive director}~~ may apply to the Circuit Court for the county in which the bank or trust company is located, or the Circuit Court of Franklin County, for an injunction to enforce the order, and it shall be the duty of the court to issue the injunction.
- (8) If the **commissioner**~~{executive director}~~ shall determine that any officer or director of a bank or trust company has committed any violation of law, of an administrative regulation, or of a cease and desist order which has become final, or has engaged in or participated in any unsafe or unsound practice in connection with the bank or trust company, or has committed or engaged in any act, omission, or practice which constitutes a breach of his **or her** fiduciary duty as officer or director, and the **commissioner**~~{executive director}~~ determines that the bank or trust company has suffered or will probably suffer substantial financial loss or other damages or that the interests of its depositors or investors could be seriously prejudiced by reason of the violation or practice of breach of fiduciary duty or that the director or officer has received financial gain by reason of the violation or practice or breach of fiduciary duty, the **commissioner**~~{executive director}~~ may serve upon the director or officer a written notice of intention to remove him **or her** from office. The violation, practice, or breach shall be one (1) involving personal dishonesty on the part of the director or officer, or one (1) which demonstrates a willful or continuing disregard for the safety or soundness of the bank. The written notice shall serve to suspend the officer or director from office. The suspension shall become effective upon service of the notice and, unless stayed by a court in proceedings authorized by subsection (10) of this section, shall remain in effect pending the completion of the administrative hearing under subsection (9) of this section. The resignation of an officer or director from the bank shall not prohibit the **commissioner**~~{executive director}~~ from pursuing an action for removal of the officer or director.
- (9) A notice of intention to remove an officer or director from office shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which an administrative hearing shall be held in accordance with KRS Chapter 13B.
- (10) Within ten (10) days after an officer or director has been suspended from office, the officer or director may apply to the Circuit Court for the county in which the bank or trust company is located for a stay of the suspension pending the completion of the administrative hearing pursuant to the notice served upon the officer or director, and the court shall have jurisdiction to grant the stay.
- (11) The bank, trust company, or person assessed shall be afforded an opportunity for an administrative hearing upon request made to the **commissioner**~~{executive director}~~ within ten (10) days after issuance of the assessment notice. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (12) Any person aggrieved by a final order of the **commissioner**~~{executive director}~~ under subsections (9) or (11) of this section may obtain a review of the order by filing in the Circuit Court for the county in which the bank or trust company is located a petition of appeal in accordance with KRS Chapter 13B.
- (13) The **commissioner**~~{executive director}~~ may apply to the Circuit Court for the county in which the bank or trust company is located for an injunction to enforce any final order issued under subsection (9) of this section or any assessment made under subsection (11) of this section, and it shall be the duty of the court to issue the injunction.

➔Section 647. KRS 286.3-820 is amended to read as follows:

- (1) For the purpose of this section:
- (a) "Loan production office" means a bank office located at a place other than the principal or branch office, at which bank employees solicit and originate loans for final approval and disbursement of funds at the principal or branch office; and
 - (b) "Disbursement of funds" is the process by which a bank officer in a principal or branch office issues a negotiable instrument at the principal or branch office.
- (2) A bank, except for a bank that the **commissioner**~~{executive director}~~ may designate by the promulgation of administrative regulations, shall apply to the **commissioner**~~{executive director}~~ for permission to establish a loan production office. The **commissioner**~~{executive director}~~ shall approve the application unless he *or she* finds that:
- (a) The proposed operation of the loan production office is not in accordance with this section;
 - (b) The financial standing, moral character, and capability of the bank and its management which proposes to operate a loan production office will jeopardize the financial stability of the bank;
 - (c) There is no reasonable assurance of sufficient volume of business for the proposed loan production office to be successful; and
 - (d) The public convenience and advantage will not be promoted by the opening of the proposed loan production office.
- (3) All extensions of credit originated in a loan production office shall be in accordance with disclosure provisions, usury rates, and other fees and charges authorized by law for banks.
- (4) Loan production offices shall not accept deposits or conduct any other banking functions except those enumerated in paragraph (a) of subsection (1) of this section.
- (5) The **commissioner**~~{executive director}~~ may examine the operations of any loan production office for the purpose of determining that the scope of its activities does not exceed that allowed in this section. Banks operating loan production offices shall maintain copies of records relating to extensions of credit originated in loan production offices at the principal office for examination purposes.
- (6) The application and appeal process set forth in KRS Chapter 13B and the cease and desist powers of the **commissioner**~~{executive director}~~ set forth in KRS 286.3-690 shall apply to loan production offices.

➔Section 648. KRS 286.3-854 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may take possession and close a bank for purposes of liquidation in any case in which *the commissioner*~~{he}~~ finds that the bank:
- (a) Is insolvent;
 - (b) Has permitted capital to become impaired to a level which does not permit the bank to operate in a safe and sound manner;
 - (c) Has had insurance of depositors' accounts terminated by the FDIC; or
 - (d) Has requested through its board of directors that the **commissioner**~~{executive director}~~ take possession for the benefit of depositors, other creditors and shareholders.
- (2) If the **commissioner**~~{executive director}~~ has taken possession of and closed a bank for purpose of liquidation, the **commissioner**~~{executive director}~~ shall forthwith issue a written finding of one (1) or more of the grounds for closing provided in this section and shall appoint a receiver for the bank. The **commissioner**~~{executive director}~~ shall immediately thereafter apply to the receivership court for confirmation of the appointment of a receiver. The court shall act upon the application forthwith and may proceed without notice to any person.

➔Section 649. KRS 286.3-856 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall tender appointment as receiver to the FDIC if any deposits in the closed bank are insured by the FDIC. Upon acceptance of the appointment as receiver, the FDIC shall not be required to post bond.

➔Section 650. KRS 286.3-860 is amended to read as follows:

Immediately after closing any state bank for purposes of liquidation under the provisions of KRS 286.3-854, the **commissioner**~~executive director~~ shall post an appropriate notice of closing at the main entrance of the bank, and thereafter no judgment lien, attachment lien or any voluntary lien shall attach to any asset of said bank, nor shall the directors, officers or agents of such bank thereafter have authority to act on behalf of said bank or to convey, transfer, assign, pledge, mortgage or encumber any assets thereof.

➔Section 651. KRS 286.3-900 is amended to read as follows:

- (1) For purposes of this section and KRS 286.3-905:
 - (a) "Bank" means any institution organized under this subtitle, the banking laws of another state, or the National Bank Act, as amended, to do a banking business;
 - (b) "Bank holding company," "company," and "control" have the meanings accorded them in the Federal Bank Holding Company Act of 1956, as amended (12 U.S.C. secs. 1841 et seq.). "Control" may be acquired by acquisition of voting securities, by purchase of assets, by merger or consolidation, by contract, or otherwise;
 - (c) "Individual" means a natural person, partnership, association, business trust, voting trust, or similar organization. "Individual" does not include a corporation; and
 - (d) "Deposit" has the meaning accorded it in the Federal Deposit Insurance Act, as amended, and regulations promulgated thereunder; excluded, however, from deposits are all interbank deposits and all deposits in foreign branches and international banking facilities, as shown in the reports made by all federally insured depository institutions to their respective supervisory authorities.
- (2) No individual or bank holding company wherever located may acquire control of any bank or bank holding company if, upon the acquisition, the individual or bank holding company would control banks in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally insured depository institutions in this state as reported in the most recent June 30 quarterly report made by the institutions to their respective supervisory authorities which are available at the time of the acquisition.
- (3) The limitations set forth in this section or any other provision of this subtitle or any administrative regulation promulgated thereunder, as now in effect or amended after July 13, 1984, shall not apply to the acquisition of a bank if, in his or her discretion, the **commissioner**~~executive director~~, if the bank is organized under the laws of this state, or the comptroller of the currency, if the bank is a national bank, determines that an emergency exists and the acquisition is appropriate in order to prevent the probable failure of the bank which is closed or is in danger of closing.
- (4) The provisions of this section shall not be construed to prohibit or restrict the merger or consolidation of banks or bank holding companies having their principal places of business in the same county and the operation by the merged or consolidated corporation of the banks, nor to prohibit the sale of any bank or bank holding company to, and the purchase thereof by, any other bank or bank holding company with its principal place of business in the same county and the operation of the bank as a branch so long as the provisions of KRS 286.3-180(4) have been satisfied.

➔Section 652. KRS 286.3-905 is amended to read as follows:

- (1) Any bank holding company which proposes to acquire control of a bank chartered in this state or a bank holding company which includes a bank chartered in this state, shall concurrently file with the **commissioner**~~executive director~~ copies of the application filed with the federal reserve board under applicable federal law. The **commissioner**~~executive director~~ shall approve such acquisition within ninety (90) days of acceptance of a complete application if **the commissioner**~~he~~ finds that:
 - (a) The terms of the acquisition are in accordance with the laws of this state;
 - (b) The financial condition, or the competence, experience, and integrity of the acquiring company or its principals are such as will not jeopardize the financial stability of the acquired bank or bank holding company;
 - (c) The public convenience and advantage will be served by the acquisition; and
 - (d) No federal regulatory authority whose approval is required has disapproved the transaction because it would result in a monopoly or substantially lessen competition.

- (2) A nonrefundable fee shall accompany each application and shall be set by the **commissioner**~~[executive director]~~ in accordance with KRS 286.3-480.
- (3) The **commissioner**~~[executive director]~~ may examine or elect to participate in a joint examination, with the applicable federal or state regulatory agency, of any holding company or nonbank subsidiary of the holding company that controls or is affiliated with a state-chartered bank. The provisions of KRS 286.3-690 apply to the holding company or nonbank subsidiary of the holding company that controls or is affiliated with a state-chartered bank.
- (4) The **commissioner**~~[executive director]~~ may enter into cooperative agreements with federal or state regulatory authorities to examine an out-of-state bank that is controlled by a Kentucky bank holding company or is controlled by a bank holding company which includes a state-chartered bank, or accept reports of examinations of such out-of-state banks from federal or state regulatory authorities in lieu of conducting examinations.
- (5) The **commissioner**~~[executive director]~~ may enter into cooperative agreements with federal or state regulatory authorities to exchange confidential information and reports of examination relating to interstate acquisitions of banks and bank holding companies.
- (6) The cost of an examination shall be assessed against and paid by the company examined. The assessment for the examination shall be calculated in the same manner as that used for bank examinations.

➔Section 653. KRS 286.3-915 is amended to read as follows:

- (1) Notwithstanding any other provision of Subtitle 1, 2, or 3 of KRS Chapter 286:
 - (a) An individual or bank holding company that controls two (2) or more banks having their principal offices in this Commonwealth may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank, which shall have its principal office in this Commonwealth, shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank; and
 - (b) Any combination authorized by this section shall not require the approval of the **commissioner**~~[executive director]~~ of financial institutions, but on or before thirty (30) days prior to consummation of any combination, the proposed surviving bank shall notify the **commissioner**~~[executive director]~~ of the combination, and on the effective date of any such combination the charter of any combined bank organized under the laws of this Commonwealth shall be surrendered.
- (2) Following any combination authorized by this section:
 - (a) The surviving bank may, subject to the approval of the **commissioner**~~[executive director]~~ as provided in KRS 286.3-180(2), establish and operate additional branches in any county where any bank involved in the combination had established a branch or main office;
 - (b) Any combined bank which is being operated as a branch of the surviving bank shall have a board of directors, a majority of which shall be residents of the combined bank's community, which shall meet not less often than quarterly to advise the branch in a nonfiduciary capacity with respect to the branch's community activities and affairs, customer relations, and local charitable activities;
 - (c) The surviving bank shall maintain a record of the deposits in each of its offices resulting from such combination or thereafter established as provided in paragraph (a) of this subsection; and
 - (d) With the approval of the **commissioner**~~[executive director]~~, all of a bank's offices in a county may be transferred, by a purchase and assumption or other transaction, by the bank to a newly chartered bank having its principal office in the same county, or to an existing bank.
- (3) For purposes of this section:
 - (a) The term "combine" or "combination" includes a merger or the acquisition of all or substantially all of the assets of a bank already controlled by an individual or bank holding company;
 - (b) An individual or bank holding company "controls" a bank if that individual or company, directly or indirectly, owns, controls, or has the power to vote at least eighty percent (80%) of the issued and outstanding voting securities of the bank;

- (c) "Combined bank" means any bank participating in a combination authorized by this section other than the surviving bank;
- (d) "Surviving bank" means a bank into which a combined bank has been combined;
- (e) "Bank" includes a national bank, savings and loan association, and federal savings bank; and
- (f) "Individual," "bank holding company," and "deposit" shall have the same meanings attributed to them in KRS 286.3-900(1).

➔Section 654. KRS 286.3-920 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; and
 - (b) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.
- (2) A Kentucky state bank may establish, maintain, and operate one (1) or more branches in a state other than Kentucky in accordance with an interstate merger transaction in which the Kentucky state bank is the resulting bank, or if the other state permits, by acquisition of a branch or branches in the other state. Not later than the date on which the required application for the interstate merger transaction or branch acquisition is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the ~~commissioner~~~~executive director~~ and pay the fee prescribed by KRS 286.3-480. The applicant shall also comply with the applicable provisions of KRS 286.3-180(2) and the ~~commissioner~~~~executive director~~ shall base his or her approval or disapproval in the same manner as prescribed in KRS 286.3-180(2).
- (3) An out-of-state state bank may establish, maintain, and operate one (1) or more branches in Kentucky in accordance with an interstate merger transaction in which the out-of-state state bank is the resulting bank in accordance with the requirements of Kentucky laws and administrative regulations. If the laws of the home state of the out-of-state bank place more restrictive terms or requirements on Kentucky state banks seeking to acquire and merge with a bank in that state, the interstate merger of the out-of-state bank may be allowed only under substantially the same terms and conditions as applicable to Kentucky state banks in that state. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the ~~commissioner~~~~executive director~~, pay the fee prescribed by KRS 286.3-480, and agree in writing to comply with the laws of this state applicable to its operation of branches in Kentucky. The applicant shall also comply with the applicable provisions of KRS 286.3-180(2) and the ~~commissioner~~~~executive director~~ shall base his or her approval or disapproval in the same manner as prescribed in KRS 286.3-180(2).
- (4) No interstate merger transaction under subsection (2) or (3) of this section shall be approved if the transaction would result in a bank holding company having control of banks or branches in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally insured depository institutions in this state as reported in the most recent June 30 quarterly report made by the institutions to their respective supervisory authorities which are available at the time of the transaction.
- (5) An individual or bank holding company that controls two (2) or more banks may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank.
- (6) A branch of an out-of-state state bank may conduct any activities that are authorized under the laws of this state for state banks. Additionally, the branch of an out-of-state state bank is authorized to conduct any activities relating to the administration of trusts that are authorized under the laws of its home state, if the activities are conducted in conformity with the laws of its home state.
- (7) A branch of a Kentucky state bank located in a host state may conduct any activities that are:
 - (a) Authorized under the laws of the host state for banks chartered by the host state; or
 - (b) Authorized for branches of national banks located in the host state, but whose principal location is in a state other than the host state.

➔Section 655. KRS 286.3-990 is amended to read as follows:

- (1) Any person who violates KRS 286.3-030(2) may be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for each day he *or she* is engaged in the private banking business.
- (2) Any institution that fails to make the report required by KRS 286.3-420 to the **commissioner**~~executive director~~ within five (5) days after the report is due or demanded, or that fails to have the report published as required by KRS 286.3-420, may be assessed and, if assessed, shall pay a penalty of two hundred dollars (\$200).
- (3) If any person violates KRS 286.3-440(3) his *or her* office shall ipso facto become vacant. The president or cashier of any bank or trust company to which any person becomes indebted in violation of KRS 286.3-440(3) shall immediately report such fact to the **commissioner**~~executive director~~, who may remove the person so offending.
- (4) Any receiver of an insolvent institution who fails to comply with the provisions of this subtitle shall be subject to the same penalties provided for solvent institutions and officers so offending.
- (5) Any directors of a bank who knowingly violate, or knowingly permit any officer or employee of the bank to violate, any of the laws relating to banks, shall be jointly and severally liable to the creditors and stockholders for any loss or damage resulting from such violation. If the loss or damage is not made good within a reasonable time, the **commissioner**~~executive director~~, with the consent of the Attorney General, shall institute proceedings to revoke the corporate powers of the bank.
- (6) Any deputy **commissioner**~~director~~ or any examiner who has knowledge of the insolvency or unsafe condition of a state bank or trust company, or that it is inexpedient to permit the bank or trust company to continue business, and who fails to immediately present a signed report of such facts to the **commissioner**~~executive director~~, or who violates any of the provisions of this subtitle, shall forfeit his *or her* office and shall be fined not less than one hundred (\$100) nor more than two thousand dollars (\$2,000) for each offense.
- (7) Any **commissioner**~~executive director~~ who has knowledge of the insolvency or unsafe condition of a state bank or trust company, or that it is inexpedient to permit the bank or trust company to continue business, and who willfully fails to take the action prescribed by this subtitle, or who violates any of the provisions of this subtitle, shall forfeit his *or her* office and shall be fined not less than five hundred (\$500) nor more than five thousand dollars (\$5,000) for each offense.
- (8) Any bank or trust company that knowingly fails to make a report required by law or by the **commissioner**~~executive director~~ within the time designated for the making thereof, or fails to include in such report any matter required by law or by the **commissioner**~~executive director~~, or fails to publish a report within thirty (30) days after it should have been published, or fails to pay when due the fees for filing reports or for an examination of the bank, shall be subject to a penalty of one hundred dollars (\$100) for each day of delinquency, but the aggregate penalty for each kind of offense shall not exceed one thousand dollars (\$1,000).
- (9) Each person, bank, or trust company that willfully makes or transmits a false report or refuses to submit its books, papers, and assets for examination, or any officer of a bank who refuses to be examined under oath concerning the affairs of the bank, shall be severally fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).
- (10) Whenever any fine imposed by subsection (1), (2), (4), (6), (7), (8), (9), (15), (16), (17), or (18) of this section is not paid, the Attorney General shall institute an action, in the name of the state, in the Franklin Circuit Court or the Circuit Court of the county in which the offense was committed, for the recovery of the fine.
- (11) Any person violating any of the provisions of KRS 286.3-225 shall be guilty of a misdemeanor and fined not less than fifty dollars (\$50) nor more than two thousand dollars (\$2,000).
- (12) Any person who willfully makes charges in excess of those permitted by KRS 286.3-720 to 286.3-770 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or both.
- (13) Any bank which violates any provision of KRS 286.3-720 to 286.3-770, except as a result of an accidental or bona fide error, shall be barred from the recovery of any finance charges permitted by KRS 286.3-740 and 286.3-750, and the debtor, or *the debtor's*~~his~~ legal representatives, may recover back, in an action against the bank, any amounts paid to the bank on account of such finance charge; provided such action is commenced within two (2) years from the date such violation first occurred; but the bank may nevertheless recover from the

debtor an amount equal to the principal of extensions of credit made pursuant to a revolving credit plan and any charges not prohibited by KRS 286.3-760.

- (14) Notwithstanding the provisions of subsections (12) and (13) of this section, any failure, other than a willful and intentional failure, to comply with any provisions of KRS 286.3-710 to 286.3-770 may be corrected during the billing cycle next succeeding the receipt by the bank of written notice thereof from the debtor, and if so corrected, the bank shall not be subject to any penalty under KRS 286.3-710 to 286.3-770.
- (15) Any bank or trust company which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a bank who violates the terms of any order issued under KRS 286.3-690 which has become final shall forfeit and pay a fine of not more than one thousand dollars (\$1,000) per day for each day such violation continues. The fine shall be assessed by the **commissioner**~~{executive director}~~ by written notice. As used in this subsection, the term "violates" includes any action causing, participating in, counseling, aiding, or abetting a violation. In determining the amount of the fine the **commissioner**~~{executive director}~~ shall consider the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous violations and such other factors as justice requires.
- (16) Any bank which violates the provisions of KRS 286.3-065 may be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). The fines may be assessed by the **commissioner**~~{executive director}~~ by written notice.
- (17) Any bank which violates any provisions of KRS 286.3-100(10) may be fined not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000) for the first violation, and may be fined not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000) for any subsequent violations.
- (18) Any officer or director who violates the provisions of KRS 286.3-280(1) or (2) may be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation, and any officer or director who violates the provisions of KRS 286.3-280(3) may be fined not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) for each violation. The fine may be assessed by the **commissioner**~~{executive director}~~ by written notice.

➔Section 656. KRS 286.4-410 is amended to read as follows:

- (1) As used in this subtitle, unless the context requires otherwise:
 - (a) "**Commissioner**~~{Executive director}~~" means the **commissioner**~~{executive director}~~ of financial institutions; and
 - (b) "Licensee" means a person licensed under this subtitle; and
 - (c) "Person" means an individual, partnership, association, trust, corporation and any other legal entity.
- (2) This subtitle shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, building and loan associations, cooperative marketing associations, credit unions, loan and investment companies, or licensed pawnbrokers. This subtitle does not apply to the purchase or acquisition, directly or indirectly, of notes, chattel mortgages, installment or conditional sales contracts, embodying liens or evidencing title retention arising from the bona fide sale of goods or services by a seller of such goods or services.

➔Section 657. KRS 286.4-420 is amended to read as follows:

No person shall, without first obtaining a license from the **commissioner**~~{executive director}~~, engage in the business of making loans in the amount or of the value of fifteen thousand dollars (\$15,000) or less at a greater rate of interest, or consideration therefor than otherwise permitted by law. All persons licensed under the provisions of this subtitle on July 15, 1982, are licensed to make loans pursuant to this subtitle, and the **commissioner**~~{executive director}~~ shall, upon request, deliver evidence of licensing within ninety (90) days of such request.

➔Section 658. KRS 286.4-430 is amended to read as follows:

- (1) Each application for a license under this subtitle shall be made in writing, under oath or affirmation, in such form as the **commissioner**~~{executive director}~~ prescribes.
- (2) The application shall contain:
 - (a) In the case of an individual, his name and the address of his residence and place of business;

- (b) In the case of a partnership or association, the name and address of every member thereof and the address of the place where the business is to be conducted;
- (c) In the case of a corporation, the names and addresses of the principal officers and directors thereof and the address of the place where the business is to be conducted; and
- (d) Such additional information as the *commissioner*~~{executive director}~~ prescribes.

➔Section 659. KRS 286.4-440 is amended to read as follows:

- (1) Each applicant at the time of making application shall pay two hundred fifty dollars (\$250) to the *commissioner*~~{executive director}~~ as a fee for investigating the application for the initial location in Kentucky, or a fee of one hundred fifty dollars (\$150) for additional locations, and the additional sum of four hundred dollars (\$400) as an annual license fee for each location for the period terminating on the last day of the current calendar year. If the application is filed after June 30 in any year, the payment shall be two hundred dollars (\$200) as a license fee in addition to the fee for investigation.
- (2) If any person regulated by the *department*~~{office}~~ desires to purchase an existing licensed location or locations, the person shall submit an application to the *commissioner*~~{executive director}~~ containing the information as the *commissioner*~~{executive director}~~ may prescribe. The fee for this application shall be one hundred dollars (\$100) per location not to exceed one thousand dollars (\$1,000).

➔Section 660. KRS 286.4-450 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ shall, after investigation, issue to the applicant a license to make loans in accordance with this subtitle, if the *commissioner*~~{executive director}~~:
 - (a) Approves the form of the application;
 - (b) Finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, command the confidence of the community and to warrant the belief that the business of the applicant will be operated honestly, fairly, and efficiently in accordance with the purposes of this subtitle; and
 - (c) Finds that the applicant has complied with KRS 286.4-440.
- (2) If the *commissioner*~~{executive director}~~ does not so find, he or she shall not issue a license and shall notify the applicant of the denial and return the sum paid by the applicant as a license fee, retaining the two hundred fifty dollars (\$250) investigation fee to cover the cost of investigating the application.
- (3) The *commissioner*~~{executive director}~~ shall approve or deny every application for license within sixty (60) days from the filing thereof with the fees unless the time is extended by a written agreement between the applicant and the *commissioner*~~{executive director}~~. If the *commissioner*~~{executive director}~~ denies a license, the applicant may appeal, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (4) The official record of the hearing shall be filed in the office of the *commissioner*~~{executive director}~~ as public records, open to public inspection.

➔Section 661. KRS 286.4-470 is amended to read as follows:

- (1) No licensee shall conduct the business authorized by this subtitle in any office, room, or place of business in which any other business, except purchase of retail and installment sales contracts and motor club memberships, is solicited or engaged in, or in association or conjunction therewith, except upon a written authorization from the *commissioner*~~{executive director}~~.
- (2) Nothing in this subtitle shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is situated, nor to prohibit the making and collecting of loans by mail.
- (3) Nothing in this subtitle shall be construed to limit the ability of any licensee to make a loan or loans in the principal amount greater than fifteen thousand dollars (\$15,000) at the licensed location at the same rates as provided in KRS 360.010.

➔Section 662. KRS 286.4-480 is amended to read as follows:

Each license shall remain in full force and effect until it is surrendered by the licensee or suspended or revoked as provided in this subtitle. Each licensee shall, on or before each December 20, pay to the **commissioner**~~{executive director}~~ the annual license fee for the next succeeding calendar year.

➔Section 663. KRS 286.4-490 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may revoke any license issued under this subtitle if **the commissioner**~~{he}~~ finds:
 - (a) That the licensee has failed to pay his annual license fee; or
 - (b) That the licensee has violated any provision of this subtitle or has failed to comply with any administrative regulation lawfully promulgated pursuant thereto; or
 - (c) That any fact or condition then exists which clearly would have warranted the **commissioner**~~{executive director}~~ in refusing to issue a license on an original application; or
 - (d) That the licensee has failed to open an office for business within one hundred twenty (120) days from the date the license is granted, or has failed to remain open for business for a period of one hundred twenty (120) days, unless in each case good cause be shown.
- (2) The **commissioner**~~{executive director}~~ may suspend any license for a period not exceeding thirty (30) days, pending investigation of possible grounds for revocation under paragraphs (b) or (c) of subsection (1) of this section.
- (3) Before the revocation of a license under subsection (1), or suspension under subsection (2), the licensee shall be given ten (10) days' written notice of the contemplated revocation or suspension of his license, the grounds therefor stated specifically, and an opportunity for an administrative hearing to be conducted in accordance with KRS Chapter 13B.
- (4) The **commissioner**~~{executive director}~~ may reinstate suspended licenses or issue new licenses to a licensee whose license has been revoked if no fact or condition then exists which clearly would have warranted him **or her** in refusing originally to issue such license under this subtitle.
- (5) Any licensee may surrender any license by delivering it to the **commissioner**~~{executive director}~~ together with written notice that he **or she** thereby surrenders his license.

➔Section 664. KRS 286.4-500 is amended to read as follows:

Whenever the **commissioner**~~{executive director}~~ denies any application for a license under the provisions of this subtitle or revokes any license issued pursuant to this subtitle, **the commissioner**~~{he}~~ shall forthwith file in his **or her** office a written order to that effect, stating his **or her** findings with respect thereto and the reasons for **the**~~{his}~~ action. The **commissioner**~~{executive director}~~ shall also forthwith serve upon the applicant for license or licensee a copy of the order, and the applicant or licensee may appeal to the Circuit Court of Franklin County, within thirty (30) days after the service of a copy of the order.

➔Section 665. KRS 286.4-560 is amended to read as follows:

Notwithstanding the provisions of this or any other law:

- (1) A licensee may request a borrower to insure tangible personal property, except household goods, offered as security for a loan exceeding three hundred dollars (\$300) under this subtitle against any substantial risk of loss, damage, or destruction for an amount not to exceed the actual value of such property or the approximate amount of the loan, whichever is greater, and for a term and upon conditions which are reasonable and appropriate considering the nature of the property and the maturity and other circumstances of the loan; provided such insurance is sold by a licensed agent, broker, or solicitor.
- (2) A licensee may also request, provide, obtain, or take as security for any loan obligation insurance on the life, unemployment, health, or disability, or all, of the borrower, or two (2) of them if there are two (2) or more. Life insurance shall be in the approximate amount of the indebtedness scheduled to be due the licensee under the loan contract. Not more than one (1) policy of life insurance may be written in connection with any loan transaction under this subtitle. The aggregate amount of periodic benefits payable by any unemployment, health, or disability insurance provided, obtained, or requested by the licensee in the event of unemployment or disability, as defined in the policy, shall not exceed the aggregate of the scheduled installments and the waiting period provided in such policy must be fourteen (14) days or longer. The premium rate for insurance provided under this section shall be reasonable in relation to the benefits provided and shall be filed with the

commissioner~~{executive director}~~ of insurance. The **commissioner**~~{executive director}~~ of insurance shall, within thirty (30) days after the filing of any premium rate, disapprove such premium rate if it is excessive in relation to the benefits. In determining whether to approve or disapprove any premium rate, the **commissioner**~~{executive director}~~ of insurance shall give due consideration to the unemployment, mortality, and morbidity costs with respect to such insurance on borrowers under this subtitle or similar acts in other states, a reasonable margin for underwriting expenses and profit and contingencies to the insurer, and cost and compensation to the licensees for providing and servicing such insurance, plus the premium taxes payable on such insurance.

- (3) In accepting any insurance provided for by this section as security for a loan the licensee, its officers, agents, or employees may deduct the premiums or identifiable charge therefor from the proceeds of the loan, which premium or identifiable charge shall not exceed the rate filed with the **commissioner**~~{executive director}~~ of insurance and not disapproved and remit such premiums to the insurance company writing such insurance and any gain or advantage to the licensee or any employee, officer, director, agent, affiliate, or associate from such insurance or its sale shall not be considered as additional or further charge in connection with any loan made under this subtitle. The arranging for and collecting of an identifiable charge shall not be deemed the sale of insurance.
- (4) Every insurance policy or certificate written in connection with a loan transaction pursuant to subsection (2) of this section shall provide for cancellation of coverage and a refund of the premium or identifiable charge unearned upon the discharge of the loan obligation for which such insurance is security without prejudice to any claim. Such refund shall be under a formula filed by the insurer with the **commissioner**~~{executive director}~~ of insurance.
- (5) Whenever insurance is written in connection with a loan transaction pursuant to this section the licensee shall deliver or cause to be delivered to the borrower a policy, certificate, or other memorandum which shall show the coverages and the cost thereof, if any, to the borrower within thirty (30) days from the date of the loan.
- (6) All such insurance shall be written by a company authorized to conduct such business in this state and the licensee shall not require the purchase of such insurance from any agent or broker designated by the licensee nor shall the licensee decline existing coverages which equal or exceed the standards of this section.

➔Section 666. KRS 286.4-590 is amended to read as follows:

Each licensee shall annually on or before January 30, file with the **commissioner**~~{executive director}~~ a report for the preceding calendar year. The report shall give information with respect to the financial condition of the licensee and other relevant information as the **commissioner**~~{executive director}~~ may reasonably require. In the event any person or affiliated group of corporations holds more than one (1) license in the state, he, she, or they may file a composite annual report in lieu of separate reports for each licensed office. The report shall be made under oath in the form prescribed by the **commissioner**~~{executive director}~~, who shall make and publish annually an analysis and recapitulation of the reports.

➔Section 667. KRS 286.4-600 is amended to read as follows:

Each licensee shall keep and use in his *or her* business and shall preserve for at least two (2) years after making the final entry therein, such books, accounts, records, or card systems in accordance with sound accounting principles and practices to enable the **commissioner**~~{executive director}~~ to determine whether the licensee is complying with the provisions of this subtitle, and with the regulations made pursuant thereto, and for at least three (3) years on loans secured by residential property.

➔Section 668. KRS 286.4-610 is amended to read as follows:

- (1) The provisions of this subtitle shall be enforced by the **commissioner**~~{executive director}~~, who may, after notice to licensees and a hearing, promulgate regulations, referenced to the section or sections which set forth the legislative standards they interpret or apply, for the proper conduct of the business licensed under this subtitle. All regulations of general application shall state the date of promulgation and the effective date. A copy of every such regulation shall be sent to all licensees before the effective date thereof and a copy shall be kept in an indexed permanent book in the office of the **commissioner**~~{executive director}~~ as a public record.
- (2) The **commissioner**~~{executive director}~~ shall make an annual examination of the affairs, business, office, and records of every licensee, and such further examinations or investigations as *the commissioner*~~{he}~~ deems necessary for the purpose of discovering violations of this subtitle or of securing information necessary for its

proper enforcement. Every licensee shall pay a fee sufficient to cover the cost of each examination based upon fair compensation for time and actual expenses.

- (3) For the purpose of making such examinations or investigations the **commissioner**~~{executive director}~~ and his **or her** representatives may require the attendance of and examine under oath all persons whose testimony he **or she** may require, relative to the loans or business of any such licensee, and shall have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under any license issued in accordance with this subtitle.

➔Section 669. KRS 286.4-613 is amended to read as follows:

No licensee shall be subject to any liability for any act or omission made in conformity with a written notice, opinion, or interpretation issued by the **commissioner**~~{executive director}~~.

➔Section 670. KRS 286.4-615 is amended to read as follows:

In undertaking the examination of a consumer loan company neither the Commonwealth of Kentucky, the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Financial Institutions, nor any examiner employed by the Commonwealth shall become liable to any depositor, investor, or other obligor of said consumer loan company by reason of said examination or omission of said examination to fully and effectively disclose the financial condition of said consumer loan company, it being the policy of the Commonwealth of Kentucky that such examinations as are required by KRS 286.4-610 are for the purpose of determining compliance with state law and not for the purpose of protecting or guaranteeing the depositors, investors, or other obligors of said consumer loan companies.

➔Section 671. KRS 286.4-630 is amended to read as follows:

In addition to any other available remedy, any person considering himself aggrieved by any act or omission of the **commissioner**~~{executive director}~~ may, within thirty (30) days from the date of such act or failure to act, bring an action in the Circuit Court in and for Franklin County to review such act or omission. The hearing before the court shall be based on the record before the **commissioner**~~{executive director}~~ and **the commissioner's**~~{his}~~ findings, if any, and on such new evidence as may be introduced.

➔Section 672. KRS 286.4-991 is amended to read as follows:

- (1) Any person who shall engage in the business regulated by this subtitle without first securing a license therefor shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000). Any loan contract made in violation of this subtitle shall be void and the lender shall have no right to collect any principal, charges or recompense whatsoever.
- (2) Any person who willfully violates any rule or order of the **commissioner**~~{executive director}~~ authorized under this subtitle, shall be guilty of a Class A misdemeanor, but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge. This section shall not be deemed to limit the power of the **commissioner**~~{executive director}~~ to revoke any license as provided in KRS 286.4-490.

➔Section 673. KRS 286.5-011 is amended to read as follows:

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

- (1) "Association" means a savings and loan association subject to the provisions of this subtitle and as used in KRS 136.290, 136.300 and 136.310.
- (2) "Combination home and business structure" means a building or buildings, including residences for not more than four (4) families, which are used in part for business purposes. The residential use of such a building must be substantial and permanent, not merely transitory. The business use may predominate.
- (3) "**Commissioner**~~{Executive director}~~" means the **commissioner**~~{executive director}~~ of financial institutions.
- (4) "Direct-reduction loan" means a loan repayable in consecutive weekly, monthly or semiannual installments, equal or unequal, sufficient to retire the debt, interest, and principal; provided, however, that the initial loan contract shall not provide for any subsequent monthly installment of an amount larger than any previous monthly installment; and, provided further, that in the case of construction loans the first payment under said contract shall be made not later than twelve (12) months after the date of the first advance. Any such loan is an amortized loan.

- (5) "Dividend" or "earnings" means that part of the net income of an association which is declared payable on savings accounts and savings certificates from time to time by the board of directors, and is the cost of savings money to the association. Dividend or earnings also may be referred to as "interest."
- (6) "Gross income" means the sum for an accounting period of the following:
- (a) Operating income.
 - (b) Real estate income.
 - (c) All profits actually received during such accounting period from the sale of securities, real estate, or other property.
 - (d) Other nonrecurring income.
- (7) "Home" means a dwelling or dwellings for not more than four (4) families, the principal use of which is for residential purposes. A home on a farm is a home.
- (8) "Home loan" means a real estate loan the security for which is home property.
- (9) "Home property" means real estate on which there is located, or will be located pursuant to a home loan, a home or a combination home and business structure.
- (10) "Impaired condition" means a condition in which the assets of an association in the aggregate do not have a fair value equal to the aggregate amount of liabilities of the association to its creditors, including its members and all other persons.
- (11) "Improved real estate" means real estate on which there is a structure or an enclosure, or which is cultivated, reclaimed, used for the purpose of agriculture in any form, or otherwise occupied, made better, more useful, or of greater value by care so as to produce an enjoyment thereof.
- (12) "Insured association" means an association the savings accounts of which are insured in accordance with the provisions of this subtitle.
- (13) "Member" means a person holding a savings account or a savings certificate of an association, or a person borrowing from or assuming or obligated upon a loan or interest therein held by an association, or purchasing property securing a loan or interest therein held by an association. A joint and survivorship relationship, whether of investors or borrowers, constitutes a single membership.
- (14) "Net income" means gross income for an accounting period less the aggregate of the following:
- (a) Operating expenses.
 - (b) Real estate expenses.
 - (c) All losses actually sustained during such accounting period from the sale of securities, real estate or other property, or such portion of such losses as shall not have been charged to reserves, pursuant to the provisions of this subtitle.
 - (d) All interest paid, or due but unpaid, on borrowed money.
 - (e) Other nonrecurring charges.
- (15) "Net income available for dividends or earnings" means net income for an accounting period less amount transferred to reserves as provided in this subtitle.
- (16) "Operating expenses" means all expenses actually paid, or due but unpaid, by an association during an accounting period, excluding the following:
- (a) Real estate expenses.
 - (b) Interest on borrowed money.
 - (c) Other nonrecurring charges.

That portion of prepaid expenses which is not apportionable to the period may be excluded from operating expenses, in which event operating expenses for future periods shall include that portion of such prepaid expenses apportionable thereto.

- (17) "Operating income" means all income actually received by an association during an accounting period, excluding the following:
- (a) Foreclosed real estate income.
 - (b) Other nonrecurring income.
- (18) "Other real estate loan" means a real estate loan the security for which is real estate other than home property.
- (19) "Real estate expenses" means all expenses actually paid, or due but unpaid, in connection with the ownership, maintenance, and sale of real estate (other than office building or buildings and real estate held for investment) by an association during an accounting period, excluding capital expenditures and losses on the sale of real estate.
- (20) "Real estate income" means all income actually received by an association during an accounting period from real estate owned (other than from office building or buildings and real estate held for investment) excluding profit from sale of real estate.
- (21) "Real estate loan" means any loan or other obligation secured by real estate, whether in fee or in a leasehold.
- (22) "Savings account" means that part of the savings liability of the association which is credited to the account of the holders thereof.
- (23) "Savings certificate" means that part of a savings account which is fully paid and is represented by a certificate.
- (24) "Savings liability" means the aggregate amount of savings accounts and savings certificates of members, including dividends credited to such accounts, less redemptions and withdrawals. Savings liability also may be referred to as "deposit."
- (25) "Withdrawal value" means the amount credited to a savings account and savings certificate of a member, less lawful deductions therefrom, as shown by the records of the association.
- (26) "Minor" means a person over fourteen (14) years of age and under eighteen (18) years of age.
- (27) "Capital stock" as used in this subtitle may be used interchangeably with the term savings account and savings certificate.

➔Section 674. KRS 286.5-021 is amended to read as follows:

Any five (5) or more residents of this state (hereinafter referred to as the "incorporators") may form an association to promote thrift and home financing, subject to approval as provided in this subtitle, by signing and acknowledging, before an officer competent to take acknowledgements of deeds, two (2) copies of a petition for a certificate of incorporation in the form prescribed by the **commissioner**~~{executive director}~~, and of the bylaws in a form approved by the **commissioner**~~{executive director}~~, which shall be filed with the **commissioner**~~{executive director}~~, accompanied by the incorporation fee.

➔Section 675. KRS 286.5-024 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 286.5-451(13) any state savings and loan association which has not become insured by December 31, 1974, must furnish proof satisfactory to the **commissioner**~~{executive director}~~ of financial institutions prior to June 30, 1975, that it has:
- (a) Obtained insurance of its savings accounts and share accounts by the Federal Savings and Loan Insurance Corporation, any agency of this state or other federal agency established for the purpose of insuring savings accounts in associations, or with any other insurer approved by the **commissioner**~~{executive director}~~ and meeting the qualifications prescribed in this subsection; provided that no association subject to the provisions of this subtitle shall have the power to obtain insurance of accounts from, or represent in any way its accounts are insured by, any insurer other than the Federal Savings and Loan Insurance Corporation, or other federal agency or state agency, unless the **commissioner**~~{executive director}~~, after application to him for approval and after reasonable notice and an opportunity to be heard the **commissioner**~~{executive director}~~ shall have determined:
 1. That the contract of insurance contemplated is written upon substantially the same basis as to form, amount, coverage, maturity, voluntary and involuntary termination and other provisions as the insurance contract provided at that time by the Federal Savings and Loan Insurance Corporation, and complies with the further requirements for protection as the **commissioner**~~{executive director}~~ in his discretion may deem reasonably necessary; and

2. That the contract is underwritten by an insurer having a net worth reasonably commensurate with the risk underwritten, which is licensed in this state and authorized to do business in this state, and the **commissioner**~~{executive director}~~ shall have issued a certificate of approval of such application; or
- (b) Become a federal savings and loan association member of the Federal Home Loan Bank Board; or
 - (c) Merged into an existing insured savings and loan association, either state or federal; or
 - (d) Entered into voluntary liquidation.

Any merger into an insured savings and loan association or any voluntary liquidation must have the prior written approval of the **commissioner**~~{executive director}~~.

- (2) Any state savings and loan association which has not by the close of business June 30, 1975, accomplished any one of the four steps prescribed in subsection (1) shall on and after July 1, 1975, be prohibited from:
 - (a) Making any loans pursuant to this subtitle; and
 - (b) Accepting any savings accounts, payments on share accounts or membership fees.
- (3) Notwithstanding any other provisions of state law to the contrary, if any state savings and loan association has not accomplished one of the four steps prescribed in subsection (1) of this section by December 31, 1974, the **commissioner**~~{executive director}~~ shall apply to a court of general jurisdiction in the county in which the home office of such association is located for the appointment of a liquidating receiver for purposes of liquidating the assets and winding up the business affairs of such association. However, if such state savings and loan association shall furnish to the **commissioner**~~{executive director}~~ proof satisfactory to him that a definite plan of accomplishment of one of said four conditions prescribed in subsection (1) of this section has been substantially completed, the **commissioner**~~{executive director}~~ may, in his sole discretion, extend the time for taking action for the appointment of such receiver. The **commissioner**~~{executive director}~~ in granting such extension may permit the acceptance of savings account payments on share accounts, membership fees or the making of loans.

➔Section 676. KRS 286.5-025 is amended to read as follows:

No certificate of incorporation as provided for under this subtitle shall be granted or approved by the **commissioner**~~{executive director}~~ after June 16, 1972, unless the applicant for such certificate:

- (1) Submits sufficient evidence of being fully insured by the Federal Savings and Loan Insurance Corporation or other federal agency; or
- (2) Submits sufficient evidence of commitment by the Federal Savings and Loan Insurance Corporation or other federal agency that the applicant will be issued federal insurance immediately subsequent to the execution of the certificate of incorporation by the **commissioner**~~{executive director}~~.

➔Section 677. KRS 286.5-031 is amended to read as follows:

- (1) Upon receipt of the articles of incorporation, the **commissioner**~~{executive director}~~ shall first determine whether or not the articles comply with the provisions of this subtitle and, if he so finds, he shall promptly notify any state or federal savings and loan association in the locality in which the proposed office or offices are to be located specifying a time in which they must file objections. The **commissioner**~~{executive director}~~ shall then inquire into the advisability of approving the application by investigating:
 - (a) The moral character and the financial responsibility of the incorporators and the principles of the applicant.
 - (b) The public necessity of such an association in the community to be served, and
 - (c) The reasonable probability of its usefulness and success. In so doing he shall determine whether or not the savings and loan association can be established without undue injury to properly conducted existing savings and loan associations, in connection with which the incorporators and principals shall furnish such information as they may desire and as the **commissioner**~~{executive director}~~ may require.
- (2) After allowing the specified time for filing objections, the **commissioner**~~{executive director}~~ shall approve the application if he finds that the moral character and financial responsibility of the incorporators and principals

are sound and such as to justify public confidence and to insure the reasonable probability of the success of the association; that the incorporators and principals have complied with the provisions of this subtitle, that the incorporation is advisable and, after investigation there is reason to believe that no undue injury to properly conducted existing savings and loan associations, either state or federal, will result. Unless the application, after investigation, meets all the above requirements the **commissioner**~~[executive director]~~ shall disapprove it.

- (3) If approved, the **commissioner**~~[executive director]~~ shall at the same time execute in triplicate a certificate of incorporation in the form prescribed by him.
- (4) The **commissioner**~~[executive director]~~ shall file one (1) signed copy of such certificate of approval and of the certificate of incorporation with the Secretary of State. The **commissioner**~~[executive director]~~ shall indorse upon the two (2) copies of the petition for certificate of incorporation filed with him **or her** such certificate of approval and return the duplicate original and a copy of the certificate of incorporation to the association, addressed to the chairman of the incorporators, and shall retain the original petition for certificate of incorporation and a copy of the certificate of incorporation in the permanent files of **the department**~~[his office]~~. The certificate of incorporation shall not be filed or recorded in any other state or county office. The failure of the **commissioner**~~[executive director]~~ to file, return, or retain any such document shall not affect the validity of the incorporation of any association.

➔Section 678. KRS 286.5-041 is amended to read as follows:

- (1) (a) The name of every association incorporated shall include the words "Savings and Loan Association." These words shall be preceded by an appropriate descriptive word or words approved by the **commissioner**~~[executive director]~~ of financial institutions. An ordinal number may not be used as a single descriptive word preceding the words, "Savings and Loan Association," unless such word is followed by the words "of" the blank being filled by the name of the town, city, or county in which the association has its home office. An ordinal number may be used together with another descriptive word, preceding the words "Savings and Loan Association," provided the other descriptive word has not been used in the corporate name of any other association in the state, in which case the suffix mentioned above is not required to be used. An ordinal number may be used, together with another descriptive word, preceding the words "Savings and Loan Association," even when such other descriptive word has been used in the corporate name of an association in the state, provided the suffix "of", as provided above, is also used. The suffix provided above may be used in any corporate name.
- (b) The use of the words, "National," "Federal," "United States," "Insured," "Guaranteed," or any form thereof, separately or in any combination thereof with other words or syllables, is prohibited as part of the corporate name of an association. No certificate of incorporation of a proposed association having the same name as a corporation authorized to do business under the laws of this state or a name so nearly resembling it as to be calculated to deceive shall be issued by the **commissioner**~~[executive director]~~.
- (2) (a) No person, unless lawfully authorized to do business in this state under the provisions of this subtitle, and is actually engaged in carrying on a savings and loan association business, shall do business under any name or title which contains the terms "savings association," "savings and loan association," "building and loan association," "building association," or any combination employing either or both of the words "building" or "loan" with one or more of the words "saving," "savings," "thrift," or words of similar import, or any combination employing one or more of the words "saving," "savings," "thrift," or words of similar import with one or more of the words "association," "institution," "society," "company," "corporation" or words of similar import, or use any name or sign or circulate or use any letterhead, billhead, circular or paper whatever, or advertise or represent in any manner which indicates or reasonably implies that his or its business is the character or kind of business carried on or transacted by an association or which is calculated to lead any person to believe that his or its business is that of an association.
- (b) Upon application by the **commissioner**~~[executive director]~~ or any association, a court of competent jurisdiction may issue an injunction to restrain any such entity from violating or continuing to violate any of the provisions of this subsection.
- (c) The prohibitions of this subsection shall not apply to any corporation or association formed for the purpose of promoting the interests of savings associations, the membership of which is comprised of savings associations, their officers or other representatives.

➔Section 679. KRS 286.5-051 is amended to read as follows:

- (1) Without the prior approval of the **commissioner**~~{executive director}~~, as provided in this subtitle, no association shall establish any office other than its home office, which shall be in the city and county named in the certificate of incorporation. No office of an association shall be moved from its immediate vicinity unless approved by the **commissioner**~~{executive director}~~.
- (2) The name or the location of the home office of any association fixed in the certificate of incorporation may be changed in the following manner: The proposed new name or the new location of the home office of the association shall be approved by a resolution adopted by the board of directors. Immediately preceding application to the **commissioner**~~{executive director}~~ for approval, notice of intention to change the name or the location of the home office, signed by two (2) officers, shall be published once a week for two (2) successive weeks in a newspaper of general circulation in the county in which the home office is located, and a copy of such notice shall be displayed during such consecutive two (2) weeks' period in a conspicuous place in the home office of the association. Five (5) copies of an application to the **commissioner**~~{executive director}~~ for approval shall be signed by two (2) officers of the association, acknowledged before an officer competent to take acknowledgments of deeds and filed with the **commissioner**~~{executive director}~~. Upon approval of an application for change of name, the **commissioner**~~{executive director}~~ shall indorse on each copy of the application therefor a certificate of approval thereof, and the change of name of such association shall be effective immediately. Upon approval of an application for change of location of the home office of an association, the **commissioner**~~{executive director}~~ shall indorse on each copy of such application a certificate of approval, as provided in this subtitle. When the **commissioner**~~{executive director}~~ shall have indorsed such approval upon the copies of an application for approval of change of name or change of location of the home office, he shall file one copy thereof with the secretary of state, two (2) copies with the federal home loan bank of which the association is a member, return one (1) copy to the applicant association and retain the original copy in the permanent files of **the department**~~{his office}~~.

➔Section 680. KRS 286.5-061 is amended to read as follows:

- (1) A branch office is a legally established place of business of the association other than the home office authorized by the board of directors and approved by the **commissioner**~~{executive director}~~, at which savings accounts and loan payments may be accepted and applications for loans may be received, and at which account books and membership certificates may be issued.
- (2) No association may establish or maintain a branch office without the prior written approval of the **commissioner**~~{executive director}~~.
- (3) Each application for approval of the establishment and maintenance of a branch office shall state the proposed location, the need, the functions to be performed, the estimated annual expense, and the mode of payment therefor. Each such application shall be accompanied by a budget of the association for the current dividend period and for the next succeeding semiannual period, which reflects the estimated additional expense of the maintenance of such a branch office. Upon the receipt by the **commissioner**~~{executive director}~~ of such an application, he shall determine whether the establishment and maintenance of such office will unduly injure any properly conducted existing association or federal savings and loan association in the community where such branch office or agency is proposed to be established. If he finds that no undue injury is likely to result, that the establishment and maintenance of such branch office is advisable, and in the public interest, **the commissioner**~~{he}~~ may approve the application.
- (4) No branch shall be established in any county other than the county in which is located the principal office of the association.

➔Section 681. KRS 286.5-071 is amended to read as follows:

The corporate existence of an association shall begin when the **commissioner**~~{executive director}~~ shall issue the certificate of incorporation of the association, and such existence shall be perpetual unless terminated in accordance with the provisions of this subtitle.

➔Section 682. KRS 286.5-091 is amended to read as follows:

- (1) Every association shall keep at the home office correct and complete books of account and minutes of the proceedings of members and directors. Complete records of all business transacted at the home office shall be

maintained at the home office. Control records of all business transacted at each branch office shall be maintained at the home office.

- (2) Each branch office shall keep detailed records of all transactions at such branch office and shall furnish full control records to the home office.
- (3) No association by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any other person, partnership, association, or corporation or under any title or designation that is not truly descriptive of such assets.
- (4) The bonds or other interest-bearing obligations purchased by an association shall not be carried on its books at more than the actual cost.
- (5) An association shall not carry any real estate on its books at a sum in excess of the total amount invested by such association on account of such real estate, including advances, costs, and improvements.
- (6) Every association shall appraise each parcel of real estate at the time of acquisition. The report of each such appraisal shall be submitted in writing to the board of directors and shall be kept in the records of the association. The **commissioner**~~executive director~~ may require the appraisal of real estate securing loans which are delinquent more than twelve (12) months.
- (7) Every association shall maintain membership records, which shall show the name and address of the member, the status of the member as a savings account holder, or an obligor, or a savings account holder and obligor, and the date of their membership.
- (8) Any association may cause any or all records kept by such association to be copied or reproduced by any photostatic, photographic or microfilming process which correctly and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material, and such association may thereafter dispose of the original record. Any such copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such copy or reproduction reproduced from a film record shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.

→Section 683. KRS 286.5-111 is amended to read as follows:

Savings and loan associations, their officers, employees or agents, savings accounts, and the sale, issuance or offering of savings accounts of any association or federal savings and loan associations are exempted from all laws of this state, other than this subtitle, which provide for supervision, registration or regulation in connection with the sale, issuance or offering of securities, and the sale, issuance or offering of any such accounts shall be legal without any action or approval whatsoever on the part of any official, other than the **commissioner**~~executive director~~, authorized to license, regulate, or supervise the sale, issuance or offering of securities.

→Section 684. KRS 286.5-121 is amended to read as follows:

Every association shall prepare and publish annually in a newspaper of general circulation in the county in which the home office of such association is located, and shall deliver to each member upon application therefor, a statement of its financial condition in the form prescribed or approved by the **commissioner**~~executive director~~.

→Section 685. KRS 286.5-131 is amended to read as follows:

In each January every association shall file with the **commissioner**~~executive director~~ a statement of its condition at the close of business on December 31 preceding. The statement shall be signed and sworn to by the president, manager or secretary and attested by at least two (2) directors, and shall show the amount of paid-up capital, the amount of all cash receipts and disbursements and such other facts as the **commissioner**~~executive director~~ requires.

→Section 686. KRS 286.5-141 is amended to read as follows:

The chairman of the incorporators shall procure from a surety company or other surety acceptable to the **commissioner**~~executive director~~, a surety bond in form approved by the **commissioner**~~executive director~~ in an amount at least equal to the amount subscribed by the incorporators plus the expense fund. Such bond shall name the **commissioner**~~executive director~~ as obligee and shall be delivered to him. It shall assure the safekeeping of the funds subscribed and their delivery to the association after the issuance of the certificate of incorporation and after the bonding of the officers. In the event of the failure to complete organization, such bond shall assure the return of the

amounts collected to the respective subscribers or their assigns, less reasonable expenses which shall be deducted from the expense fund.

➔Section 687. KRS 286.5-151 is amended to read as follows:

- (1) The number of shares into which the capital stock of an association is divided shall be at least two hundred (200) in cities having less than five thousand (5,000) population and at least five hundred (500) in other cities.
- (2) The capital stock to be accumulated shall be divided into shares of the ultimate value fixed by the articles of incorporation, except associations in operation on March 20, 1918, in which case a copy of the bylaws, attested by the secretary of such association, shall be filed with the **commissioner**~~[executive director]~~.
- (3) The shares may be issued at such times and in such classes as the bylaws designate, and they may be issued upon the continuing or permanent plan, if so provided in the bylaws.
- (4) Nothing within this subtitle shall be interpreted to permit the establishment of an association which could issue a type of capital stock which in essence would destroy the mutuality concept of a savings, building and loan association as presently existing.

➔Section 688. KRS 286.5-171 is amended to read as follows:

- (1) Every domestic association shall set aside at least one percent (1%) of the net income each year as a reserve fund to provide against contingent losses, until the total amount of the fund so set aside equals twelve percent (12%) of the assets of the association. The **commissioner**~~[executive director]~~ may require other specific reserves in his *or her* discretion.
- (2) Any losses from sale of real estate may be charged against this fund and in the event of any such charges then any profits from the sale of real estate shall, to the extent of losses charged, be credited to the said fund.

➔Section 689. KRS 286.5-181 is amended to read as follows:

Within thirty (30) days after the corporate existence of an association begins, the directors of the association shall hold an organization meeting and shall elect officers pursuant to the provisions of this subtitle. At the organization meeting the directors shall take such other action as is appropriate in connection with beginning the transaction of business by the association. The **commissioner**~~[executive director]~~ may extend by order the time within which the organization meeting shall be held.

➔Section 690. KRS 286.5-191 is amended to read as follows:

Any association, which does not commence business within six (6) months after the date of its corporate existence, shall forfeit its corporate existence, unless the **commissioner**~~[executive director]~~, before the expiration of such six (6) months' period, shall have approved the extension of time within which it may commence business, upon a written application stating the reasons for such delay. Upon such forfeiture the certificate of incorporation shall expire, and all action taken in connection with the incorporation thereof except the payment of the incorporation fee, shall become void. Amounts credited on savings accounts, less expenditures authorized by law, shall be returned pro rata to the respective holders thereof.

➔Section 691. KRS 286.5-271 is amended to read as follows:

- (1) Every member shall have the right to inspect such books and records of an association as pertain to his loan or savings account. Otherwise, the right of inspection and examination of the books and records shall be limited:
 - (a) To the **commissioner**~~[executive director]~~ or **the commissioner's**~~[his]~~ duly authorized representatives as provided in this subtitle;
 - (b) To persons duly authorized to act for the association; and
 - (c) To any federal instrumentality or agency authorized to inspect or examine the books and records of an insured association.
- (2) Except as otherwise authorized by KRS 205.835, the books and records pertaining to the accounts and loans of members shall be kept confidential by the association, its directors, officers and employees, and by the **commissioner and the commissioner's**~~[executive director, his]~~ examiners and representatives, except where the disclosure thereof shall be compelled by a court of competent jurisdiction, and no member or any other

person shall have access to the books and records or shall be furnished or shall possess a partial or complete list of the members except upon express action and authority of the board of directors.

➔Section 692. KRS 286.5-451 is amended to read as follows:

- (1) Associations may make loans on the direct reduction plan. The board of directors may or the bylaws of the association shall prescribe interest rates which may be variable and may prescribe the duration of the loan, and the loan shall be payable in equal weekly or monthly installments.
- (2) The applicant for such loan shall subscribe for and shall pledge one (1) or more shares of stock of the association or the association may require the applicant for such loan to subscribe for and pledge shares or fractional shares of stock, equal, when paid up, to the amount of the loan. Payment of dues and interest shall be credited upon the loan and shares in accordance with the direct reduction plan adopted. In consideration of making loans upon such plan no dividend shall be declared or paid or credited upon amounts credited as dues or principal upon such loans, but all payments, made on the loans shall be first applied to interest due to the date of respective payments and the balance applies as dues on principal, and interest shall be collected only on the balance. When the amount paid in as dues and credited as payment on the shares as calculated equals the value of a share or shares, such shares shall be considered paid in full and automatically canceled but such cancellation shall in no manner affect or reduce the stipulated weekly or monthly installment payments provided to be paid in the note or mortgage given to evidence and secure the payment of the loan. No borrower shall be permitted more than one (1) vote for any and all shares owned by him, which are pledged as security for a loan.
- (3) When any such installment becomes due and remains unpaid for six (6) weeks after it has become due and payable, then all the balance of such installments, both due and to become due, shall immediately become due and payable at the option of the holder of the note, and the borrower shall be notified of the delinquency, and payments shall be demanded, by mail with postage prepaid to the address of the borrower as it appears on the books of the association. If the delinquent payments of principal and interest are not paid within thirty (30) days from the mailing of the notice, then all money paid in as dues or principal and such shares, may be forfeited by the association and applied first to the payment of interest due and the balance on principal and suit may be brought to enforce payment of the note and mortgage.
- (4) Associations may make loans on the sole security of savings accounts or savings certificates. No such loan shall exceed the withdrawal value of the accounts owned or savings certificates or otherwise pledged for or by the borrower. No such loan shall be made when an association has applications for withdrawal which have been on file more than sixty (60) days and not reached for payment.
- (5)
 - (a) Associations may make loans on a reduction plan where the reduction of loan or credit upon loan shall be made at the end of every semiannual period. The applicants for such loans shall subscribe for shares equal, when paid up, to the amount of such loans.
 - (b) The bylaws shall prescribe the interest rate and duration of the loan, and the loan shall be payable in equal weekly or monthly installments. Payment of dues, interest, and premium, shall be credited upon the semiannual reduction plan. At the end of each semiannual period, the dues paid, and any dividends credited, shall be credited upon the loan.
 - (c) All payments made on the loan shall first be credited to payment of interest and premium, and the balance, with dividends credited, shall be applied on principal at the end of every semiannual period. After such credit, interest shall be charged on the balance. When the amount paid is as dues together with dividends credited, equals the par value of the shares, such shares shall automatically be canceled, and the mortgage released.
 - (d) All loans made under this plan shall be subject to the provisions relating to repayment of loans, and relating to default in payment of dues and interest as provided in this subtitle.
- (6) Associations may make without regard to the foregoing any loan, secured or unsecured, which is insured or guaranteed in any manner and in any amount by the United States or any instrumentality thereof.
- (7) In the case of loans made under subsections (4), (5), and (6) of this section, in the event the ownership of the real estate security or any part thereof becomes vested in a person other than the party or parties originally executing the security instruments, and provided there is not an agreement in writing to the contrary, an association may, without notice to such party or parties, deal with such successor or successors in interest with reference to said mortgage and the debt thereby secured in the same manner as with such party or parties, and

may forbear to sue or may extend time for payment of or otherwise modify the terms of the debt secured thereby, without discharging or in any way affecting the original liability of such party or parties thereunder or upon the debt thereby secured.

- (8) Associations may make property improvement loans to home owners and other property owners for maintenance, repair, modernization and improvement of their properties and loans for the financing of mobile homes with or without security, provided that no such loans made at rates in excess of those permitted by KRS 360.010 shall exceed the rate provided by Title I of the Federal Housing Act of 1934, as amended and the Servicemen's Readjustment Act of 1944, as amended, and provided, further, that not in excess of twenty-five percent (25%) of assets of the association shall be so invested.
- (9) The power to make loans shall include:
 - (a) The power to purchase loans of any type that the association may make and
 - (b) The power to make loans upon the security of loans of any type that the association may make.
- (10) Associations may participate with other lenders in loans of any type that such an association may otherwise make, provided that the other participants are instrumentalities of or corporations owned wholly or in part by the United States or this state, or are associations organized under the laws of this state, or are associations or corporations insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation, or are life insurance companies with assets in excess of one hundred million dollars (\$100,000,000), or are employees' or self-employed persons' trusts qualified and exempt from federal income tax under the provisions of the laws of the United States.
- (11) Associations may sell without recourse any loan, including any participating interests therein, at any time, provided that the total dollar amount of such loans sold, including such sale, within the calendar year beginning January 1 immediately preceding the date of such sale, does not exceed a sum equivalent to twenty-five percent (25%) of the dollar amount of all loans and participating interests in loans held by such association at the beginning of such calendar year; provided, further, that the *commissioner*~~[executive director]~~, upon application of the association showing good cause, may authorize the sale of a greater amount during a calendar year. Notwithstanding the limitations of this subsection, loans may be assigned with recourse to any federal home loan bank of which the association is a member.
- (12) Associations may service mortgages. The maximum principal amount of mortgages thus serviced by an association at any one (1) time shall not exceed two-thirds (2/3) of the amount of the savings liability of such association.
- (13) Provided, however, that the ability of savings and loan associations to make such loans as set forth in this section, which are not insured or guaranteed as herein set forth, shall be contingent and conditioned upon the savings and loan association being fully insured by the Federal Savings and Loan Insurance Corporation as provided by Title IV of the National Housing Act of 1934, as amended.
- (14) The *commissioner*~~[executive director]~~ is authorized and directed to prescribe such rules, regulations, and forms as are deemed to be necessary and appropriate to accomplish the basic purposes of and the provisions contained within this subtitle.

➔Section 693. KRS 286.5-571 is amended to read as follows:

If conversion, merger or consolidation as provided in KRS 286.5-561 is authorized, a copy of the resolutions adopted with respect thereto, verified by the affidavit of the president or a vice president and the secretary or assistant secretary of the association, shall be filed in the office of the *commissioner*~~[executive director]~~ within ten (10) days from the date of the meeting.

➔Section 694. KRS 286.5-581 is amended to read as follows:

- (1) If conversion, merger or consolidation under KRS 286.5-561 is authorized, the officers and directors shall, within six (6) months from the date of the adoption of the resolution, take the steps necessary to effect a conversion, merger or consolidation of the association into a federal savings and loan association, and upon such terms as may then be agreed upon between the board of directors of the association and the federal home loan bank board, or other proper federal authority. The conversion, merger or consolidation shall be void if not consummated within eighteen (18) months.

- (2) Upon the filing in the office of the **commissioner**~~[executive director]~~ of a certified copy of the charter or authorization issued to the association by the federal home loan bank board, or other proper federal authority, or of a certificate showing the organization of the association as a federal association, certified to by the federal home loan bank board, or its authorized representative, the association shall cease to be a state association and shall be a federal association, except that the corporate existence of the state association shall continue for three (3) years for the purpose of prosecuting or defending suits by or against it, and enabling it to close its affairs.

➔Section 695. KRS 286.5-611 is amended to read as follows:

- (1) Any federal savings and loan association may convert itself into a state-chartered association upon a vote of two-thirds (2/3) or more of the votes of members of such federal savings and loan association cast at an annual meeting or at any special meeting called to consider such action. Copies of the minutes of the proceedings of such meeting, verified by the affidavit of the secretary or an assistant secretary, shall be filed in the office of the **commissioner**~~[executive director]~~ and mailed to the federal home loan bank board, Washington, D. C., within ten (10) days after such meeting. The verified copies of the proceedings of the meeting when so filed shall be presumptive evidence of the meeting and action taken at such meeting.
- (2) At the meeting at which conversion is voted upon, the members shall also vote upon the directors who shall be the directors of the state-chartered association after conversion takes effect. Such directors then shall execute two (2) copies of the petition for certificates of incorporation provided for in this subtitle and two (2) copies of the bylaws, as provided in this subtitle.
- (3) The **commissioner**~~[executive director]~~ shall insert in the certificates of incorporation, at the end of the paragraph preceding the testimonium clause, the following: "This association is incorporated by conversion from a federal savings and loan association."
- (4) Each of the directors chosen for the association shall sign and acknowledge the petition for certificates of incorporation as subscribers thereto and the proposed bylaws as incorporators of the association.
- (5) The provisions of this subtitle shall, so far as applicable, apply to such conversion under this subtitle. The **commissioner**~~[executive director]~~ may provide, by regulation for the procedure to be followed by any such federal savings and loan association converting into a state-chartered association. All the provisions regarding property and other rights contained in KRS 286.5-591 shall apply, in reverse order, to the conversion of a federal savings and loan association into a state-chartered association, so that the state-chartered association shall be continuation of the corporate entity of the converting federal association and continue to have all of its property and rights.

➔Section 696. KRS 286.5-621 is amended to read as follows:

- (1) Any association may reorganize or go into voluntary liquidation by the votes of its members owning at least two-thirds (2/3) of the shares in force at the time the vote is taken.
- (2) Whenever the members desire to reorganize or go into voluntary liquidation, the board of directors or the committee of members appointed for that purpose shall submit the question of reorganization or voluntary liquidation to a vote of the members at a special meeting of members, but no association shall reorganize or go into voluntary liquidation without the approval of the **commissioner**~~[executive director]~~.

➔Section 697. KRS 286.5-631 is amended to read as follows:

- (1) Whenever a meeting of the members is to be called as provided in KRS 286.5-621, the board of directors or the committee shall convene a special meeting of the members at the principal office of the association at such time as the directors or committee determine.
- (2) Notice of meeting shall be given to every member of the association by mailing at least ten (10) days before the time fixed for the meeting, a notice properly addressed to every member at his last recorded address. The directors or committee shall also cause a notice of the meeting to be certified to the **commissioner**~~[executive director]~~ at the time notice is given to the members.

➔Section 698. KRS 286.5-641 is amended to read as follows:

- (1) The directors or committee shall prepare or have prepared a full exhibit of the affairs, property and condition of the association, including an itemized statement of its assets and liabilities, which exhibits shall be sworn to by a majority of the directors or of the committee before some officer authorized to take acknowledgments of

deeds in this state. The report shall be printed and a copy thereof mailed along with the notice convening the special meeting.

- (2) The original exhibit and the notice of meeting shall be filed with the **commissioner**~~{executive director}~~ at the time they are mailed to the members.

➔Section 699. KRS 286.5-651 is amended to read as follows:

At the special meeting all votes taken shall be by ballot, and votes by the members owning at least two-thirds (2/3) of its shares in force at the time the vote is taken shall be necessary to carry any resolution for the reorganization or liquidation of the association. If the members pass a resolution for reorganization or liquidation, a copy of the resolution, certified by the presiding officer and secretary of the meeting, and containing full instructions and defining the authority and compensation of the parties to be named therein, shall be given to the parties named, and a like duly certified copy of the resolution, instructions and authority shall immediately be filed with the **commissioner**~~{executive director}~~ by the parties named in any resolution before they enter upon the discharge of their duties. Before the parties named in any resolution assume the duties of their trust, they shall become bound with two (2) or more sufficient sureties or some surety company authorized to do business in this state in such sum as the **commissioner**~~{executive director}~~ approves.

➔Section 700. KRS 286.5-690 is amended to read as follows:

The **commissioner**~~{executive director}~~ and examiners shall not be interested in an association, directly or indirectly, either as creditor (except that each may be a savings account holder and receive dividends thereon), director, officer, employee, borrower, trustee or attorney, nor shall any one (1) of them receive, directly or indirectly, any payment, compensation or gratuity from any association.

➔Section 701. KRS 286.5-700 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall have general supervision over all associations and corporations which are subject to the provisions of this subtitle. He shall enforce the purposes of this subtitle by use of the powers herein conferred and by reference to the courts when required.
- (2) Every approval by the **commissioner**~~{executive director}~~ given pursuant to the provisions of this subtitle and every communication having the effect of an order or instruction to any association shall be in writing signed by the **commissioner**~~{executive director}~~ under seal, and shall be sent by certified mail, return receipt requested to the association affected, addressed to the president at the home office of the association.

➔Section 702. KRS 286.5-702 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall have full authority to issue administrative regulations and promulgate orders to carry out the provisions of this subtitle.

➔Section 703. KRS 286.5-705 is amended to read as follows:

- (1) Notwithstanding any restrictions elsewhere contained in this subtitle the **commissioner**~~{executive director}~~ may prescribe, amend and repeal regulations authorizing state-chartered savings and loan associations to make any loans and any investments, accept savings accounts and deposits, and provide for the payments of dividends or interest thereon, and other matters under the same terms, conditions, limitations, restrictions and safeguards which such associations could make or do were they operating as federal savings and loan associations at the time such authority is granted, provided that such regulations shall have as their objective the placing of state-chartered savings and loan associations on a substantial, competitive, operating parity with federal savings and loan associations, in order that the dual system of savings associations may be preserved.
- (2) Nothing herein contained shall be construed to repeal, modify or alter the restrictions of subsection (4) of KRS 286.5-061 with respect to branching.

➔Section 704. KRS 286.5-710 is amended to read as follows:

- (1) The affairs of every association not in liquidation shall be examined by the **commissioner**~~{executive director}~~ or an examiner of the **commissioner**~~{executive director}~~ as often as is deemed necessary, and at least once in every year, without any notice to the association, its officers or agents. The examiner shall make a thorough examination into the condition, workings and affairs of the association. All books, papers and records and assets of the association shall be subject to his inspection.

- (2) The examiner shall file a report of his findings in the office of the **commissioner**~~[executive director]~~ and the **commissioner**~~[executive director]~~ shall furnish a copy of such report to the association examined. The examiner shall report any violation of law or any unauthorized or unfit practices or any failure to keep and have correct amounts of business of the association, and if he finds that any director has willfully neglected to attend meetings regularly, he shall recommend the discharge of such director.
- (3) No examiner acting under the provisions of this subtitle shall disclose to any person, other than officially to the **commissioner**~~[executive director]~~, in the report made to him or in compliance with the order of some court, the names of stockholders or members in any association, or any information respecting their private accounts.
- (4) All reports and information in the hands of the **commissioner**~~[executive director]~~ concerning federal associations, or federally insured associations, shall be subject to inspection by the federal home loan bank and the Federal Home Loan Bank Board and their authorized representatives.

➔Section 705. KRS 286.5-720 is amended to read as follows:

- (1) In lieu of the examination provided for in KRS 286.5-710, the **commissioner**~~[executive director]~~ may accept any examination made by a federal home loan bank, the federal home loan bank board, or by the Federal Savings and Loan Insurance Corporation. Two (2) copies of any audit, signed and certified by the auditor making such audit, shall be filed promptly with the **commissioner**~~[executive director]~~.
- (2) Whenever, in the judgment of the **commissioner**~~[executive director]~~, the condition of any association renders it necessary or expedient to make an extra examination or to devote any extraordinary attention to its affairs, the **commissioner**~~[executive director]~~ shall cause such work to be done. A full and complete copy of the report of all examinations shall be furnished to the association examined. Such report of examination or audit shall be presented by the president to the board of directors at its next regular or special meeting.
- (3) The **commissioner**~~[executive director]~~, or *the commissioner's*~~[his]~~ examiners or auditors, shall have access to all books and papers of an association which relate to its business, and books and papers kept by any officer, agent, or employee, relating to or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of any such association or any other person in relation to its affairs, transactions, and conditions, and may require and compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

➔Section 706. KRS 286.5-740 is amended to read as follows:

If the **commissioner**~~[executive director]~~, as a result of any examination or from any report made to him, finds that any association is violating the provisions of its certificate of incorporation or bylaws, or any state or federal laws, or any lawful order or regulation of the **commissioner**~~[executive director]~~, *the commissioner*~~[he]~~ shall, by a formal written order delivered to the association pursuant to subsection (2) of KRS 286.5-700, state any alleged violation, together with a statement of the facts alleged to be such violation, and order discontinuance of such violation and conformance with all requirements of law. The order shall specify the effective date thereof, which may be immediate or may be at a later date, and such order shall remain in effect until withdrawn by the **commissioner**~~[executive director]~~ or until terminated by a court order. Such order of the **commissioner**~~[executive director]~~, upon application made on or after the effective date thereof by the **commissioner**~~[executive director]~~ to a court of general jurisdiction in the county in which the home office of the association is located, shall be enforced ex parte and without notice by an order to comply, entered by such court. Any association affected by such order of the **commissioner**~~[executive director]~~ may, after receipt thereof, apply within thirty (30) days to the court for an immediate hearing and order suspending the order of the **commissioner**~~[executive director]~~ until such time as the hearing has been completed. The hearing of such application to the court shall be upon such notice to the **commissioner**~~[executive director]~~ as the court shall provide. Whether upon application by the **commissioner**~~[executive director]~~ or by the association, the court shall have power and shall, after service of process, adjudicate the question and enter the proper order or orders and enforce the same.

➔Section 707. KRS 286.5-750 is amended to read as follows:

- (1) If the **commissioner**~~[executive director]~~, as a result of any examination or from any report made to *the commissioner*~~[him]~~, believes that the public interest may be served by the appointment of a conservator, applies to a court of general jurisdiction in the county in which the home office of the association is located for the appointment of a conservator court may appoint a conservator if it finds that the association:
 - (a) Is in an impaired condition, or

- (b) Is in violation of an order or injunction, as authorized by this section, which has become final in that the time to appeal has expired without appeal, or a final order entered from which there can be no appeal.
- (2) The **commissioner**~~[executive director]~~, **the commissioner's**~~[his]~~ examiner, or another person may be appointed by the court as conservator, and a certified copy of the order of the court making the appointment shall be evidence thereof. The conservator shall have the power and authority provided in this subtitle and such other power and authority as is expressed in the order of the court. The conservator shall endeavor promptly to remedy the situations complained of in the petition for his **or her** appointment.
- (3) Within six (6) months of the date of the appointment, or within twelve (12) months if the court extends the six (6) months' period, the association shall be returned to its board of directors and thereafter shall be managed and operated as if no conservator had been appointed, or a receiver shall be appointed as provided in KRS 286.5-760.
- (4) If the **commissioner**~~[executive director]~~, or examiner, is appointed conservator he **or she** shall receive no additional compensation, but if another person is appointed, then the compensation of the conservator, as determined by the court, shall be paid by the association.
- (5) A certified copy of the order of the court discharging the conservator and returning such association to its directors shall be sufficient evidence thereof.
- (6) Any conservator appointed shall have all the rights, powers, and privileges possessed by the officers, board of directors, and members of the association.
- (7) The conservator shall not retain special counsel or other experts, incur any expense other than normal operating expenses, or liquidate assets except in the ordinary course of operations.
- (8) The directors and officers shall remain in office and the employees shall remain in their respective positions, but the conservator may remove any director, officer, or employee, if the order of removal of a director or officer is approved in writing by the **commissioner**~~[executive director]~~.
- (9) While the association is in the charge of a conservator, members of such association shall continue to make payments to the association in accordance with the terms and conditions of their contracts, and the conservator, in his discretion, may permit savings account members to withdraw their accounts, from the association pursuant to the provisions of this subtitle or under such rules and regulations as the **commissioner**~~[executive director]~~ may prescribe. The conservator shall have power to accept savings accounts and additions to savings accounts, but any amounts received by the conservator may be segregated if the **commissioner**~~[executive director]~~ so orders in writing; if so ordered, such amounts shall not be subject to offset and shall not be used to liquidate any indebtedness of such association existing at the time the conservator was appointed for it or any subsequent indebtedness incurred for the purposes of liquidating the indebtedness of any such association existing at the time such conservator was appointed. All expenses of the association during such conservatorship shall be paid by the association.

➔Section 708. KRS 286.5-760 is amended to read as follows:

- (1) If in the judgment of the **commissioner**~~[executive director]~~ the public interest requires it, he may apply to a court of general jurisdiction in the county in which the home office of any association is located for the appointment of a receiver. Such court is authorized to appoint a receiver if it finds that such association:
- (a) Is in an impaired condition; or
- (b) Is in violation of an order or injunction, as provided in KRS 286.5-740 and 286.5-750, which has become final in that the time to appeal has expired without appeal or a final order entered from which there can be no appeal. The **commissioner**~~[executive director]~~, an examiner or other person may be appointed by the court as receiver, and a certified copy of the order of the court making such appointment shall be evidence thereof. Such receiver shall have all the powers and authority of a conservator, plus the power to liquidate, and shall have such other powers and authority as may be expressed in the order of the court. If the **commissioner**~~[executive director]~~ or an examiner is appointed receiver, he shall receive no additional compensation, but if another person is appointed, then the compensation of the receiver, as determined by the court, shall be paid from the assets of the association.

- (2) If the association is an institution insured by the Federal Savings and Loan Insurance Corporation, the Federal Savings and Loan Insurance Corporation shall be tendered appointment as receiver or coreceiver. If it accepts such appointment, it may, nevertheless, make loans on the security of or purchase at public or private sale any part or all of the assets of the association of which it is receiver or coreceiver, provided such loan or purchase is approved by the court.
- (3) The procedure in such receivership action shall be in all other respects in accordance with the practice in the court, including all rights of appeal and review. The directors, officers and attorneys of an association in office at the time of the initiation of any proceeding under this or the preceding section are expressly authorized to contest any such proceeding and shall be reimbursed for reasonable expenses and attorneys' fees by the association or from its assets. Any court having any such proceeding before it shall allow and order paid reasonable expenses and attorneys' fees for such directors, officers and attorneys.

➔Section 709. KRS 286.5-780 is amended to read as follows:

If a controversy arises between the **commissioner**~~{executive director}~~ and an association with respect to any question of law or regulation or with respect to any question involving immeasurable or irreparable damage to the association, prior to an administrative or judicial hearing, the association or the **commissioner**~~{executive director}~~ may apply to any court of competent jurisdiction of the county in which the home office of the association is located for a declaratory judgment as to such question, and such court shall decide the controversy on its merits in accordance with the weight of the evidence, and such court shall have full power to enforce its orders.

➔Section 710. KRS 286.5-790 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall compile the reports of all associations required to be filed in **the department**~~{his office}~~ and shall present the reports, together with such additional information concerning associations as may be of general interest, in his annual report to the Governor.

➔Section 711. KRS 286.5-800 is amended to read as follows:

Excepting banks, no association or foreign association or any other person shall advertise or represent or accept or offer to accept any savings accounts in this state as insured accounts or as savings accounts of an insured institution unless the same are insured as provided in KRS 286.5-081, and any violation of this provision shall be a separate offense for each day of such violation and shall be a misdemeanor and shall be enjoined upon the application of the Attorney General, the **commissioner**~~{executive director}~~ or other state prosecuting official, or by any association in this state.

➔Section 712. KRS 286.5-910 is amended to read as follows:

- (1) Any savings and loan association holding company which proposes to acquire control of a Kentucky state chartered savings and loan association, or of a savings and loan association holding company which controls a Kentucky state chartered savings and loan association, shall concurrently file with the **commissioner**~~{executive director}~~ copies of the application filed with the applicable federal supervisory authority. The **commissioner**~~{executive director}~~ shall approve such acquisition within ninety (90) days of acceptance of a complete application if he **or she** finds that:
- (a) The terms of the acquisition are in accordance with the laws of this state;
 - (b) The financial condition, or the competence, experience and integrity of the acquiring company or its principals are such as will not jeopardize the financial stability of the acquired savings and loan association or savings and loan association holding company;
 - (c) The public convenience and advantage will be served by the acquisition; and
 - (d) No federal regulatory authority whose approval is required has disapproved the transaction because it would result in a monopoly or substantially lessen competition, or has otherwise disapproved the transaction.
- (2) A nonrefundable fee shall accompany each application and shall be set by the **commissioner**~~{executive director}~~ in accordance with the fee-setting principles set out in KRS 286.3-480.
- (3) The **commissioner**~~{executive director}~~ may enter into cooperative agreements with federal or state regulatory authorities to examine an out-of-state savings and loan association that is controlled by a savings and loan association holding company having its principal place of business in this state, or accept reports of examinations of such out-of-state regulatory authorities in lieu of conducting examinations.

- (4) The **commissioner**~~{executive director}~~ may enter into cooperative agreements with federal or state regulatory authorities to exchange confidential information and reports of examination relating to interstate acquisitions of savings and loan associations and savings and loan association holding companies.
- (5) The cost of an examination shall be assessed against and paid by the savings and loan association or savings and loan association holding company examined. The assessment for the examination shall be calculated in the same manner as that used for savings and loan association examinations.

➔Section 713. KRS 286.5-991 is amended to read as follows:

- (1) Any person who violates any provision of subsection (2) of KRS 286.5-041 shall be fined not more than five thousand dollars (\$5,000), and each day of violation constitutes a separate offense.
- (2) Any person guilty of conduct for which civil liability is provided for by subsection (1) of KRS 286.5-231 shall be punished in the manner prescribed for stealing property of the same value as the property so used, disposed of, assigned, transferred or canceled.
- (3) Every association, officer, agent or manager that fails to make the report required by KRS 286.5-131, and to furnish any information called for by the **commissioner**~~{executive director}~~ under oath and attestation of its officers shall be severally fined not less than one hundred dollars (\$100).
- (4) The president and secretary of any association that fails to make and file any report required by this subtitle within thirty (30) days after it is due, shall be fined not more than one hundred dollars (\$100).
- (5) Any examiner who violates subsection (3) of KRS 286.5-710 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (6) Any examiner in the office who knows of the insolvency or unsafe condition of any association, or knows that it is inexpedient to permit an association to continue business, and who neglects to immediately present a signed report of that fact to the **commissioner**~~{executive director}~~, or who illegally discloses any information obtained by him *or her* by virtue of his *or her* office, or who violates any of the provisions of this subtitle or fails to perform any duty imposed upon him by this subtitle except as provided in subsection (5), shall be fined not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) for each offense.
- (7) Any **commissioner**~~{executive director}~~ who knows of the insolvency or unsafe condition of any association or knows that it is inexpedient to permit an association to continue business, and who willfully fails to take the action provided in this subtitle, or who illegally discloses any information obtained by him *or her* by virtue of his *or her* office, or violates any of the provisions of this subtitle, or fails to perform any duty imposed upon him *or her* by this subtitle, shall forfeit ~~the his~~ office and be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each offense.
- (8) Except as provided in subsection (3), any association which knowingly fails to make any report required by law or by the **commissioner**~~{executive director}~~ within the specified time, or to include any matter required, or to pay the fees for filing reports or for examinations when due, shall be fined twenty-five dollars (\$25) for each day of delinquency. The aggregate penalty for each offense shall not exceed two hundred and fifty dollars (\$250).
- (9) Every person or association that willfully makes or transmits a false report, or refuses to submit its books, papers or assets for examination, or any officer of an association who refuses to be examined under oath concerning the affairs of the association, shall severally be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (10) Whenever any penalty imposed by this section is not paid, the Attorney General shall institute an action, in the name of the state, in the Franklin Circuit Court or the Circuit Court of the county in which the offense was committed, for the recovery of the penalty.
- (11) Any association that violates KRS 286.5-805 by not carrying the required statement, or by carrying a statement that an application for insurance is pending when in fact it is not, shall be fined five hundred dollars (\$500) for each offense.

➔Section 714. KRS 286.6-005 is amended to read as follows:

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

- (1) "Credit union" means a cooperative, nonprofit association, incorporated under this subtitle, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.
- (2) "~~Commissioner~~~~Executive director~~" means the *commissioner*~~executive director~~ of financial institutions.

➔Section 715. KRS 286.6-012 is amended to read as follows:

Any party aggrieved by a decision of the *commissioner*~~executive director~~ under the provisions of KRS 286.6-015, 286.6-035, 286.6-055, 286.6-065, 286.6-700, or 286.6-710 may request an administrative hearing which shall be conducted in accordance with KRS Chapter 13B.

➔Section 716. KRS 286.6-015 is amended to read as follows:

- (1) Any seven (7) or more residents of this state, of legal age, who have a common bond referred to in KRS 286.6-107 may organize a credit union and become charter members thereof by complying with this section.
- (2) The subscribers shall execute in duplicate articles of incorporation and agree to the terms thereof, which articles shall state:
 - (a) The name, which shall include the words "credit union" and which shall not be the same as that of any other credit union in this state, and the location where the proposed credit union is to have its principal place of business;
 - (b) That the existence of the credit union shall be perpetual;
 - (c) The par value of the shares of the credit union; and
 - (d) The names and addresses of the subscribers to the articles of incorporation, and the number of shares subscribed to by each, which shall be determined by the board.
- (3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this subtitle, and execute the same in duplicate.
- (4) The subscribers shall select at least five (5) qualified persons who agree to serve on the board of directors, and at least three (3) other qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree.
- (5) The subscribers shall forward any required fee, the articles of incorporation, the bylaws and the agreements to serve to the *commissioner*~~executive director~~, who shall act upon the application for a charter within thirty (30) days. The *commissioner*~~executive director~~ shall issue a certificate of approval, if the articles and bylaws are in conformity with this subtitle and ~~the commissioner~~~~he~~ is satisfied that:
 - (a) The characteristics of the sponsoring group are favorable to the economic viability of such credit union;
 - (b) The standing and character of the proposed organizers are such as to give assurance that its affairs will be properly administered; and
 - (c) The share and deposit insurance requirements of KRS 286.6-405 will be met.
- (6) The *commissioner*~~executive director~~ shall return a copy of the bylaws and the articles to the applicants or their representatives, which shall be preserved in the permanent files of the credit union.
- (7) The subscribers for a credit union charter may not transact any business until formal approval of the charter has been received.

➔Section 717. KRS 286.6-025 is amended to read as follows:

In order to simplify the organization of credit unions, the *commissioner*~~executive director~~ shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this subtitle, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall be available without charge to persons desiring to organize a credit union.

➔Section 718. KRS 286.6-035 is amended to read as follows:

(1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the **commissioner**~~{executive director}~~ who shall approve or disapprove the amendments within sixty (60) days.

(2) Amendments shall become effective upon approval in writing by the **commissioner**~~{executive director}~~.

➔Section 719. KRS 286.6-055 is amended to read as follows:

(1) A credit union may change its principal place of business within this state upon written authorization by the **commissioner**~~{executive director}~~. If the **commissioner**~~{executive director}~~ has not notified a credit union of his or her action on an application to change the place of business within fifteen (15) calendar days of the date the application was received by the **commissioner**~~{executive director}~~, the credit union may proceed with the change in its place of business.

(2) A credit union may maintain service facilities, including automated teller machines, at locations other than its principal office upon written authorization by the **commissioner**~~{executive director}~~ or as permitted by administrative regulation. The maintenance of these facilities must be reasonably necessary to furnish service to its members.

(3) A credit union may join with one (1) or more credit unions in the operation of a service facility to meet member needs, including an automated teller machine, upon written authorization by the **commissioner**~~{executive director}~~ or as permitted by administrative regulation.

➔Section 720. KRS 286.6-065 is amended to read as follows:

(1) A credit union organized in another state may conduct business as a credit union in this state with the approval of the **commissioner**~~{executive director}~~. The **commissioner**~~{executive director}~~ shall find that the out-of-state credit union:

- (a) Is a credit union organized under laws similar to this subtitle;
- (b) Is financially solvent;
- (c) Has account insurance comparable to that required for credit unions incorporated under this subtitle;
- (d) Is effectively examined and supervised by the supervisory authority of the state in which it is organized; and
- (e) Needs to conduct business in this state to adequately serve its members in this state.

(2) The out-of-state credit union shall agree to:

- (a) Grant loans at rates not in excess of the rates permitted for credit unions incorporated under this subtitle;
- (b) Comply with the same consumer protection provisions that credit unions incorporated under this subtitle must obey;
- (c) Designate and maintain an agent for the service of process in this state; and
- (d) Submit copies of reports to the **commissioner**~~{executive director}~~ when requested.

(3) The **commissioner**~~{executive director}~~ may examine the out-of-state credit union or enter into cooperative or reciprocal agreements with the out-of-state credit union's regulatory authority for periodic examinations.

➔Section 721. KRS 286.6-070 is amended to read as follows:

Credit unions shall be under the supervision of the **commissioner**~~{executive director}~~, who may make general rules and regulations, and special rulings, demands and findings necessary for the proper conduct and regulation of the business. Such action by the **commissioner**~~{executive director}~~ shall be in addition to and not in conflict with the provisions of this subtitle.

➔Section 722. KRS 286.6-075 is amended to read as follows:

A credit union organized under this subtitle may:

- (1) Make contracts;
- (2) Sue and be sued;

- (3) Adopt and use a common seal and alter same;
- (4) Acquire, lease, hold, assign, pledge, hypothecate, sell and otherwise dispose of property, either in whole or in part, necessary or incidental to its operations;
- (5) Offer its members and other credit unions various classes of shares, share certificates, deposits or deposit certificates, upon written authorization of the *commissioner*~~[executive director]~~;
- (6) Lend its funds to its members as hereinafter provided;
- (7) Borrow from any source provided that a credit union must secure approval from the *commissioner*~~[executive director]~~ in writing of its intention to borrow in excess of an aggregate of forty percent (40%) of its capital;
- (8) Discount or sell any of its assets, and purchase the assets of another credit union, subject to the approval of the *commissioner*~~[executive director]~~;
- (9) Make deposits in legally chartered banks, savings banks, savings and loan associations, trust companies, and other credit unions, including corporate credit unions, and invest funds as otherwise provided in KRS 286.6-585;
- (10) Hold membership in other credit unions organized under this subtitle or other acts, and in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law;
- (11) Engage in activities and programs as requested by the federal government or by this state or any agency or political subdivision thereof, when approved by the *commissioner*~~[executive director]~~ and not inconsistent with this subtitle; and
- (12) Act as fiscal agent for and receive payments on shares and deposits from the federal government, this state, or any agency or political subdivision thereof.

➔Section 723. KRS 286.6-090 is amended to read as follows:

Each credit union shall make a report of its condition to the *commissioner*~~[executive director]~~, on blank forms to be supplied by the *Department*~~[Office]~~ of Financial Institutions on the dates of the calls made to state banks. Notice of the calls shall be sent out by the *commissioner*~~[executive director]~~. The reports shall be verified by the oath of a majority of the members of the supervisory committee, or by the oath of the president and treasurer or secretary, and further reports shall be made as the *commissioner*~~[executive director]~~ at any time demands.

➔Section 724. KRS 286.6-092 is amended to read as follows:

- (1) If any credit union fails to make the report prescribed by KRS 286.6-090 within fifteen (15) days after it is due, or fails to pay the charges required by this subtitle, including the charges for delay in filing reports, the *commissioner*~~[executive director]~~ shall give notice to the credit union of his intention to revoke the certificate of approval of the corporation. If failure continues for fifteen (15) days after the notice, the *commissioner*~~[executive director]~~ may, in his discretion, revoke the certificate of approval and take possession of the property and business of the credit union until such time as the *commissioner*~~[executive director]~~ permits it to resume business, or until its affairs are liquidated.
- (2) If the *commissioner*~~[executive director]~~ has knowledge or reasonable cause to believe that any credit union, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the credit union has engaged in violations of law, or charter, bylaw, or administrative regulation of the *department*~~[office]~~, or in unsafe or unsound business practices, or a breach of any written agreement with the *department*~~[office]~~, the *commissioner*~~[he]~~ may issue and serve upon the credit union, director, officer, employee, agent, or other person a notice of charges containing a statement of facts with respect to alleged violations or practices and shall fix the time and place at which an administrative hearing shall be held to determine whether an order to cease and desist should issue against the credit union, director, officer, employee, agent, or other person. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (3) Unless the party or parties so served shall appear at the hearing personally or by a duly-authorized representative, they shall be deemed to have consented to the issuance of the cease and desist order.
- (4) If there is consent, or if upon the record made at any hearing the *commissioner*~~[executive director]~~ shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the *commissioner*~~[he]~~ may issue and serve upon the credit union, director, officer, employee, agent, or other

person a final order to cease and desist from any violation or practice and, further, to take affirmative action to correct the conditions resulting from any violation or practice.

- (5) If the **commissioner**~~{executive director}~~ shall determine that the violation or practice, as specified in the notice of charges pursuant to subsection (2) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the credit union, or is likely to otherwise seriously prejudice the interests of its members, **the commissioner**~~he~~ may issue an emergency order pursuant to KRS 13B.125 requiring the credit union, director, officer, employee, agent, or other person to immediately upon service cease and desist from any violation or practice.
- (6) Unless set aside, limited, or suspended, as provided by subsection (7) of this section, an emergency cease and desist order shall remain effective and enforceable pending completion of the administrative hearing.
- (7) Within ten (10) days after service of an emergency cease and desist order, the party or parties served may apply to the Circuit Court of the residence of the individual or of the principal office of the credit union for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending completion of an administrative hearing, and the court shall have jurisdiction to issue an injunction.
- (8) In the case of violation or threatened violation of, or failure to obey, an emergency cease and desist order or a cease and desist order issued pursuant to this section, the **commissioner**~~{executive director}~~ may apply to the Circuit Court of the residence of the individual or of the principal office of the credit union for an injunction to enforce the order, and it shall be the duty of the court to issue the injunction.

➔Section 725. KRS 286.6-095 is amended to read as follows:

Notwithstanding any other provision of law, the **commissioner**~~{executive director}~~ may make reasonable rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions, if **the commissioner**~~he~~ deems it reasonably necessary for the well-being of such credit unions.

➔Section 726. KRS 286.6-100 is amended to read as follows:

- (1) Credit unions shall be under the supervision of the **commissioner**~~{executive director}~~ and shall make financial reports to **the commissioner**~~him~~ as and when he *or she* may require, but at least annually. Each credit union shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the **commissioner**~~{executive director}~~. The **commissioner**~~{executive director}~~ shall fix a scale of examination fees to be paid by credit unions, giving due consideration to the time and expense incident to such examinations and to the ability of credit unions to pay such fees, which fees shall be assessed and paid by each credit union promptly after completion of such examination.
- (2) In lieu of the examination provided for in this section, the **commissioner**~~{executive director}~~ may accept any examination made by the national credit union administration. One (1) copy of the examination report shall be promptly submitted to the **commissioner**~~{executive director}~~ for processing and analysis by the **Department**~~{Office}~~ of Financial Institutions.
- (3) When, in the judgment of the **commissioner**~~{executive director}~~, the condition of any credit union organized under the provisions of this subtitle renders it necessary or expedient to make an examination or to devote any extraordinary attention to its affairs, the **commissioner**~~{executive director}~~ shall cause such work to be done. A full and complete copy of the report of all examinations shall be furnished to the credit union so examined. Such report of examination shall be presented by the president to the board of directors at its next regular or special meeting.

➔Section 727. KRS 286.6-105 is amended to read as follows:

In undertaking the examination of any credit union, neither the Commonwealth of Kentucky, the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Financial Institutions, nor any examiner employed by the Commonwealth shall become liable to any depositor, investor, or other obligor of said credit union by reason of said examination or omission of said examination to fully and effectively disclose the financial condition of said credit union, it being the policy of the Commonwealth of Kentucky that such examinations as are required by KRS 286.6-100 are for the purpose of determining compliance with state law and not for the purpose of protecting or guaranteeing the depositors, investors or other obligors of said credit unions.

➔Section 728. KRS 286.6-165 is amended to read as follows:

Within fifteen (15) days after election or appointment, a record of the names and addresses of the members of the board, committees and all officers of the credit union shall be filed with the **commissioner**~~[executive director]~~ on forms provided by the **department**~~[office]~~.

➔Section 729. KRS 286.6-185 is amended to read as follows:

- (1) A credit union has a special obligation of confidentiality to its members; therefore, any contrary provisions of KRS Chapter 271B notwithstanding, a credit union shall be obligated to provide a shareholder only names and addresses of its member shareholders.
- (2) No officer or director of a credit union or employee of the **department**~~[office]~~ shall release any information contained in the report of examination, except so far as necessary in the performance of his official duties as provided by law.
- (3) The **department**~~[office]~~ may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities.
- (4) Every official report concerning a credit union and every report of an examination shall be prima facie evidence of the facts therein stated for all purposes in any action in which the **department**~~[office]~~ or credit union is a party. Such reports shall not be made public except when required in proper legal proceedings.

➔Section 730. KRS 286.6-285 is amended to read as follows:

- (1) Unless the credit union has been audited by a licensed public accountant or other qualified person or firm, the supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union. It shall submit a report of each annual audit to the board of directors and the **commissioner**~~[executive director]~~ and a summary of that report to the members at the next annual meeting of the credit union.
- (2) The supervisory committee shall make or cause to be made such supplementary audits, examinations or verifications of members' accounts as it deems necessary or as are required by the **commissioner**~~[executive director]~~ or by the board of directors, and submit reports of these supplementary audits to the board of directors.

➔Section 731. KRS 286.6-296 is amended to read as follows:

- (1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report such action to the board of directors for appropriate action.
- (2) The supervisory committee by a unanimous vote may suspend any officer or member of the board of directors until the next members' meeting, which shall be held not less than seven (7) nor more than twenty-one (21) days after such suspension. At such meeting the suspension shall be acted upon by the members.
- (3) Any member of the supervisory committee may be removed by the board of directors for failure to perform his duties in accordance with this subtitle, the articles of incorporation, or the bylaws.
- (4) If the **commissioner**~~[executive director]~~ shall determine that any officer or director of a credit union has committed any violation of law, administrative regulation or of a cease and desist order which has become final, or has engaged in or participated in any unsafe or unsound practice in connection with the credit union, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such officer or director, and the **commissioner**~~[executive director]~~ determines that the credit union has suffered or will probably suffer substantial financial loss or other damages or that the interests of its members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, or that the director or officer has received financial gain by reason of the violation or practice or breach of fiduciary duty, the **commissioner**~~[executive director]~~ may serve upon such director or officer a written notice of intention to remove him *or her* from office. The violation, practice or breach must be one involving personal dishonesty on the part of such director or officer, or one which demonstrates a willful or continuing disregard for the safety or soundness of the credit union. The written notice shall serve to suspend the officer or director from office. Such suspension shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (6) of this section, shall remain in effect pending the completion of the administrative proceedings under subsection (5) of this section and until such time as the **commissioner**~~[executive director]~~ shall dismiss the charges specified in such notice or, if an order of removal is issued against the officer or director, the effective date of any such order.

- (5) A notice of intention to remove an officer or director from office shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty (30) days nor later than sixty (60) days after the date of service of such notice, unless an earlier date is set by the **commissioner**~~[executive director]~~ at the request of such officer or director and for good cause shown. Unless such officer or director shall appear at the hearing in person or by duly authorized representative, he *or she* shall be deemed to have consented to the issuance of an order of removal. In the event of such consent, or if upon the record made at any such hearing the **commissioner**~~[executive director]~~ shall find that any of the grounds specified in such notice have been established, the **commissioner**~~[executive director]~~ may issue such orders of suspension or removal from office as he *or she* deems appropriate.
- (6) Within ten (10) days after an officer or director has been suspended from office, such officer or director may apply to the Circuit Court of the residence of the individual or of the principal office of the credit union for a stay of such suspension pending the completion of the administrative proceedings pursuant to the notice served upon such officer or director, and such court shall have jurisdiction to grant such stay.
- (7) Any person aggrieved by a final order of the **commissioner**~~[executive director]~~ under subsection (5) of this section may obtain a review of the order by filing in the Circuit Court of the residence of the individual or of the principal office of the credit union a petition of appeal within ten (10) days after the rendition of a final order. A copy of the petition shall be served upon the **commissioner**~~[executive director]~~ and thereupon the **commissioner**~~[executive director]~~ or *the commissioner's*~~[his]~~ agent shall certify and file in court a copy of the record or other evidence upon which the order is entered. No objection to the order may be considered by the court unless it was argued before the **commissioner**~~[executive director]~~ or there were reasonable grounds for failure to do so.
- (8) The **commissioner**~~[executive director]~~ may apply to the Circuit Court of the residence of the individual or of the principal office of the credit union for an injunction to enforce any order under subsection (5) of this section and it shall be the duty of the court to issue such injunction.

➔Section 732. KRS 286.6-325 is amended to read as follows:

- (1) At such intervals and for such periods as the board of directors may authorize, and after provision for the required reserves, the board of directors may declare dividends to be paid on shares and share certificates from net earnings. Prior approval of the **commissioner**~~[executive director]~~ shall be required for the payment of dividends in excess of net earnings, except that if the excess is less than one percent (1%) of undivided earnings prior approval shall not be required.
- (2) Dividends may be paid at various rates, or not paid at all, with due regard to the conditions that pertain to each class of share.

➔Section 733. KRS 286.6-335 is amended to read as follows:

A credit union may offer deposits and deposit certificates to its members and other credit unions, subject to such terms, rates and conditions as the board of directors establishes and any regulations the **commissioner**~~[executive director]~~ may prescribe.

➔Section 734. KRS 286.6-345 is amended to read as follows:

Christmas clubs and vacation clubs may be operated under conditions established by the board of directors, and other special purpose share and deposit accounts may be operated with authorization from the **commissioner**~~[executive director]~~.

➔Section 735. KRS 286.6-355 is amended to read as follows:

- (1) Shares, share certificates, deposits, and deposit certificates may be withdrawn for payment to the account holder or to third parties, in such manner and in accordance with such procedures as may be established by the board of directors, subject to approval by the **commissioner**~~[executive director]~~. The board may restrict one (1) class of share so it may not be redeemed, withdrawn or transferred except upon termination of membership in the credit union.
- (2) Shares, share certificates, deposits, and deposit certificates shall be subject to any withdrawal notice requirement which may be imposed pursuant to the bylaws.

➔Section 736. KRS 286.6-405 is amended to read as follows:

- (1) Not later than December 31, 1984, a credit union shall apply for insurance on shares and deposits as provided by the national credit union administration under Title II of the Federal Credit Union Act (12 U.S.C. secs. 1781 et seq.), or alternatively, a form of comparable insurance approved by the **commissioner**~~[executive director]~~. This requirement does not apply to a credit union with debt and equity capital consisting primarily of funds from other credit unions.
- (2) A credit union which has been denied a commitment for such insurance shall within thirty (30) days commence steps to either liquidate, or merge with an insured credit union, or apply in writing to the **commissioner**~~[executive director]~~ for additional time to obtain an insurance commitment. The **commissioner**~~[executive director]~~ may grant one (1) or more extensions of time to obtain the insurance commitment upon satisfactory evidence that the credit union has made or is making substantial effort to achieve the conditions precedent to issuance of the commitment.
- (3) No credit union shall be granted a charter by the **commissioner**~~[executive director]~~ unless such credit union has obtained a commitment for insurance of its member share and deposit accounts.
- (4) The **commissioner**~~[executive director]~~ may make available reports of condition and examination findings to the National Credit Union Administration or to any qualified insuring organization and may accept any report of examination made on behalf of such agency or organizations. The **commissioner**~~[executive director]~~ may appoint an official of the National Credit Union Administration or of any qualified insuring organization as liquidating agent of an insured credit union.

➔Section 737. KRS 286.6-575 is amended to read as follows:

- (1) A credit union may act as trustee or custodian of:
 - (a) Individual retirement accounts authorized by federal or state law;
 - (b) Pension funds of self-employed individuals or of a company or organization sponsoring the credit union; or
 - (c) Other similar retirement or pension plans, with authorization from the **commissioner**~~[executive director]~~.
- (2) A credit union may act as trustee under pension and profit-sharing plans with authorization from the **commissioner**~~[executive director]~~.

➔Section 738. KRS 286.6-585 is amended to read as follows:

Funds not used in loans to members may be invested:

- (1) In securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America or any agency thereof or in any trust or trusts established for investing directly or collectively in the same;
- (2) In obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress, or any political subdivision thereof;
- (3) In certificates of deposit or passbook-type accounts issued by a state or national bank, mutual savings bank, or savings and loan association;
- (4)
 - (a) In loans, not to exceed twenty-five percent (25%) of capital at the lending credit union, to; or
 - (b) In shares or deposits, not to exceed twenty percent (20%) of the capital of the investing credit union, of other credit unions, central credit unions, corporate credit unions, or a central liquidity facility established under state or federal law;
- (5) In shares, stocks, loans, or other obligations of any organization, corporation, or association, provided the membership or ownership, as the case may be, of the organization, corporation, or association is primarily confined or restricted to credit unions, or organizations of credit unions, and provided further the purpose for which it is organized is to strengthen or advance the development of credit unions or credit union organizations;
- (6) In shares of a cooperative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding ten percent (10%) of the shares, deposits, and surplus of the credit union;

- (7) In stocks and bonds of corporations organized in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the several territories organized by Congress to an aggregate maximum of five percent (5%) of members' shares in stocks and an aggregate maximum of five percent (5%) of members' shares in bonds, provided that investments shall be limited to stocks or bonds which appear on a list approved by the *commissioner*~~{executive director}~~ and published quarterly or annually, the list to include not less than thirty (30) corporations.

➔Section 739. KRS 286.6-605 is amended to read as follows:

The regular reserve shall belong to the credit union and shall be used to meet losses resulting from loans and risk assets and to meet such other losses as are approved by the *commissioner*~~{executive director}~~ and shall not be distributed except on liquidation of the credit union, or in accordance with a plan approved by the *commissioner*~~{executive director}~~.

➔Section 740. KRS 286.6-615 is amended to read as follows:

The *commissioner*~~{executive director}~~ shall define by regulation what is deemed "risk assets" for the purpose of establishing the regular reserve.

➔Section 741. KRS 286.6-625 is amended to read as follows:

In addition to such regular reserve, special reserves to protect the interest of members shall be established when required by regulation, or when found by the board of directors of the credit union or by the *commissioner*~~{executive director}~~, in any special case, to be necessary for that purpose.

➔Section 742. KRS 286.6-700 is amended to read as follows:

- (1) If it appears that any credit union is bankrupt or insolvent, or that it has willfully violated this subtitle, or is operating in an unsafe or unsound manner, the *commissioner*~~{executive director}~~ may issue an order temporarily suspending the credit union's operations for not less than thirty (30) nor more than sixty (60) days. The board of directors shall be given notice by registered mail of such suspension, which notice shall include a list of the reasons for such suspension, or a list of the specific violations of this subtitle, or both. The *commissioner*~~{executive director}~~ shall also notify any government agency or other organization insuring the accounts of the credit union of any suspension.
- (2) Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the *commissioner*~~{executive director}~~. The board of directors shall then file with the *commissioner*~~{executive director}~~ a reply to the suspension notice, and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.
- (3) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the *commissioner*~~{executive director}~~ may revoke the suspension notice, permit the credit union to resume normal operations, and notify any interested insuring agency of such action.
- (4) If the *commissioner*~~{executive director}~~, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, ~~the commissioner~~ may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of such action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.
- (5) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the *commissioner*~~{executive director}~~ may then revoke the credit union's charter, appoint a liquidating agent and liquidate the credit union.

➔Section 743. KRS 286.6-705 is amended to read as follows:

- (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.
- (2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily, and directing that the question of liquidation be submitted to the members.

- (3) Within ten (10) days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the **commissioner**~~[executive director]~~ and any government agency or other organization insuring member accounts thereof in writing, setting forth the reasons for the proposed liquidation. Within ten (10) days after the members act on the question of liquidation, the president shall notify the **commissioner**~~[executive director]~~ and any government agency or other organization insuring member accounts in writing as to the action of the members on the proposal.
- (4) As soon as the board of directors decides to submit the question of liquidation to the members, payments on shares, share certificates, deposits, deposit certificates, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.
- (5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds (2/3) majority of the members present at a regular or special meeting of the members is required. Where authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first class mail, at least ten (10) days prior to such meeting.
- (6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting on loans and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully concluded.
- (7) The board of directors or the liquidating agent shall use the assets of the credit union to pay: first, expenses incidental to liquidation including any surety bond that may be required; second, any liability due non-members; third, deposits and deposit certificates as provided in this subtitle. Assets then remaining shall be distributed to the members proportionately to the shares held by each member of the date dissolution was voted.
- (8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, they shall execute a certificate of dissolution on a form prescribed by the **commissioner**~~[executive director]~~ and file it, together with all pertinent books and records of the liquidating credit union, with the **commissioner**~~[executive director]~~, whereupon such credit union shall be dissolved.

➔Section 744. KRS 286.6-710 is amended to read as follows:

- (1) Any credit union may, with the approval of the **commissioner**~~[executive director]~~, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger, approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members duly called for such purpose, and consented to by any government agency or other organization insuring the accounts of the credit union.
- (2) The **commissioner**~~[executive director]~~ may approve a merger according to the plan agreed upon by the majority of the board of directors of each credit union if approved by less than a majority of the entire membership, as provided in this section, if **the commissioner**~~[he]~~ finds upon the written and verified application filed by the board of directors that:
 - (a) Notice of the meeting called to consider the merger was mailed to each member entitled to vote upon the question;
 - (b) Such notice disclosed the purpose of the meeting and properly informed the membership that approval of the merger might be sought pursuant to this section; and
 - (c) A majority of the votes cast upon the question were in favor of the merger.
- (3) After agreement by the directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which shall set forth all of the following:
 - (a) The time and place of the meeting of the board of directors at which the plan was agreed upon;
 - (b) The vote in favor of the adoption of the plan;
 - (c) A copy of the resolution or other action by which the plan was agreed upon;

- (d) The time and place of the meeting of the members at which the plan agreed upon was approved; and
 - (e) The vote by which the plan was approved by the members.
- (4) Such certificate and a copy of the plan of merger agreed upon shall be forwarded to the **commissioner**~~{executive director}~~, certified by him, and returned to both credit unions within thirty (30) days.
 - (5) Upon return of the certificate from the **commissioner**~~{executive director}~~, all property, property rights, and members' interest of the merged credit union shall vest in the surviving credit union without deed, endorsement or other instrument of transfer; and all debts, obligations and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union shall remain intact.
 - (6) This section shall be construed, whenever possible, to permit a credit union organized under any other act to merge with one (1) incorporated under this subtitle, or to permit any credit union incorporated under this subtitle to merge with one (1) organized under any other act.

➔Section 745. KRS 286.6-715 is amended to read as follows:

- (1) A credit union incorporated under the laws of this state may be converted to a credit union organized under the laws of any other state or under the laws of the United States, subject to regulations issued by the **commissioner**~~{executive director}~~.
- (2) A credit union organized under the laws of the United States or of any other state may convert to a credit union incorporated under the laws of this state. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally organized and the requirements of the **commissioner**~~{executive director}~~ and file proof of such compliance with said **commissioner**~~{executive director}~~.

➔Section 746. KRS 286.6-990 is amended to read as follows:

- (1) Any credit union that fails to make the report required by KRS 286.6-090, when notified, shall pay to the **department**~~{office}~~ ten dollars (\$10) for each day of such failure, unless excused.
- (2) Any officer or any member of a committee who participates in the making of a loan to a nonmember shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100) or imprisoned for not less than thirty (30) days nor more than six (6) months, or both.

➔Section 747. KRS 286.6-991 is amended to read as follows:

- (1) Violation of KRS 286.6-045 constitutes a misdemeanor punishable by a fine of not more than five hundred dollars (\$500), by imprisonment for not more than one (1) year, or both.
- (2) The **commissioner**~~{executive director}~~ may petition a court of competent jurisdiction to enjoin a violation of KRS 286.6-045.

➔Section 748. KRS 286.7-410 is amended to read as follows:

As used in KRS 286.7-410 to 286.7-600, unless the context otherwise requires:

- (1) "**Commissioner**~~{Executive director}~~" means the **commissioner**~~{executive director}~~ of financial institutions;
- (2) "Certificate holder" means an industrial loan corporation organized under the provisions of KRS 286.7-410 to 286.7-600 to which a certificate, as defined in subsection (3) of this section, has been issued by the **commissioner**~~{executive director}~~.
- (3) "Certificate" means a written instrument issued by the **commissioner**~~{executive director}~~ authorizing the corporation therein named to do business under the provisions of KRS 286.7-410 to 286.7-600, except when used in the phrase "certificate of investment."

➔Section 749. KRS 286.7-420 is amended to read as follows:

- (1) Any five (5) or more persons may organize an industrial loan corporation in any city upon the terms and conditions and subject to the liabilities prescribed in KRS 286.7-410 to 286.7-600.
- (2) No person shall engage in the industrial loan business in this state other than in the corporate form as provided in KRS 286.7-410 to 286.7-600.

- (3) The name of the corporation shall not contain the words "bank" or "trust" or the phrase "loan association," nor shall these words be used in any printed or advertising matter to refer to the corporation. Such corporation need not use the word "incorporated" in addition to its corporate name, either in its place of business or on any printed matter or advertising matter. No certificate of incorporation of an applicant having the same name as a corporation authorized to do business under the laws of this state or a name so nearly resembling it as to be calculated to deceive shall be approved by the **commissioner**~~{executive director}~~, except to a corporation formed by reincorporation, reorganization, merger or consolidation of other corporations, or upon the sale of the property or license of a corporation.

➔Section 750. KRS 286.7-430 is amended to read as follows:

- (1) The capital stock of any such industrial loan corporation shall not be less than one hundred thousand dollars (\$100,000) if located in counties containing a city of the first or second class, or not less than fifty thousand dollars (\$50,000) if located in any other county. The amount of the capital stock shall be paid in full, and in money, before the corporation may transact any business other than that relating to its formation and organization.
- (2) At the time an industrial loan corporation applies for a certificate it shall file with the **commissioner**~~{executive director}~~ a statement verified by its president and secretary showing its assets and liabilities, and the address at which it proposes to operate its business. A separate certificate shall be required for each place of business.
- (3) Each industrial loan corporation at the time of making application shall pay sixty dollars (\$60) to the **commissioner**~~{executive director}~~ as a fee for investigating the application, and the additional sum of three hundred dollars (\$300) as an annual fee for the privilege of doing business for the period terminating on the succeeding January 15. If the application is filed after June 30 in any year, the payments shall be one hundred and fifty dollars (\$150) as a fee for the privilege of doing business in addition to the fee for investigation. The annual fee shall be paid for each place of business. In addition to the annual fee for the privilege of doing business, every corporation organized under the provisions of KRS 286.7-410 to 286.7-600 shall pay a fee for examinations by the **Department**~~{Office}~~ of Financial Institutions, which fee shall be computed by the **Department**~~{Office}~~ of Financial Institutions on the basis of fair compensation for time and actual expenses.

➔Section 751. KRS 286.7-440 is amended to read as follows:

- (1) Before delivering the articles of incorporation to the Secretary of State for recording, a copy of the articles shall be presented to the **commissioner**~~{executive director}~~ for approval. Upon receipt of such articles, the **commissioner**~~{executive director}~~ shall first determine whether or not the articles comply with the provisions of KRS 286.7-410 to 286.7-600 and, if **the commissioner**~~{he}~~ so finds, he **or she** shall promptly notify the industrial loan companies in the locality in which the proposed office or offices are to be located, specifying a time within which they may file objections. The **commissioner**~~{executive director}~~ shall then inquire into the advisability of approving the application by investigating:
- (a) The moral character and financial responsibility of the incorporators and principals of the applicant.
 - (b) The public necessity for such association in the community to be served; and
 - (c) The reasonable probability of its usefulness and success. In so doing **the commissioner**~~{he}~~ shall determine whether or not the industrial loan company can be established without undue injury to properly conducted existing industrial loan companies, in connection with which the incorporators and principals shall furnish such information as they may desire and as the **commissioner**~~{executive director}~~ may require.
- (2) After allowing the specified time for the filing of objections, the **commissioner**~~{executive director}~~ shall approve the application if he **or she** finds that the moral character and financial responsibility of the incorporators and principals are sound and such as to justify public confidence and to insure the reasonable probability of the success of the corporation, that the incorporators and principals have complied with the provisions of KRS 286.7-410 to 286.7-600, that the incorporation is advisable and, after investigation, there is reason to believe that no undue injury to properly conducted existing industrial loan companies will result. Unless the application, after investigation, meets all of the above requirements, the **commissioner**~~{executive director}~~ shall disapprove it.

➔Section 752. KRS 286.7-450 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall upon approval issue a certificate of approval in triplicate, one (1) copy of which shall be delivered to the applicant and one (1) copy to the Secretary of State which shall

constitute the authority of the Secretary of State to file and record the articles as provided in the general corporation law.

- (2) Upon the receipt of payment of fees and filing of the articles of incorporation by the Secretary of State, the **commissioner**~~{executive director}~~ shall issue a certificate or certificates authorizing the corporation to operate an industrial loan business in this state at the places specified, such certificates to be in any form the **commissioner**~~{executive director}~~ prescribes.
- (3) The **commissioner**~~{executive director}~~ shall mail one (1) copy of the certificate to each office of the corporation and shall retain one (1) copy, which shall be filed in the office of the **commissioner**~~{executive director}~~.
- (4) If the **commissioner**~~{executive director}~~ does not approve the application, **the commissioner**~~{he}~~ shall notify the applicant of the denial and return the sum paid by the applicant as a fee for the privilege of doing business, retaining the fifty-dollar (\$50) investigation fee.
- (5) The **commissioner**~~{executive director}~~ shall approve or deny every application within sixty (60) days after the filing thereof with the fees paid, unless the time is extended by the **commissioner**~~{executive director}~~ for good cause.
- (6) All findings of the **commissioner**~~{executive director}~~, together with a summary of the evidence supporting them, shall be filed in the office of the **commissioner**~~{executive director}~~ as public records.
- (7) The certificate or certificates issued to the corporation shall expire on the succeeding January 15, and shall be renewed only on compliance with the provisions of KRS 286.7-410 to 286.7-600.
- (8) Whenever the **commissioner**~~{executive director}~~ denies any application for certificate under the provisions of KRS 286.7-410 to 286.7-600, **the commissioner**~~{he}~~ shall promptly file in his office a written order to that effect, stating his **or her** findings with respect thereto and the reasons for his **or her** action. The **commissioner**~~{executive director}~~ shall also promptly serve upon the applicant for a certificate a copy of the order. The applicant may request an administrative hearing to be conducted in accordance with KRS Chapter 13B. Any party aggrieved by a final order issued pursuant to a hearing authorized under this subsection may appeal to the Circuit Court of Franklin County in accordance with KRS Chapter 13B.
- (9) The corporation shall not conduct any industrial loan business until it receives a certificate from the **commissioner**~~{executive director}~~ stating that it has fully complied with all the provisions of KRS 286.7-410 to 286.7-600, and that the requisite capital is in good faith subscribed and paid in cash.

➔Section 753. KRS 286.7-480 is amended to read as follows:

In addition to the charge permitted by KRS 286.7-410 to 286.7-600, no further amount shall be directly or indirectly charged, contracted for or received on any such installment loan, except lawful fees actually paid to a public official for filing, recording or releasing any instrument securing the loan, delinquency and deferral charges as set out in subsection (1) of KRS 286.7-500. Provided, however, that the certificate holder may request, as collateral for any loan, and collect premiums for:

- (1) Notwithstanding the provisions of this or any other law:
 - (a) A certificate holder may request a borrower to insure tangible personal property, except household goods, offered as security for a loan not exceeding seven thousand five hundred dollars (\$7,500) under KRS 286.7-410 to 286.7-600 against any substantial risk of loss, damage or destruction for any amount not to exceed the actual value of such property or the approximate amount of the loan, whichever is lesser, and for a term and upon conditions which are reasonable and appropriate considering the nature of the property and the maturity and other circumstances of the loan; provided, such insurance is sold by a licensed agent, broker or solicitor.
 - (b) A certificate holder may also request as security for any loan obligation insurance on the life of the borrower, or one of them if there are two or more. The initial amount of credit life insurance shall not exceed the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. Not more than one policy of life insurance may be written in connection with any loan transaction under KRS 286.7-410 to 286.7-600.

- (c) In accepting any insurance provided for by KRS 286.7-410 to 286.7-600 as security for a loan the certificate holder, its officers, agents or employees may deduct the premiums or identifiable charge therefor from the proceeds of the loan, and remit such premiums to the insurance company writing such insurance and any gain or advantage to the certificate holder or any employee, officer, director, agent, affiliate or associate from such insurance or its sale, shall not be considered as additional or further charge in connection with any loan made under KRS 286.7-410 to 286.7-600. The arranging for and collecting of an identifiable charge shall not be deemed the sale of insurance.
 - (d) Every insurance policy or certificate written in connection with a loan transaction pursuant to paragraph (b) of this subsection shall provide for cancellation of coverage and a refund of the premium or identifiable charge unearned upon the discharge of the loan obligation for which such insurance is security without prejudice to any claim.
 - (e) Whenever insurance is written in connection with a loan transaction pursuant to KRS 286.7-410 to 286.7-600, the certificate holder shall deliver or cause to be delivered to the borrower a policy, certificate or other memorandum which shall show the coverages and the costs thereof, if any, to the borrower within thirty days from the date of the loan.
 - (f) All such insurance shall be written by a company authorized to conduct such business in this state and the certificate holder shall not require the purchase of such insurance from any agent or broker designated by the certificate holder nor shall the certificate holder decline existing coverages which equal or exceed the standards of KRS 286.7-410 to 286.7-600.
- (2) Insurance on real property pledged as security for a loan in an amount not to exceed the actual value of such property or the approximate amount of the loan whichever is lesser.
 - (3) Accident and health insurance on not less than a fourteen-day retroactive basis, covering one borrower in aggregate amount not to exceed the approximate amount of the loan with each periodic indemnity payment not to exceed the original indebtedness divided by the number of periodic installments; all subject to the general provisions and limitations of KRS 286.7-410 to 286.7-600. Premium rates for accident and health insurance written pursuant to KRS 286.7-410 to 286.7-600 shall be reasonable in relation to benefits, and shall be filed with the **commissioner**~~executive director~~ of insurance.
- ➔Section 754. KRS 286.7-520 is amended to read as follows:
- (1) KRS 286.3-215, 286.4-420, 286.4-620, and 360.010 do not apply to loans made under authority of KRS 286.7-460 to 286.7-510, but KRS 286.3-215, 286.4-420, 286.4-620, and 360.010 remain in full force and effect for all other purposes and nothing in this section or in KRS 286.7-480 to 286.7-510 shall be construed to impair the validity or effect of KRS 286.3-215, 286.4-420, 286.4-620, and 360.010 with respect to loans other than those made pursuant to KRS 286.7-460 to 286.7-510.
 - (2) Any contract of loan in the making or collection of which any act has been done which constitutes a willful violation of any provision of KRS 286.7-460 to 286.7-510 is void, and the corporation has no right to collect or receive any interest or charges whatsoever on such loan, but the unpaid principal of the loan shall be paid in full to the lending institution.
 - (3) Those industrial loan corporations operating under KRS 286.7-410 to 286.7-600 that issue certificates of investment shall establish as a reserve against such certificates of investment an amount which shall not be less than five percent (5%) of the amount of such certificates of investment outstanding. In addition the **commissioner**~~executive director~~ shall have authority to require a blanket surety bond with an approved corporate surety which shall include fidelity coverage in an amount deemed adequate by the **commissioner**~~executive director~~ to protect holders of certificates of investment.
 - (4) No corporation organized under KRS 286.7-410 to 286.7-600 shall deposit any of its funds with any bank or trust company unless such bank or trust company has been designated as such depository by a vote of the majority of the directors of the executive committee exclusive of any director who is an officer, director or trustee of the depository so designated. A corporation operating under KRS 286.7-410 to 286.7-600 may invest in the bonds of any federal instrumentality or bonds issued by the Commonwealth of Kentucky or any governmental subdivision thereof.
 - (5) No corporation organized under KRS 286.7-410 to 286.7-600, nor any foreign industrial loan corporation nor any other person shall conduct its business in the same office in which there is conducted a petty loan business

under Subtitle 4 of KRS Chapter 286, or solicit any other business, or associate or be in conjunction with any other business except upon a written authorization by the **commissioner**~~{executive director}~~.

➔Section 755. KRS 286.7-530 is amended to read as follows:

- (1) Every corporation organized under the provisions of KRS 286.7-410 to 286.7-600 shall report to and be subject to examination, supervision, and control by the **Department**~~{Office}~~ of Financial Institutions.
- (2) KRS 286.7-410 to 286.7-600 shall be enforced by the **commissioner**~~{executive director}~~, who may, after notice to holders of certificates and a hearing, promulgate regulations, referenced to the section or sections which set forth the legislative standards they interpret or apply, for the proper conduct of the business authorized under KRS 286.7-410 to 286.7-600.
- (3) On or before January 30 of each year, every industrial loan company shall file with the **commissioner**~~{executive director}~~ a report for the preceding calendar year. The report shall give information with respect to the financial condition of the industrial loan company, and other relevant information as the **commissioner**~~{executive director}~~ may reasonably require.

➔Section 756. KRS 286.7-535 is amended to read as follows:

In undertaking the examination of any industrial loan company, neither the Commonwealth of Kentucky, the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Financial Institutions, nor any examiner employed by the Commonwealth shall become liable to any depositor, investor or other obligor of said industrial loan company by reason of said examination or omission of such examination to fully and effectively disclose the financial condition of said industrial loan company, it being the policy of the Commonwealth of Kentucky that such examinations as are required by KRS 286.7-530 are for the purpose of determining compliance with state law and not for the purpose of protecting or guaranteeing the depositors, investors or other obligors of said industrial loan companies.

➔Section 757. KRS 286.7-540 is amended to read as follows:

No corporation organized under the provisions of KRS 286.7-410 to 286.7-600, nor any foreign corporation, nor any other person not authorized by other specific statutory provisions, shall engage in the business of making loans at a rate of interest in excess of the legal rate of interest prescribed in KRS 360.010 unless there is on file in the office of the **commissioner**~~{executive director}~~ a certificate issued by the **commissioner**~~{executive director}~~ authorizing the transaction of an industrial loan business under the provision of KRS 286.7-410 to 286.7-600.

➔Section 758. KRS 286.7-550 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~, for good cause and after an opportunity for a hearing to be conducted in accordance with KRS Chapter 13B, may revoke and remove from **the department's**~~{his}~~ file, or suspend for thirty (30) days, any certificate issued under KRS 286.7-410 to 286.7-600 if **the commissioner**~~{he}~~ finds that:
 - (a) The holder of the certificate has failed to pay his **or her** annual fee for the privilege of doing business;
 - (b) The certificate holder has violated any provision of KRS 286.7-410 to 286.7-600 or has failed to comply with any administrative regulation lawfully promulgated pursuant thereto;
 - (c) Any fact or condition then exists which clearly would have warranted the **commissioner**~~{executive director}~~ in refusing to issue a certificate on an original application; or
 - (d) The certificate holder has failed to open an office for business within one hundred and twenty (120) days from the date the certificate is granted, or has failed to remain open for business for a period of one hundred and twenty (120) days, unless in each case good cause be shown.
- (2) The **commissioner**~~{executive director}~~ may reinstate suspended certificates or issue new certificates to a certificate holder whose certificate has been revoked if no fact or condition then exists which clearly would have warranted him in refusing originally to issue such certificate under KRS 286.7-410 to 286.7-600.
- (3) Any certificate holder may surrender any certificate by delivering it to the **commissioner**~~{executive director}~~ together with written notice that he **or she** thereby surrenders the certificate.
- (4) Any person whose certificate is revoked or suspended may appeal the final order by filing in the Franklin Circuit Court a petition for judicial review in accordance with KRS Chapter 13B.

➔Section 759. KRS 286.7-580 is amended to read as follows:

No foreign corporation may conduct an industrial loan business in this state without applying for and receiving a certificate from the *commissioner*~~[executive director]~~ authorizing such business in this state. The issuance or denial of such certificate or certificates shall be governed by reasonable rules and regulations of the *department*~~[office]~~ designed to assure that no foreign corporation shall be permitted to transact an industrial loan business in this state upon more favorable terms and conditions than would be permitted a domestic corporation.

➔Section 760. KRS 286.7-590 is amended to read as follows:

The privilege of the corporation to advertise to the public that it is under the supervision of the *Department*~~[Office]~~ of Financial Institutions may be denied by the *commissioner*~~[executive director]~~ at any time *the commissioner*~~[he]~~ has reason to believe there is a violation of any of the provisions of KRS 286.7-410 to 286.7-600 or any rule or regulations promulgated thereunder.

➔Section 761. KRS 286.8-010 is amended to read as follows:

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

- (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with another person;
- (2) "*Department*~~[Office]~~" means the *Department*~~[Office]~~ of Financial Institutions;
- (3) "*Commissioner*~~[Executive director]~~" means the *commissioner*~~[executive director]~~ of the *department*~~[office]~~;
- (4) "Applicant" means a person filing an application or renewal application for a license, registration, or claim of exemption under this subtitle;
- (5) "Borrower" means any person that seeks, applies for, or obtains a mortgage loan;
- (6) "Branch" or "branches" means any location other than the mortgage loan company's or mortgage loan broker's principal location where the mortgage loan company, mortgage loan broker, or its employees maintain a physical presence for the purpose of conducting business in the mortgage lending process, including the servicing of mortgage loans;
- (7) "Classroom" means a physical classroom environment in which teachers and participants are physically present for the teaching of a course. Courses taught through Internet, mail, or correspondence classes shall not be considered to be courses taught in a classroom;
- (8) "Clerical or support duties" means administrative functions such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include:
 - (a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or
 - (b) Any communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include taking a residential mortgage loan application, offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms;
- (9) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise;
- (10) "Control records" means all records relating to the operation of a branch that are necessary to exercise control and supervision over the branch;
- (11) "Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any pattern of residential mortgage fraud on a continuing basis;
- (12) "Depository institution" means a depository institution as defined in the Federal Deposit Insurance Act, 12 U.S.C. sec. 1813(c), and amendments thereto, and includes any credit union;
- (13) "Employ or use" means to employ, utilize, or contract with a person or the person's employees for the purpose of participating in the mortgage lending process, including the servicing of mortgage loans;
- (14) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild;
- (15) "Licensee" means a person to whom a license has been issued;

- (16) "Managing principal" means a natural person who meets the requirements of KRS 286.8-032(6) and who agrees to actively participate in and be primarily responsible for the operations of a licensed mortgage loan broker;
- (17) "Mortgage lending process" means the process through which a person seeks or obtains a mortgage loan, including the solicitation, application, origination, negotiation of terms, processing, underwriting, signing, closing, and funding of a mortgage loan and the services provided incident to a mortgage loan, including the appraisal of the residential real property. Documents involved in the mortgage lending process include but are not limited to:
- (a) Uniform residential loan applications or other loan applications;
 - (b) Appraisal reports;
 - (c) Settlement statements;
 - (d) Supporting personal documentation for loan applications, including:
 - 1. Form W-2 or other earnings or income statements;
 - 2. Verifications of rent, income, and employment;
 - 3. Bank statements;
 - 4. Tax returns; and
 - 5. Payroll stubs;
 - (e) Any required mortgage-related disclosures; and
 - (f) Any other document required as a part of, or necessary to, the mortgage lending process;
- (18) "Mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on residential real property or any loan primarily for personal, family, or household use that is secured by collateral that has a mortgage lien interest in residential real property;
- (19) "Mortgage loan broker" means any person who for compensation or gain, or in the expectation of compensation or other gain, received directly or indirectly, serves as an agent for any borrower in an attempt to obtain a mortgage loan, or holds oneself out as being able to do so;
- (20) "Mortgage loan company" means any person who directly or indirectly:
- (a) Makes, purchases, or sells mortgage loans, or holds oneself out as being able to do so; or
 - (b) Services mortgage loans, or holds oneself out as being able to do so;
- (21) "Mortgage loan originator" means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain:
- (a) Performs any one (1) or more of the following acts in the mortgage lending process:
 - 1. Solicits, places, negotiates, or offers to make a mortgage loan;
 - 2. Obtains personal and financial information from a borrower or prospective borrower;
 - 3. Assists a borrower or prospective borrower with the preparation of a mortgage loan or related documents;
 - 4. Explains, recommends, discusses, negotiates, or quotes rates, terms, and conditions of a mortgage loan with a borrower or prospective borrower, whether or not the borrower or prospective borrower makes or completes an application;
 - 5. Explains any term or aspect of any disclosure or agreement given at or after the time a mortgage loan application is received; or
 - 6. Takes a residential mortgage loan application; or
 - (b) Is an independent contractor engaging in the mortgage lending process as a mortgage loan processor;

- (22) "Mortgage loan processor" means a natural person who performs only clerical or support duties at the direction of and subject to the supervision and instruction of a mortgage loan originator;
- (23) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators;
- (24) "Originate" means to solicit, place, negotiate, offer to make, or broker a mortgage loan;
- (25) "Pattern of residential mortgage fraud" means residential mortgage fraud that involves two (2) or more mortgage loans that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics;
- (26) "Person" means a natural person, or any type or form of corporation, company, partnership, proprietorship, or association;
- (27) "Physical location" means any location where the mortgage lending process, including the servicing of mortgage loans, is conducted;
- (28) "Record" means any books of account or other books, papers, journals, ledgers, statements, instruments, documents, files, messages, writings, correspondence, or other internal data or information, made or received in the regular course of business or otherwise, regardless of the mode in which it is recorded;
- (29) "Registrant" means a person to whom a certificate of registration has been issued;
- (30) "Residential mortgage loan application" means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a mortgage loan;
- (31) "Residential real property" means a dwelling as defined in the Federal Truth in Lending Act, 15 U.S.C. sec. 1602(v), or any real property upon which is constructed or intended to be constructed a dwelling as so defined;
- (32) "Service" or "servicing" means:
- (a) Receiving any scheduled periodic mortgage loan payments from a borrower, including amounts for escrow accounts or other fees or obligations related to the mortgage loan, and making or crediting the payments to the mortgage loan account, owner of the loan, or a third party assigned to receive said payments;
 - (b) Maintaining accountings of principal, interest, and other accounts associated with the servicing of mortgage loans and responding to borrower inquiries regarding the status of these loans or accounts;
 - (c) Initiating, supervising, or conducting foreclosure proceedings and property dispositions in the case of default, except this shall not include licensed attorneys representing clients in such matters; or
 - (d) In the case of a home equity conversion mortgage or reverse mortgage, making payments to the borrower;
- (33) "Takes a residential mortgage loan application" means:
- (a) Recording the borrower's application information in any form for use in a credit decision; or
 - (b) Receiving the borrower's application information in any form for use in a credit decision;
- (34) "Transact business in Kentucky" or "transacting business in Kentucky" means to participate in any meaningful way in the mortgage lending process, including the servicing of mortgage loans, with respect to any residential real property located in Kentucky;
- (35) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry; and
- (36) "Wholly owned subsidiary" means a subsidiary that is entirely owned or controlled by another person.

➔Section 762. KRS 286.8-012 is amended to read as follows:

Any party aggrieved by any decision of the *commissioner*~~executive director~~ under the provisions of KRS 286.8-020 or 286.8-100 may request an administrative hearing which shall be conducted in accordance with KRS Chapter 13B.

➔Section 763. KRS 286.8-020 is amended to read as follows:

- (1) The following mortgage loan companies and mortgage loan brokers shall be subject to KRS 286.8-046, 286.8-180, 286.8-220(1), and subsections (12), (13), and (14) of this section, but shall be exempt from all other provisions of this subtitle:
- (a) Any person duly licensed, chartered, and otherwise subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency under the laws of this state or any other state or the United States as a bank, bank holding company, trust company, credit union, savings and loan association, savings and loan association holding company, service corporation subsidiary of a savings and loan association, insurance company, real estate investment trust as defined in 26 U.S.C. sec. 856, an institution of the farm credit system organized under the Farm Credit Act of 1971 as amended, or any wholly owned subsidiary of any such person if the subsidiary is subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency;
 - (b) Any natural person who makes a mortgage loan secured by a dwelling that served as the natural person's residence, unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
 - (c) Any natural person who makes a mortgage loan to an immediate family member of the natural person unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
 - (d) The United States of America; the Commonwealth of Kentucky; any other state, district, territory, commonwealth, or possession of the United States of America; any city, county, or other political subdivision; and any agency, division, or corporate instrumentality of any of the foregoing;
 - (e) The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA);
 - (f) Any mortgage loan company or mortgage loan broker making or brokering a mortgage loan involving housing initially transferred by certificate of title under KRS Chapter 186A;
 - (g) A consumer loan or finance company or an industrial loan company licensed under Subtitle 4 or 7 of this chapter whose primary business is originating consumer or industrial loans as provided under Subtitle 4 or 7 of this chapter or any wholly owned subsidiary of such a consumer loan or finance company or an industrial loan company, except that they shall be subject to the prohibited acts of KRS 286.8-220(2)(e) and (f) and 286.8-110(4); and
 - (h) A nonprofit organization that is recognized as tax-exempt under 26 U.S.C. sec. 501(c)(3) and authorized to do business in this Commonwealth, and that has affordable housing as a primary purpose in its operations.
- (2) The following shall be exempt from the licensing provisions of this subtitle and the examination provisions of KRS 286.8-170 and 286.8-180, unless it appears on grounds satisfactory to the **commissioner**~~executive director~~ that an examination is necessary, but shall otherwise be subject to all other provisions of this subtitle:
- (a) A mortgage loan company or mortgage loan broker approved and regulated by the United States Department of Housing and Urban Development to perform business in this Commonwealth; and
 - (b) Any branch of a mortgage loan company or mortgage loan broker listed in paragraph (a) of this subsection, provided the branch is approved and regulated by the United States Department of Housing and Urban Development to perform business in this Commonwealth.
- (3) Any nonprofit organization, mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (1)(h) or (2)(a) or (b) of this section shall file with the **commissioner**~~executive director~~ a written application for a claim of exemption. The **commissioner**~~executive director~~ shall approve an application for an exemption that is timely filed and meets the requirements of this subtitle. The period of exemption shall be from January 1 through December 31, and the exemption shall expire on December 31 of the same calendar year. Every person granted an exemption under this section shall file a written application for a new exemption on an annual basis. The application shall be received by the **commissioner**~~executive director~~ on or before December 31 of the same calendar year. A written application for a partial-year

exemption shall also expire on December 31 of the same calendar year that the written application for an exemption is granted.

- (4) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section shall fund or broker a minimum of twelve (12) Federal Housing Administration-insured loans on Kentucky residential real properties each year in order to maintain its exemption.
- (5) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section who ceases to be approved or regulated by the Department of Housing and Urban Development shall notify the **commissioner**~~{executive director}~~, in writing, within ten (10) days after it ceases to be regulated by the United States Department of Housing and Urban Development.
- (6) Any person listed in subsection (1)(a), (b), (c), (d), (e), (f), or (g) of this section shall not be required to file with the **commissioner**~~{executive director}~~ a claim of exemption.
- (7) (a) Any natural person making a loan under subsection (10) of this section shall make the following disclosure, on a separate sheet of paper in minimum eighteen (18) point type, to the borrower:

DISCLOSURE

(Name and address of lender) is not licensed or regulated by the Kentucky **Department**~~{Office}~~ of Financial Institutions.

(Name of lender) is making this mortgage loan with his or her own funds, for the person's own investment, without intent to resell the mortgage loan.

(The phone number and address of the Kentucky **Department**~~{Office}~~ of Financial Institutions.)

- (b) A copy of the disclosure, signed by the borrower, shall be maintained by the natural person for a period not to exceed three (3) years after the date the mortgage loan is paid in full.
- (8) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section shall provide a list of funded or brokered Federal Housing Administration-insured loans from December 1 of the previous calendar year to November 30 of the current calendar year to the **commissioner**~~{executive director}~~ by December 31 of each year on a form prescribed by the **commissioner**~~{executive director}~~.
- (9) Any mortgage loan company, mortgage loan broker, or branch thereof applying for an exemption under subsection (2)(a) or (b) of this section shall not be approved for an exemption under subsection (2)(a) or (b) of this section unless the mortgage loan company, mortgage loan broker, or branch thereof has:
 - (a) Held a mortgage loan company or mortgage loan broker license or registration for five (5) consecutive years prior to the filing of the application for an exemption under this section with the **commissioner**~~{executive director}~~; or
 - (b) Been approved and regulated by the United States Housing and Urban Development to conduct business in the mortgage lending process for five (5) consecutive years prior to the filing of the application for an exemption under this section with the **commissioner**~~{executive director}~~.
- (10) Any natural person not exempted in subsection (1)(b) or (c) of this section who makes a mortgage loan with his or her own funds for the person's investment without the intent to resell the mortgage loan shall be exempt from the provisions of this subtitle except for the following:
 - (a) Examination provisions of KRS 286.8-170 and 286.8-180 when it appears on grounds satisfactory to the **commissioner**~~{executive director}~~ that an examination is necessary;
 - (b) Disclosure requirements of subsection (7) of this section;
 - (c) Any investigation and enforcement provisions of this subtitle including KRS 286.8-170(6), and KRS 286.8-046, 286.8-090, 286.8-190, and 286.8-990;
 - (d) Prohibited acts under KRS 286.8-125 and 286.8-220; and
 - (e) Registration and regulatory requirements of KRS 286.8-255.
- (11) No person shall hold both a claim of exemption and a license granted under this subtitle.

- (12) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker shall make available and grant access to the *commissioner*~~[executive director]~~ or an examiner of the *commissioner*~~[executive director]~~ the records in its possession or control that are subject to the provisions of this subtitle.
- (13) Notwithstanding any provisions to the contrary set forth in this subtitle, no mortgage loan company or mortgage loan broker shall impede the *commissioner*~~[executive director]~~ or an examiner of the *commissioner*~~[executive director]~~ from interviewing any person regarding any potential violations of this subtitle.
- (14) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker that employs or utilizes the direct services of a mortgage loan originator subject to the registration and regulatory requirements of KRS 286.8-255 shall complete and timely submit to the Nationwide Mortgage Licensing System and Registry an annual report of condition, which shall be in such form and contain such information as the Nationwide Mortgage Licensing System and Registry may require, along with any other information which may be required by the *commissioner*~~[executive director]~~.

→Section 764. KRS 286.8-030 is amended to read as follows:

- (1) (a) It is unlawful for any person to transact business in Kentucky, either directly or indirectly, as a mortgage loan company or mortgage loan broker if the mortgage loan company or mortgage loan broker is not licensed in accordance with the requirements of this subtitle, unless that person is exempt under KRS 286.8-020 and, if required by KRS 286.8-020(3) has timely filed a completed application for a claim of exemption, and the filed application for a claim of exemption has been approved by the *commissioner*~~[executive director]~~.
- (b) It is unlawful for any natural person to make a loan under KRS 286.8-020(10) without making the disclosure required by KRS 286.8-020(7).
- (c) It is unlawful for any natural person to transact business in Kentucky, either directly or indirectly, as a mortgage loan originator or mortgage loan processor, unless otherwise exempted, if the mortgage loan originator or mortgage loan processor is not registered in accordance with KRS 286.8-255.
- (d) It is unlawful for any mortgage loan company or mortgage loan broker to employ or use a mortgage loan originator or a mortgage loan processor if the mortgage loan originator or mortgage loan processor is not registered in accordance with KRS 286.8-255 or otherwise exempted.
- (e) It is unlawful for any mortgage loan company to employ or use, with or without compensation, a mortgage loan broker if the mortgage loan broker is not licensed in accordance with the requirements of this subtitle unless that person is exempt under KRS 286.8-020 and, if required by KRS 286.8-020(3), has timely filed a completed application for a claim of exemption, and the filed application for a claim of exemption has been approved by the *commissioner*~~[executive director]~~.
- (2) Neither the fact that a license or certificate of registration has been issued nor the fact that any person, business, or company is effectively registered or licensed, constitutes a finding by the *commissioner*~~[executive director]~~ that any document filed under this subtitle is true, complete, and not misleading. Nor does such fact directly or indirectly imply approval of the registrant or licensee by the *commissioner*~~[executive director]~~ or the Commonwealth of Kentucky. It is unlawful to make or cause to be made to any prospective customer or client any representation inconsistent with this subsection.
- (3) Any mortgage loan company or mortgage loan broker who willfully transacts business in Kentucky in violation of subsection (1) of this section shall have no right to collect, receive, or retain any interest or charges whatsoever on a loan contract, but the unpaid principal of the loan shall be paid in full.
- (4) Each solicited, attempted, or closed loan shall constitute a separate violation of this section.
- (5) The unique identifier, name, and signature of any person originating a mortgage loan shall be clearly shown on the mortgage loan application. It shall be unlawful to make or cause to be made any representations on a mortgage loan application that are inconsistent with this subsection. The unique identifier shall also be displayed on solicitations or advertisements, including business cards or Web sites, of all persons holding themselves out as being able to originate mortgage loans in Kentucky, and any other document as established by rule, regulation, or order of the *commissioner*~~[executive director]~~.

➔Section 765. KRS 286.8-032 is amended to read as follows:

- (1) A license as a mortgage loan company or a mortgage loan broker may be obtained by filing a written application with the **commissioner**~~{executive director}~~. The **commissioner**~~{executive director}~~ may require the electronic filing of the application and fees with the State Regulatory Registry, LLC, or its successor organization; its parent, affiliate, or operating subsidiary; or other agencies or authorities, as part of the nationwide mortgage licensing system, and consistent with the intent found in KRS 286.8-285.
- (2) The application shall:
 - (a) Be sworn to;
 - (b) State the name of the applicant and each of the applicant's affiliates and operating subsidiaries engaged in business as a mortgage loan company or a mortgage loan broker;
 - (c) State the name under which the applicant will conduct business in Kentucky;
 - (d) State the physical address of the applicant's principal office and branch or branches;
 - (e) List the name, residence, and business address of each person having an interest in the business as principal, partner, officer, trustee, and director, specifying the capacity and title of each;
 - (f) Indicate the general plan and character of the business;
 - (g) Contain a corporate surety bond or other instrument as prescribed by KRS 286.8-060;
 - (h) If applying for a mortgage loan broker license, contain a compiled financial statement of the applicant; or, if applying for a mortgage loan company license, contain a reviewed or audited financial statement of the applicant prepared by a licensed or certified public accountant;
 - (i) Include payment of the required fees; and
 - (j) Include such other information as the **commissioner**~~{executive director}~~ determines necessary.
- (3) No mortgage loan company license may be granted unless the applicant:
 - (a) Has and maintains, so long as the license is in effect, a minimum, documented funding source of one million dollars (\$1,000,000);
 - (b) Has a net worth in excess of one million dollars (\$1,000,000); or
 - (c) Has and maintains a net worth in excess of one hundred thousand dollars (\$100,000) and certifies to the **commissioner**~~{executive director}~~ that the company will not make or purchase loans secured by mortgages on residential real property located in Kentucky so long as the license is in effect.
- (4) A license issued to a mortgage loan company or a mortgage loan broker shall entitle all officers and employees of the person, if a corporation, and all members, partners, trustees, and employees, if an association, partnership, natural person, or trust, to engage in the mortgage loan business pursuant to this subtitle, subject to the applicable requirements of this subtitle.
- (5) If a licensee desires to establish a branch, the licensee shall file an application with the **commissioner**~~{executive director}~~ that includes the physical location and telephone number of the branch, the name of the prospective manager, the anticipated opening date, and any other information requested by the **commissioner**~~{executive director}~~.
- (6) Each applicant for a mortgage loan broker license shall have at least one (1) managing principal at all times. This managing principal shall provide the **commissioner**~~{executive director}~~ sufficient proof of a minimum of two (2) years' experience working in the mortgage industry. The **commissioner**~~{executive director}~~ shall determine from the application whether an applicant has sufficient experience to meet this requirement. Each mortgage loan broker shall obtain written approval from the **commissioner**~~{executive director}~~ prior to a change of managing principal.
- (7) All applicants for a mortgage loan broker license shall have successfully completed an educational training course, approved by the **department**~~{office}~~, of not less than thirty (30) classroom hours' duration. Applicants who have held a mortgage loan broker license for at least one (1) year in the past five (5) years shall be exempt from this requirement. This section shall not apply to renewals of existing licenses. Approval of an applicant for a mortgage loan broker license under this subsection shall be conditioned on the applicant establishing that the district, state, or territory from which the applicant applies, resides, or performs the primary portion of his

or her mortgage business has rules, regulations, or other provisions which by reciprocity or comity are at least equivalent to this subsection.

- (8) The application for a mortgage loan broker and mortgage loan company license shall state:
- (a) The address of the physical location where the business is to be located in compliance with KRS 286.8-250 and whether such location is a residence. The physical location where the mortgage lending process is conducted shall have a street address. A post office box or similar designation shall not meet the requirements of this subsection. The physical location shall be accessible to the general public as a place of business, unless the physical location is a residence and proof of residence has been submitted as required by this section. Photographs of the exterior, interior, and exterior sign of each location shall accompany the application. If the physical location is not a residence and is leased, the lease shall be for a minimum term of one (1) year. A copy of the lease and the names of all employees conducting business under the lease shall accompany the application. If the physical location is a residence, proof that the location is a residence, in a form as required by the *commissioner*~~{executive director}~~, shall accompany the application. Proof of residence shall confirm that the residence is owned or leased by the mortgage loan broker, mortgage loan company, or its employees or owners and that the residence is the main residence of any such persons. Proof of physical location shall include proof that local zoning requirements are satisfied.
 - (b) A mortgage loan company or mortgage loan broker shall notify the *commissioner*~~{executive director}~~ of a change in the location or name of its business or the addition of any branch or branches in writing at least ten (10) days prior to the change.
- (9) On or after January 1, 2009, every mortgage loan company and mortgage loan broker shall maintain an agent for service of process in the Commonwealth. The name, address, telephone number, and electronic mail address of the agent for service of process shall be filed with the application. The *commissioner*~~{executive director}~~ shall be notified in writing at least five (5) days prior to any change in the status of an agent for service of process.
- (10) The *commissioner*~~{executive director}~~ may deem an application abandoned when an applicant fails to provide or respond to a request for additional information.

➔Section 766. KRS 286.8-034 is amended to read as follows:

- (1) An applicant for a license under this subtitle shall provide the *commissioner*~~{executive director}~~ with separate checks payable to the Kentucky State Treasurer for:
 - (a) An investigation fee of three hundred dollars (\$300) for the principal office and one hundred fifty dollars (\$150) for each branch office; and
 - (b) A license fee of four hundred fifty dollars (\$450) for the principal office and two hundred fifty dollars (\$250) for each branch originating mortgages on residential real properties located in Kentucky if the applicant applies for a license on or between November 1 and June 30 of the following calendar year or of one hundred fifty dollars (\$150) for the principal office and one hundred dollars (\$100) for each branch if the applicant applies for a license on or between July 1 and October 31 of the same calendar year.
- (2) A license issued between January 1 and October 31 of the same calendar year shall expire on December 31 of the same calendar year. A license issued between November 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year.
- (3) A license may be renewed by paying the annual renewal license fee which is three hundred fifty dollars (\$350) for the principal office and two hundred fifty dollars (\$250) for each branch originating mortgages on residential real properties located in Kentucky, submitting to the Nationwide Mortgage Licensing System and Registry an annual report of condition, which shall be in such form and contain such information as the Nationwide Mortgage Licensing System and Registry may require, and submitting to the *commissioner*~~{executive director}~~ any other information required by the *commissioner*~~{executive director}~~. The *commissioner*~~{executive director}~~ shall not approve the renewal of a mortgage loan broker's license if the *commissioner*~~{executive director}~~ has not received the information on physical location as required in KRS 286.8-032(8).

(4) The application, fees, and any required information shall be received by the **commissioner**~~{executive director}~~ on or before November 30 prior to the December 31 expiration date. The **commissioner**~~{executive director}~~ may reinstate the license within thirty-one (31) days of the expiration of the license if the licensee pays the filing fee and a reinstatement fee of two hundred fifty dollars (\$250). A license shall not be reinstated when the application, fees, or any required information is received on or after February 1 of the following year that the renewal application was due.

(5) The **commissioner**~~{executive director}~~ shall provide a licensee with a duplicate copy of any license upon a satisfactory showing of its loss and payment of a ten dollar (\$10) replacement fee.

➔Section 767. KRS 286.8-036 is amended to read as follows:

(1) Each license issued under this subtitle shall state the address or addresses at which business is to be conducted, the name of the licensee, and the date and place of its incorporation, if applicable.

(2) A licensee shall post a copy of such license in a conspicuous place in the office to which it pertains.

(3) A license may not be transferred or assigned without the prior written approval of the **commissioner**~~{executive director}~~.

(4) No licensee shall transact the business provided for by this subtitle under any other name or maintain an office at any location other than that designated in the license.

(5) Every licensed mortgage loan company or mortgage loan broker shall notify the **commissioner**~~{executive director}~~, in writing, within ten (10) days of the closing of any licensed office or registered Kentucky branch.

➔Section 768. KRS 286.8-044 is amended to read as follows:

(1) Notice of entry of any order of suspension or denial of a license, registration, or claim of exemption to any applicant, registrant, or licensee shall be given in writing and served personally or sent by certified mail to the last known address of the person affected. The affected person, upon timely written request to the **commissioner**~~{executive director}~~, shall be entitled to a hearing in accordance with the provisions of KRS Chapter 13B; but if no written request is received within twenty (20) days of service of the notice, the **commissioner**~~{executive director}~~ shall enter a final order suspending or denying the license or registration.

(2) The **commissioner**~~{executive director}~~ may file an administrative complaint against any person if it appears on grounds satisfactory to the **commissioner**~~{executive director}~~ that a potential or actual violation of this subtitle has been committed and when the person may be subject to the penalties of KRS 286.8-046, 286.8-090, and 286.8-990. The **commissioner**~~{executive director}~~ shall serve the administrative complaint by certified mail or personal delivery to the last known address of the person named in the complaint. The person named in the administrative complaint shall be entitled to a hearing, but only upon timely receipt of a written answer and request for a hearing within twenty (20) days of the service or hand delivery of the administrative complaint. If timely requested, an administrative hearing shall be held in accordance with the provisions of KRS Chapter 13B. If a written answer and request for hearing are not made within twenty (20) days of service or delivery of the complaint, the **commissioner**~~{executive director}~~ shall enter a final order granting the relief requested in the complaint.

(3) Service by certified mail shall be complete upon the earlier of the following:

(a) The date on which the person receives the mail;

(b) The date on which the agency receives the return receipt; or

(c) The date on which the agency receives notice that the mail has been returned undelivered.

➔Section 769. KRS 286.8-046 is amended to read as follows:

(1) The **commissioner**~~{executive director}~~ may levy a civil penalty against any person who violates any provision of or any administrative regulation promulgated under this subtitle or order issued by the **commissioner**~~{executive director}~~ under this subtitle. The civil penalty shall be not less than one thousand dollars (\$1,000) nor more than twenty-five thousand dollars (\$25,000) per violation, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs.

(2) The **commissioner**~~{executive director}~~ may order restitution, refund, recovery of expenses, or direct such other affirmative action as the **commissioner**~~{executive director}~~ deems necessary against any person who violates

any order issued by the *commissioner*~~[executive director]~~ or any provision of, or administrative regulation promulgated under, this subtitle.

➔Section 770. KRS 286.8-048 is amended to read as follows:

- (1) The *commissioner*~~[executive director]~~ may enter an emergency order suspending, limiting, or restricting the license, claim of exemption, or registration of any mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor without notice or hearing if it appears upon grounds satisfactory to the *commissioner*~~[executive director]~~ that the mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has engaged or is engaging in unsafe, unsound, and illegal practices that pose an imminent threat to the public interest.
- (2) One (1) or more of the following circumstances shall be considered sufficient grounds for an emergency order under this section if it appears on grounds satisfactory to the *commissioner*~~[executive director]~~ that:
 - (a) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor does not meet or has failed to comply with more than one (1) of the requirements of this subtitle and the violations appear to be willful;
 - (b) The mortgage loan broker or mortgage loan company is in such financial condition that it cannot continue in business with safety to its customers;
 - (c) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has been indicted, charged with, or found guilty of any act involving fraud, deception, theft, or breach of trust, or is the subject of an administrative cease-and-desist order or similar order, or of a permanent or temporary injunction currently in effect entered by any court or agency of competent jurisdiction;
 - (d) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of doing business in the mortgage lending process, or has engaged in any course of business that has worked or tended to work a fraud or deceit upon any person or would so operate;
 - (e) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has made or caused to be made to the *commissioner*~~[executive director]~~ any false representation of material fact, has refused to permit an examination, or has refused or failed, within a reasonable time, to furnish any information or make any report that may have been requested or required by the *commissioner*~~[executive director]~~;
 - (f) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state of the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by this state or any other jurisdiction under threat of administrative action; or
 - (g) The surety bond required under KRS 286.8-060 has terminated, expired, or no longer remains in effect.
- (3) An emergency order issued under this section becomes effective when signed by the *commissioner*~~[executive director]~~. The emergency order shall be delivered by personal delivery or certified mail to the last known address of the party or parties. The order shall be deemed served upon delivery or upon return of the order.
- (4) A party aggrieved by an emergency order issued by the *commissioner*~~[executive director]~~ under this section may request an emergency hearing. The request for hearing shall be filed with the *commissioner*~~[executive director]~~ within twenty (20) days of service of the emergency order.
- (5) Upon receipt of a written request for emergency hearing, the *commissioner*~~[executive director]~~ shall conduct an emergency hearing as required under KRS 13B.125, within ten (10) working days from the date of receipt of the request for hearing, unless the parties agree otherwise.
- (6) An emergency order issued under this section shall remain in effect until it is withdrawn or superseded by an order of the *commissioner*~~[executive director]~~ or until it is terminated by a court order.

➔Section 771. KRS 286.8-060 is amended to read as follows:

- (1) Except as otherwise provided in this section, each mortgage loan company, mortgage loan broker, and mortgage loan originator shall post or be covered by a surety bond for the entire licensure or registration period in an amount prescribed by the **commissioner**~~[executive director]~~, but in no event shall the bond be less than two hundred fifty thousand dollars (\$250,000) for mortgage loan companies and fifty thousand dollars (\$50,000) for mortgage loan brokers.
- (2) Every bond shall provide for suit thereon by any person who has a cause of action under this subtitle. The total liability of the surety, to all persons, cumulative or otherwise, shall not exceed the amount specified in the bond.
- (3) The bond shall be in a form prescribed by the **commissioner**~~[executive director]~~ and shall be made payable to the **commissioner**~~[executive director]~~. The terms of the bond shall provide that it may not be terminated without thirty (30) days prior written notice to the **commissioner**~~[executive director]~~.
- (4) Every bond shall be available for the recovery of expenses, fines, restitution, and fees levied by the **commissioner**~~[executive director]~~ under this subtitle, and for losses or damages that have been incurred by any borrower or consumer as a result of the registrant's or licensee's failure to comply with the requirements of this subtitle.
- (5) Every bond shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three (3) years after the act upon which it is based.
- (6) If the **commissioner**~~[executive director]~~ or the **commissioner's**~~[executive director's]~~ representative shall at any time reasonably determine that the bond or securities aforesaid are insecure, deficient in amount, or exhausted in whole or part, he may by written order require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this subtitle, the order to be complied with within thirty (30) days following service thereof upon the registrant or licensee.

➔Section 772. KRS 286.8-070 is amended to read as follows:

- (1) The use of the words "certified" or "licensed" or any form thereof separately or in any combination thereof with other words or syllables, is prohibited as part of the name of a mortgage loan company or a mortgage loan broker. No license of a proposed mortgage loan company or a mortgage loan broker having the same name as a corporation authorized to do business under the laws of this state or a name so nearly resembling it as to be calculated to deceive shall be issued by the **commissioner**~~[executive director]~~.
- (2) No person, unless lawfully authorized to do business in this state under the provisions of this subtitle, and actually engaged in carrying on a mortgage loan or loan broker business, shall do business under any name or title which contains the terms "mortgage company," "mortgage loan company," "mortgage loan broker," "loan broker," "financial broker," or any combination employing the words "mortgage," "loan," or "broker," with one (1) or more of the words "association," "institution," "society," "company," "corporation," or words of similar import, or use any name or represent in any manner which indicates or reasonably implies that his or its business is that of a mortgage loan company or mortgage loan broker as defined by KRS 286.8-010.
- (3) A mortgage loan company or mortgage loan broker required to have a license under this subtitle shall not use the words "bank," "trust," "national," or "federal," or any form thereof separately or in combination thereof with other words or syllables as a part of its name or to otherwise identify itself.

➔Section 773. KRS 286.8-075 is amended to read as follows:

- (1) As used in this section, "change of control" means:
 - (a) A transfer of voting stock which results in giving a person, directly or indirectly, the power to direct the management and policy of a mortgage loan company or mortgage loan broker; or
 - (b) A transfer of at least ten percent (10%) of the outstanding voting stock of a mortgage loan company or a mortgage loan broker.
- (2) A transfer of voting stock of a mortgage loan company or mortgage loan broker which constitutes a change of control shall be approved in writing by the **commissioner**~~[executive director]~~, prior to the transfer.
- (3) The owner, president, chief executive officer or a partner shall apply to the **commissioner**~~[executive director]~~ for approval of a transfer of voting stock in his mortgage loan company or mortgage loan broker which constitutes a change of control. The application must contain information which shows that the requirements of this subtitle for obtaining a license will be satisfied after the change of control.

➔Section 774. KRS 286.8-080 is amended to read as follows:

Upon receipt of the application the **commissioner**~~[executive director]~~ shall first determine whether or not it complies with the provisions of this subtitle and, if **the commissioner**~~[he]~~ so finds, he **or she** shall then inquire into the advisability of approving the application by determining whether the applicant demonstrates such financial responsibility, financial condition, and business expertise, character and general fitness to reasonably warrant the belief that the applicant's business will be conducted honestly, fairly and efficiently and in such a way as to justify public confidence. The **commissioner**~~[executive director]~~ may investigate and consider the qualifications of officers and directors or principals of an applicant in determining whether this qualification has been met. If the **commissioner**~~[executive director]~~ finds that the applicant meets all the above requirements, he shall approve the application.

➔Section 775. KRS 286.8-090 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may suspend; revoke; place on probation; condition; refuse to issue or renew a license, registration, or exemption; or accept surrender of a license, registration, or exemption in lieu of revocation or suspension; or issue a cease and desist order if the **commissioner**~~[executive director]~~ finds that the person, applicant, licensee, or registrant:
 - (a) Does not meet, no longer meets, or has failed to comply with the requirements of this subtitle;
 - (b) Is unfit through lack of financial responsibility or experience to conduct the business of a mortgage loan company or mortgage loan broker, as the case may be;
 - (c) Does not conduct his business in accordance with the law or the method of business includes or would include activities which are illegal where performed;
 - (d) Collects interest at a usurious rate;
 - (e) Is in such financial condition that he cannot continue in business with safety to his customers;
 - (f) Is guilty of fraud in connection with any transaction governed by this subtitle, or is the subject of an administrative cease and desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act;
 - (g) Has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the mortgage lending process, or has engaged in a course of business that has worked or tended to work a fraud upon any person or would so operate;
 - (h) Has made or caused to be made to the **commissioner**~~[executive director]~~ any false representation of material fact or has suppressed or withheld from the **commissioner**~~[executive director]~~ any information that the person possesses and which, if submitted to the **commissioner**~~[executive director]~~, would have rendered the person ineligible to be licensed, registered, or exempted from licensing or registration under this subtitle;
 - (i) Has failed to account to persons interest for all funds received for the escrow account required under KRS 286.8-130;
 - (j) Has refused to permit an examination or investigation by the **commissioner**~~[executive director]~~ of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the **commissioner**~~[executive director]~~ under the provisions of this subtitle;
 - (k) Has been convicted of any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty, or any felony, or has pending against him any felony charge;
 - (l) Has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state of the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by this state or any other jurisdiction under threat of administrative action;
 - (m) Has employed or contracted with a person who has failed to register or has had a license or registration denied, revoked, or suspended in this Commonwealth or another state;

- (n) Has demonstrated incompetence or untrustworthiness to act as a licensee or registrant or to continue a claim of exemption granted by application under this subtitle;
 - (o) Has failed to pay any required fee under this subtitle;
 - (p) Has abandoned an application by failing to provide the *commissioner*~~{executive director}~~ any information required under this subtitle, or requested by the *commissioner*~~{executive director}~~, to complete an application;
 - (q) Has influenced, or attempted to influence through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan;
 - (r) Has failed to comply with an administrative or court order imposing child support obligations;
 - (s) Has failed to pay state income taxes or to comply with any administrative or court order directing the payment of state income tax;
 - (t) Has improperly used notes or other resources to complete an examination for a license or registration;
 - (u) Has violated any provision of KRS 360.100; or
 - (v) Has violated any provision of this subtitle, administrative regulation promulgated hereunder, or order issued by the *commissioner*~~{executive director}~~.
- (2) Any person whose license, registration, or claim of exemption has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension under this section is prohibited from participating in any business activity of a registrant or licensee under this subtitle and from engaging in any business activity on the premises where a licensee or registrant under this subtitle is conducting its business.
 - (3) The *commissioner*~~{executive director}~~ shall execute a written order whenever a license, registration, or claim of exemption issued pursuant to this subtitle is suspended or revoked. The *commissioner*~~{executive director}~~ shall serve the written order upon the licensee, registrant, or person claiming the exemption. The written order shall be sent by certified mail, return receipt requested, postage prepaid, to the last known principal business address of such licensee, registrant, or person claiming the exemption, as set forth in the records of the *commissioner*~~{executive director}~~. The written order shall be deemed to have been received by the licensee, registrant, or person claiming the exemption three (3) business days following the mailing thereof.
 - (4) Any person who continues to participate in any business activity covered by this subtitle after such person's license, registration, or claim of exemption has been revoked, suspended, or denied shall be subject to the penalties in this section, KRS 286.8-046, and KRS 286.8-990 and shall be in violation of KRS 367.170.
 - (5) Any person who has had a license, registration, or claim of exemption denied by the *commissioner*~~{executive director}~~ shall not be eligible to apply for a license, registration, or claim of exemption under this subtitle until after expiration of one (1) year from the date of denial.
 - (6) Any person who has had a license, registration, or claim of exemption revoked by the *commissioner*~~{executive director}~~ shall not be eligible to apply for a license, registration, or claim of exemption under this subtitle until after expiration of three (3) years from the date of revocation. A person whose license, registration, or claim of exemption has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license, registration, or claim of exemption under this subtitle.
 - (7) The provisions of this section shall be in addition to any other penalties or remedies available, including the penalties of KRS 286.8-046.
 - (8) The *commissioner*~~{executive director}~~ may notify the Department of Revenue which may institute an action in the name of the Commonwealth of Kentucky in the Franklin Circuit Court, or any court of competent jurisdiction, for the recovery of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.
 - (9) The *commissioner*~~{executive director}~~ may file a complaint in the Franklin Circuit Court, or any court of competent jurisdiction, for a temporary restraining order or injunction, against any person, where the *commissioner*~~{executive director}~~ has reason to believe from evidence satisfactory to the *commissioner*~~{executive director}~~ that such person has violated, or is about to violate, a provision in this subtitle, for the purpose of restraining and enjoining such person from continuing or engaging in the violation or doing any act in furtherance thereof. The court shall have jurisdiction over the proceeding and shall have the power to enter an order or judgment awarding preliminary or final injunctive relief that is proper. Any person

who violates a temporary restraining order or injunction issued by the court entered as a result of a violation of this subtitle shall be held in contempt of court.

- (10) The surrender or expiration of a license, registration, or exemption shall not affect the licensee's civil or criminal liability for acts committed prior to the surrender or expiration. No revocation, suspension, refusal to renew, surrender, or expiration of any license, registration, or exemption shall impair or affect the obligation of any preexisting lawful contract between the licensee and the borrower. The surrender or expiration of a license, registration, or exemption shall not affect a proceeding to suspend or revoke a license or registration.

➔Section 776. KRS 286.8-100 is amended to read as follows:

- (1) No licensee shall establish or maintain a branch transacting business in Kentucky, either directly or indirectly, without filing the application as described in KRS 286.8-032(5) and receiving prior written approval of the **commissioner**~~{executive director}~~.
- (2) Each application for approval of the establishment and maintenance of a branch shall state the physical address of the proposed location, the functions to be performed, and other information the **commissioner**~~{executive director}~~ may require if different from that contained in the original application for a license or registration.
- (3) Each application under this section shall be sworn to and accompanied by the appropriate fee as set out in KRS 286.8-034(1)(b).
- (4) Upon the receipt by the **commissioner**~~{executive director}~~ of an application and the required fee, if he finds that the applicant is otherwise in compliance with the provisions of this subtitle, he shall approve the application.
- (5) The **commissioner**~~{executive director}~~ may deem an application abandoned and subject to KRS 286.8-090 when the application is received incomplete and the applicant fails to provide any required information or fee under this subtitle or fails to respond to a request by the **commissioner**~~{executive director}~~ for further information.

➔Section 777. KRS 286.8-120 is amended to read as follows:

- (1) Every mortgage loan company may require borrowers to pay all necessary and reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Without limiting the generality of the foregoing, such expenses may include appraisal, attorneys' fees, abstract, recording and registration fees, title examination, title insurance, mortgage insurance, credit report, survey, drawing of papers, origination fees, loan closing costs, and taxes or charges imposed upon or in connection with the making and reporting of any mortgage.
- (2) Every mortgage loan company also may require the borrowers to pay the cost of all other necessary and incidental services rendered by the mortgage loan company or by others in connection with loans in reasonable amounts. Without limiting the generality of the foregoing, such costs may include the cost of services of inspectors, engineers, and architects.
- (3) Such initial charges as described in subsections (1) and (2) of this section may be collected by the mortgage loan company from the borrower and paid to any person rendering such services, or paid directly by the borrower.
- (4) In lieu of such initial charges to cover such expenses and costs as described in subsections (1) and (2) of this section, a mortgage loan company may make a reasonable charge, part or all of which may be retained by the mortgage loan company which renders such service, or part or all of which may be paid to others who render such services.
- (5) The fees and charges authorized by this section shall be in addition to interest authorized by law, and shall not be deemed to be a part of the interest collected or agreed to be paid on such loans within the meaning of any law of this Commonwealth which limits the rate of interest which may be exacted in any transaction.
- (6) No person shall receive any fee or other compensation of any kind in connection with procuring any loan, except for services actually rendered as above provided, and in no event shall a mortgage loan company or mortgage loan broker require the payment of a fee greater than one hundred dollars (\$100) as a condition to submitting a loan application unless the **commissioner**~~{executive director}~~ shall otherwise prescribe by rule.

- (7) All "letters of commitment," or any other contracts or agreements between prospective borrowers and a mortgage loan company or a loan broker, where the borrowers employ services, for a fee or commission, to obtain a loan commitment or funding from a lending institution shall indicate the terms and conditions thereof, including a full and detailed description of the services the broker or company undertakes to perform, a specific statement of the circumstances in which the broker or company will be entitled to obtain or retain consideration and the period that such agreement shall remain in effect.
- (8) Failure on the part of any party, with the exception of the borrower, to fulfill the terms of any loan commitment, letter of commitment, agreement, or contract for the loan of money within the time and on such terms specified therein, or the failure to make a bona fide effort to secure a loan after receiving a fee for such service, shall constitute default by the mortgage loan company and any other person so in default; and any person damaged by such default may sue at law or equity for damages, reasonable attorneys' fees and interest at the legal rate of interest under KRS 360.010. Every cause of action for damages under this subsection survives the death of any person who might have been a plaintiff or defendant. No person may sue under this subsection more than five (5) years after any act constituting default.

➔Section 778. KRS 286.8-130 is amended to read as follows:

- (1) All moneys paid to the mortgage loan company for payment of taxes or insurance premiums on property which secures any loan made or serviced by the mortgage loan company shall be deposited in an account which is insured by the Federal Deposit Insurance Corporation or any other account acceptable to the Federal National Mortgage Association or the United States Department of Housing and Urban Development or the Government National Mortgage Association or the United States *Department of Veterans Affairs*~~Administration~~ and kept separate, distinct, and apart from funds *that* belong to the mortgage loan company. The funds, when deposited, shall be designated as an "escrow account" or under some other appropriate name indicating that the funds are not the funds of the mortgage loan company.
- (2) Any interest earned on funds deposited into an escrow account under subsection (1) shall belong to the borrower and shall be applied to the expenses to be paid from the account.
- (3) The mortgage loan company shall, upon reasonable notice, account to any debtor whose property secures a loan made by the mortgage company for any funds which that person has paid to the mortgage loan company for the payment of taxes or insurance premiums on the property in question.
- (4) The mortgage loan company shall, upon reasonable notice, account to the *commissioner*~~executive director~~ for all funds in the company's escrow account.
- (5) Escrow account funds shall not be subject to execution or attachment on any claim against the mortgage company. It shall be unlawful for any mortgage company to knowingly keep or cause to be kept any funds or money in any bank under the heading of "escrow account" or any other name designating the funds or money belonging to the debtors of the mortgage loan company, except actual funds paid to the mortgage loan company for the payment of taxes and insurance premiums on property securing loans made or serviced by the company.
- (6) Payments to the debtor's escrow account shall be promptly and properly credited. All escrowed taxes, insurance, and other items shall be paid in a timely fashion and not later than the statutory or contractual deadline applicable thereto.

➔Section 779. KRS 286.8-140 is amended to read as follows:

The *commissioner*~~executive director~~ shall exercise general supervision and control over mortgage loan companies and mortgage loan brokers doing business in the Commonwealth of Kentucky. In addition to the other duties imposed upon him by law, the powers and duties of the *commissioner*~~executive director~~ are:

- (1) To prescribe such rules, regulations, and forms and to promulgate such orders as are deemed to be necessary and appropriate to accomplish the basic purposes of and the provisions contained within this subtitle. The *commissioner*~~executive director~~ may from time to time make, amend, and rescind such rules, forms, and orders, including rules and forms governing applications, registration, reports, and loan disclosure statements, and defining any terms, whether or not used in this subtitle, insofar as the definitions are not inconsistent with the provisions of this subtitle. For the purpose of rules and forms, the *commissioner*~~executive director~~ may classify loans, persons, and matters within his jurisdiction, and prescribe different requirements for different classes. No rule, form, or order may be made, amended, or rescinded unless the *commissioner*~~executive director~~ finds that the action is necessary or appropriate in the public interest and consistent with the purposes

fairly intended by the policy and provisions of this subtitle. In prescribing rules and forms the **commissioner**~~{executive director}~~ may cooperate with other state and federal agencies with a view to achieving maximum uniformity in the form and content of applications, reports and loan disclosure statements whenever practical;

- (2) To conduct such investigations as may be necessary to determine whether any person has engaged in or is about to engage in any act, practice, or course of conduct constituting a violation of any provision of this subtitle;
- (3) To conduct such examinations, investigations, and hearings, in addition to those specifically provided for by law, as may be necessary and proper for the efficient administration of this subtitle; and
- (4) At the **commissioner's**~~{executive director's}~~ discretion, to require filings and fees required under this subtitle to be electronically filed with the State Regulatory Registry, LLC, or its successor organization; its parent, affiliate, or operating subsidiary; or other agencies or authorities that are part of the nationwide mortgage licensing system, or other agencies or authorities consistent with the intent of KRS 286.8-285. The **commissioner**~~{executive director}~~ may accept uniform mortgage examinations or other procedures designed to implement a uniform national mortgage regulatory system or facilitate common practices and procedures among the states.

➔Section 780. KRS 286.8-150 is amended to read as follows:

- (1) Except as otherwise provided by law, applications for registration or renewals, all papers, documents, reports, and other written instruments filed with the **commissioner**~~{executive director}~~ under this subtitle, or obtained pursuant to an examination by the **Department**~~{Office}~~ of Financial Institutions are open to public inspection, except that the **commissioner**~~{executive director}~~ pursuant to the provisions of KRS Chapter 61 may classify as confidential or withhold from public inspection for such time as he *or she* considers necessary any information which, in his *or her* judgment, the public welfare or the welfare of any licensee or registrant or its customers requires to be so withheld. All investigations and information contained therein shall not be public until such time as the **commissioner**~~{executive director}~~ makes all or part of the investigation public or the investigation is closed.
- (2) The **commissioner**~~{executive director}~~ may classify as confidential certain records and information obtained by the **Department**~~{Office}~~ of Financial Institutions when such matters are obtained from the Nationwide Mortgage Licensing System and Registry or from a governmental agency.
- (3) The **commissioner**~~{executive director}~~ may classify as confidential and prohibit the disclosure of any request for documents or records submitted pursuant to KRS 286.8-180, for such time as deemed necessary if, in the **commissioner's**~~{executive director's}~~ judgment, the disclosure of said request for documents or records may impede or interfere with an ongoing investigation conducted pursuant to KRS 286.8-140 or may cause the destruction or secretion of documents by the targeted party.
- (4) Notwithstanding any provision to the contrary in this subtitle or in KRS Chapter 61, any information, documents, or material provided to or obtained from the Nationwide Mortgage Licensing System and Registry shall be subject to the confidentiality requirements set forth in Section 1512 of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto.

➔Section 781. KRS 286.8-160 is amended to read as follows:

- (1) Every mortgage loan company and mortgage loan broker shall make and keep such accounts, correspondence, memoranda, papers, books, data, and other records used in the mortgage lending process as the **commissioner**~~{executive director}~~ prescribes, or that are required by federal law.
- (2) The records governed in this subtitle shall be preserved for such time as the **commissioner**~~{executive director}~~ may by rule or order require, not to exceed a period of five (5) years after a mortgage loan application is completed, whether approved or rejected, or on mortgage loans paid in full, whichever is longer. Records shall be held for longer than five (5) years where federal law prescribes or supersedes this section.
- (3) Records required to be preserved under this subtitle may be kept in an electronic retrievable format, or other similar form of medium, that is readily accessible to examination, investigation, and inspection by the **commissioner**~~{executive director}~~.

- (4) Every mortgage loan company and mortgage loan broker shall file financial reports as the **commissioner**~~[executive director]~~ prescribes.
- (5) If the information contained in any document filed with the **commissioner**~~[executive director]~~ is or becomes inaccurate or incomplete in any material respect, the person who filed the document shall promptly file a correcting amendment.
- (6) Any person who ceases operating as a mortgage loan company or mortgage loan broker under the provisions of this subtitle shall, prior to the discontinuance of business in the residential mortgage lending process, notify the **commissioner**~~[executive director]~~ of the physical location where the records required to be kept under this subtitle will be preserved. The records shall be made accessible to the **commissioner**~~[executive director]~~ upon five (5) business days' written notice.
- (7) Any person who ceases operating as a mortgage loan company or mortgage loan broker under the provisions of this subtitle shall designate a custodian of records and notify the **commissioner**~~[executive director]~~ of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve all records required under this subtitle and allow the **commissioner**~~[executive director]~~ access to the records for examination and investigation upon demand.
- (8) Records may be maintained by a mortgage loan company or mortgage loan broker at a location other than within this Commonwealth, so long as they are made accessible to the **commissioner**~~[executive director]~~ upon five (5) business days' written notice.
- (9) The **commissioner**~~[executive director]~~ may approve a written request for the destruction of records required to be preserved under this subtitle prior to the minimum retention period described in subsection (2) of this section.

➔Section 782. KRS 286.8-170 is amended to read as follows:

- (1) Every mortgage loan company and mortgage loan broker shall keep at its principal office correct and complete records of its business transactions, books of accounts, and minutes of proceedings of its directors, principals, or partners. Complete records of all business transactions at the principal office shall be maintained at the principal office. Each branch office shall keep detailed records of all transactions at such branch office and shall furnish full control records to the principal office.
- (2) No mortgage loan company or mortgage loan broker by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any person, partnership, association, or corporation, or under any title, designation, or value that is not thoroughly descriptive of any assets.
- (3) The affairs of every mortgage loan company, mortgage loan broker, mortgage loan originator, and mortgage loan processor, and the records required to be maintained by KRS 286.8-160 are subject at any time or from time to time to such periodic, special, or other examinations by the executive director or an examiner of the **commissioner**~~[executive director]~~ within or without this state and with or without notice to the person being examined, as the **commissioner**~~[executive director]~~ deems necessary or appropriate in the public interest. All records of the person being examined shall be subject to the **commissioner's**~~[executive director's]~~ inspection.
- (4) The examiner shall make a thorough examination into the condition, workings and affairs of the person being examined and report any violation of law or any unauthorized unsafe practices or any failure to keep and have correct any required books and records as he *or she* may find to the **commissioner**~~[executive director]~~.
- (5) A mortgage loan company or mortgage loan broker shall pay a fee for each such examination of its operations or employees based on fair compensation for time and actual expense. For the purpose of avoiding unnecessary duplication of examinations, the **commissioner**~~[executive director]~~, insofar as he *or she* deems it practicable in administering this section, may cooperate and exchange information with any agency of the state or federal government, other states, the Nationwide Mortgage Licensing System and Registry, or the federal National Mortgage Association, Government National Mortgage Association, and Federal Home Loan Mortgage Corporation, and may accept such examinations in whole or in part in lieu of an examination by the **commissioner**~~[executive director]~~.
- (6) The **commissioner**~~[executive director]~~ or *the commissioner's*~~[his]~~ examiners or designated representative shall have access to all records of a mortgage loan company, mortgage loan broker, mortgage loan originator, and mortgage loan processor which relate to their business, and records kept by any officers, agents, or employees, relating to or upon which any record of its business is kept.

- (7) A mortgage loan originator or mortgage loan processor shall make available and grant access to the **commissioner**~~{executive director}~~, or an examiner of the **commissioner**~~{executive director}~~, the records relating to its operations. A mortgage loan company or mortgage loan broker shall make available and grant access to all records of its current and former employees and contractors relating to its operations.
- (8) Any person subject to this subtitle shall make or compile reports or prepare other information as directed by the **commissioner**~~{executive director}~~ or an examiner of the **commissioner**~~{executive director}~~ to include:
- (a) Accounting compilations;
 - (b) Information lists and data concerning loan transactions in a format prescribed by the **commissioner**~~{executive director}~~ or an examiner of the **commissioner**~~{executive director}~~; and
 - (c) Such other information deemed necessary to carry out the purposes of this section.
- (9) No mortgage loan company, mortgage loan broker, mortgage loan originator, or mortgage loan processor shall impede the **commissioner**~~{executive director}~~ or an examiner of the **commissioner**~~{executive director}~~ from interviewing its officers, principals, members, employees, independent contractors, agents, or customers.
- (10) In making any examination or investigation authorized by this subtitle, the **commissioner**~~{executive director}~~ may control access to any documents and records of the licensee or person under examination or investigation. The **commissioner**~~{executive director}~~ may take possession of the documents and records, or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the **commissioner**~~{executive director}~~. Unless the **commissioner**~~{executive director}~~ has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this subtitle, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.
- (11) It shall be unlawful for any person subject to investigation or examination under this subtitle to knowingly withhold, abstract, alter, remove, mutilate, destroy, or secrete any books, records, or other information.
- (12) In order to carry out the purposes of this subtitle, the **commissioner**~~{executive director}~~ may:
- (a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
 - (b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this subtitle; and
 - (c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the persons subject to this subtitle.
- (13) The authority of this section shall remain in effect, whether a person acts or claims to act under any licensing or registration law of this subtitle, or claims to act without such authority.

➔Section 783. KRS 286.8-175 is amended to read as follows:

- (1) Reports of examination, and correspondence that relates to the report of examination, of a mortgage loan company or mortgage loan broker shall be considered confidential information. No officer or director of a mortgage loan company or mortgage loan broker, employee of the **department**~~{office}~~, or employee of a state or federal regulatory authority shall release any information contained in the examination, except when:
 - (a) Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality has been issued by a court of competent jurisdiction; or
 - (b) The information is referred to an appropriate prosecuting attorney for possible criminal proceedings.
- (2) The **department**~~{office}~~ may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities.

- (3) Every official report concerning a mortgage loan company or mortgage loan broker, and every report of examination, shall be prima facie evidence of the facts therein stated for all purposes in any action in which the **department**~~[office]~~, mortgage loan company, or mortgage loan broker is a party.

➔Section 784. KRS 286.8-180 is amended to read as follows:

- (1) In the conduct of any examination, investigation, or hearing, the **commissioner**~~[executive director]~~ or an officer designated by **the commissioner**~~[him]~~ may compel the attendance of any person or obtain any documents by subpoenas; administer oaths or affirmations in the examination of the directors, officers, agents, employees of any mortgage loan company, or mortgage loan broker or any other person concerning the business and conduct of affairs or any person subject to the provisions of this subtitle, and in connection therewith may require and compel the production of any books, records, papers, or other documents relevant to the inquiry.
- (2) In the contumacy by, or refusal to obey a subpoena issued to, any person, Franklin Circuit Court, upon application by the **commissioner**~~[executive director]~~, may issue to the person an order requiring him **or her** to appear before the **commissioner**~~[executive director]~~, or the officer designated by **the commissioner**~~[him]~~, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
- (3) The cost of any investigation or hearing conducted under KRS 286.8-190 may be assessed to and collected from the mortgage loan company or mortgage loan broker in question by the **commissioner**~~[executive director]~~.

➔Section 785. KRS 286.8-190 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may investigate either upon complaint or otherwise when it appears that any person is conducting business in an unsafe and injurious manner or otherwise is in violation of this subtitle, or any rule or order hereunder, or when it appears that any person is engaging in the mortgage loan business without being licensed or registered, or legally exempted from licensing or registration, under the provisions of this subtitle.
- (2) If it appears to the **commissioner**~~[executive director]~~ upon sufficient grounds or evidence satisfactory to the **commissioner**~~[executive director]~~ that any person has engaged in or is about to engage in any practice in violation of this subtitle or any rule or order hereunder, or that person's mortgage loan business affairs are in an unsafe condition, the **commissioner**~~[executive director]~~ may:
- (a) Order the person to cease and desist from the acts or practices by a formal written order delivered to the person stating any alleged violation. The order shall specify the effective date thereof, and notice of entry shall be served personally or sent by certified mail to the last known address of the person affected. The person, upon written application, shall be entitled to a hearing; but if a written application for a hearing is not timely received by the **commissioner**~~[executive director]~~ within twenty (20) days after the certified mailing or personal delivery of the order, it shall be made final and shall remain in effect until withdrawn by the **commissioner**~~[executive director]~~ or terminated by a court order; and
- (b) Apply directly to Franklin Circuit Court, or any court of competent jurisdiction, to enjoin any acts or practices in violation of this subtitle and to enforce compliance with this subtitle or any rule or order hereunder. Upon proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The **commissioner**~~[executive director]~~ shall not be required to post a bond.

➔Section 786. KRS 286.8-210 is amended to read as follows:

Any person aggrieved by final order of the **commissioner**~~[executive director]~~ may obtain a review of the order in Franklin Circuit Court, by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the **commissioner**~~[executive director]~~, and thereupon the **commissioner**~~[executive director]~~ shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order in whole or in part. No objection to the order may be considered by the court unless it was urged before the **commissioner**~~[executive director]~~ or there were reasonable grounds for failure to do so. The findings of the **commissioner**~~[executive director]~~ as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were

reasonable grounds for failure to adduce the evidence in the hearing before the *commissioner*~~[executive director]~~ the court may order the additional evidence to be taken before the *commissioner*~~[executive director]~~ and to be adduced upon the hearing in such manner and upon such conditions as the court may consider proper. The *commissioner*~~[executive director]~~ may modify his *or her* findings as to the facts, by reason of additional evidence so taken, and *the commissioner*~~[he]~~ shall file any modified or new findings, which if supported by substantial evidence shall be conclusive. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the *commissioner's*~~[executive director's]~~ order. An appeal may be taken from the judgment of the Franklin Circuit Court upon any such appeal to the court of appeals on the same terms and conditions as an appeal is taken in civil actions.

➔Section 787. KRS 286.8-220 is amended to read as follows:

- (1) It shall be unlawful for any person to make or cause to be made, in any document filed with the *commissioner*~~[executive director]~~, a governmental agency, the Nationwide Mortgage Licensing System and Registry, or in any proceeding under this subtitle, any statement that is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect, including an omission of a material fact.
- (2) It shall be unlawful for any person, in connection with a transaction involving the mortgage lending process, or in connection with the operation of a mortgage loan business or the management or servicing of mortgage loans, directly or indirectly:
 - (a) To employ a device, scheme, or artifice to defraud;
 - (b) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
 - (c) To fail to disburse funds in accordance with a loan commitment;
 - (d) To delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
 - (e) Upon receipt of a customer's written request, to delay beyond five (5) business days the issuance of a written loan payoff amount or to delay beyond ten (10) business days the issuance of a payment history;
 - (f) To charge a fee for the issuance of an initial written loan payoff amount or payment history for each calendar quarter as set out in paragraph (e) of this subsection;
 - (g) To obtain property by fraud or misrepresentation;
 - (h) To fail to make disclosures as required by this subtitle or any other applicable state or federal law, including regulations thereunder; or
 - (i) To fail to comply with state or federal laws, including the rules and regulations thereunder, that are applicable to transacting business in Kentucky.
- (3) Unless exempted by KRS 286.8-020(1), it shall be unlawful for any person to transact business in Kentucky unless it complies with the provisions of this subtitle.
- (4) It shall be unlawful for any person to use prescreened trigger lead information derived from a consumer report to solicit a consumer who has applied for a mortgage loan with another mortgage loan company or mortgage loan broker, when the person:
 - (a) Fails to state in the initial solicitation that the person is not affiliated with the mortgage loan company or mortgage loan broker with which the consumer initially applied;
 - (b) Fails in the initial solicitation to conform to state and federal law relating to prescreened solicitations using consumer reports, including the requirement to make a firm offer of credit to the consumer;
 - (c) Uses information regarding consumers who have opted out of the prescreened offers of credit or who have placed their contact information on the state or federal do-not-call registry; or
 - (d) Solicits a consumer with an offer of certain rates, terms, and costs with the knowledge that the rates, terms, or costs will be subsequently changed to the detriment of the consumer.

➔Section 788. KRS 286.8-225 is amended to read as follows:

There is hereby created in the State Treasury a trust and revolving fund designated as the "mortgage fraud prosecution fund." All civil penalties or contributions directed by the *commissioner*~~{executive director}~~ to be transmitted to the mortgage fraud prosecution fund shall be deposited into the fund. Expenditures from the fund may be used for the investigation and criminal prosecution of fraudulent activities within the residential mortgage lending process, training related to prevention, detection, and investigation of mortgage fraud, and consumer education related to mortgage fraud. Only the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Financial Institutions or the *commissioner's*~~{executive director's}~~ designee may authorize expenditures from the account. The money deposited in the fund is hereby appropriated for the uses set forth in this section. Notwithstanding KRS 45.229, any money remaining in the fund at the close of any fiscal year shall not lapse but shall be carried forward to the next fiscal year. The fund may also receive additional state appropriations, gifts, grants, contributions, and federal funds. All interest earned on money in the fund shall be credited to the fund.

→Section 789. KRS 286.8-227 is amended to read as follows:

The *commissioner*~~{executive director}~~ is authorized through the collection of civil penalties or contributions to retain the funds collected for the purpose of depositing the funds into the mortgage fraud prosecution fund created in KRS 286.8-225. The funds shall be transmitted monthly to the State Treasurer, who shall deposit the funds into the mortgage fraud prosecution fund created in KRS 286.8-225. The *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Financial Institutions is responsible for the distribution of the funds in the mortgage fraud prosecution fund and shall, in consultation with the Attorney General and local prosecutors, develop administrative regulations for the use of these funds.

→Section 790. KRS 286.8-255 is amended to read as follows:

- (1) No natural person shall transact business in Kentucky, either directly or indirectly, as a mortgage loan originator or mortgage loan processor unless such mortgage loan originator or mortgage loan processor is registered with the *department*~~{office}~~ and has been issued a current certificate of registration by the *department*~~{office}~~, complies with all applicable requirements of this subtitle, and maintains a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry. The *department*~~{office}~~ shall maintain a database of all mortgage loan originators and mortgage loan processors originating or processing mortgage loans on residential real property in Kentucky. The *department*~~{office}~~ shall issue a certificate of registration to all registered mortgage loan originators and mortgage loan processors.
- (2) The application for registration shall:
 - (a) Be on a form prescribed by the *commissioner*~~{executive director}~~;
 - (b) Be accompanied by a registration fee in the amount of fifty dollars (\$50) which shall be used solely by the *department*~~{office}~~ to establish and maintain a database of all mortgage loan originators and mortgage loan processors, and any excess funds shall be retained by the *department*~~{office}~~ and shall not lapse to the general fund; and
 - (c) Contain such information as the *commissioner*~~{executive director}~~ deems necessary to carry out the purposes of this subtitle.
- (3)
 - (a) Applications for initial registrations of mortgage loan originators and mortgage loan processors shall be accompanied by satisfactory evidence that the applicant has successfully completed twenty (20) hours of prelicensing education courses related directly to the mortgage lending process, as approved and designated by the *commissioner*~~{executive director}~~.
 - (b) For the purposes of paragraph (a) of this subsection, the prelicensing education courses approved and designated by the *commissioner*~~{executive director}~~ shall meet the minimum requirements set forth in Section 1505(c) of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto, and shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.
 - (c) For the purposes of paragraph (a) of this subsection, the *commissioner*~~{executive director}~~ may accept as credit towards the completion of the prelicensing education requirements in this state, the completion of prelicensing education requirements in any other state so long as the education has met the requirements set forth in paragraphs (a) and (b) of this subsection.
- (4) Applications for renewals of certificates of registration by registered mortgage loan originators and mortgage loan processors shall be accompanied by satisfactory evidence that the individual has successfully met the continuing education requirements of KRS 286.8-260 and by payment of a renewal fee in the amount of fifty

dollars (\$50). The renewal fee shall be used solely by the *department*~~{office}~~ to establish and maintain a database of all mortgage loan originators and mortgage loan processors and any excess funds shall be retained by the *department*~~{office}~~ and shall not lapse to the general fund.

- (5) A certificate of registration issued between January 1 and October 31 of the same calendar year shall expire on December 31 of the same calendar year. A certificate of registration issued between November 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year. Any certificate of registration that has expired may be reinstated by the *commissioner*~~{executive director}~~ upon payment of the annual registration fee, and a reinstatement fee of two hundred fifty dollars (\$250), within thirty (30) days of the expiration of the certificate of registration.
- (6) The *department*~~{office}~~ shall provide a registrant with a duplicate copy of any certificate of registration upon satisfactory showing of its loss and payment of a ten dollar (\$10) replacement fee.
- (7) All mortgage loan originators and mortgage loan processors subject to the registration requirements of this section shall also be subject to and comply with all applicable provisions of this subtitle.
- (8) The *commissioner*~~{executive director}~~ may require the submission of background records checks, including but not limited to checks for state, federal, and international criminal histories, civil or administrative records, and any other information as deemed necessary to comply with the minimum requirements set forth in Section 1505 of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto, as well as the submission of an independent credit report obtained from a consumer reporting agency described in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681a, as part of an application or renewal application filed under this subtitle. The cost of the background and records checks, and credit report shall be borne by the applicant.
- (9) No mortgage loan originator or mortgage loan processor shall be granted or shall be entitled to maintain a certificate of registration unless he or she satisfies the following minimum standards for registration:
 - (a) The applicant has never had a loan originator's license or registration revoked in any governmental jurisdiction, except revocations that have been formally vacated or set aside shall not be deemed a revocation for the purposes of this section;
 - (b) The applicant has not been convicted of, pled guilty to, or pled nolo contendere to a felony in any domestic, foreign, or military court:
 1. During the seven (7) year period preceding the date of the application for registration or renewal of registration; or
 2. At any time preceding such date of application for registration or renewal of registration, if such felony involved an act of fraud or dishonesty, a breach of trust, or money laundering;
 - (c) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator or loan processor will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle;
 - (d) The applicant has completed the preclicensing education requirement set forth in subsection (3) of this section;
 - (e) The applicant has passed a qualified written test which satisfies the minimum requirements set forth in Section 1505(d) of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto; and
 - (f) If required by KRS 286.8-060, the applicant holds or is covered by a surety bond which satisfies the minimum requirements set forth in KRS 286.8-060.
- (10) No mortgage loan originator or mortgage loan processor shall be granted a renewal certificate of registration unless he or she satisfies the following minimum standards for renewal of registration:
 - (a) The applicant has met and continues to meet the minimum standards set forth in subsection (9) of this section; and
 - (b) The applicant has satisfied the annual continuing education requirements set forth in KRS 286.8-260.
- (11) The certificate of registration of any mortgage loan originator or mortgage loan processor that fails to comply with the minimum standards for registration renewal set forth in this section shall expire and shall promptly be

deemed surrendered to the *commissioner*~~[executive director]~~ without demand. The *commissioner*~~[executive director]~~ may adopt procedures and requirements for the reinstatement of expired registrations consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

- (12) Mortgage loan originators engaging in any of the activities set forth in KRS 286.8-010(21)(a) shall provide loan origination services to not more than one (1) mortgage loan company or mortgage loan broker at a time.

➔Section 791. KRS 286.8-260 is amended to read as follows:

- (1) Any person required to be registered under this subtitle shall complete at least twelve (12) hours of continuing professional education on an annual basis that is approved and designated by the *commissioner*~~[executive director]~~. A minimum of four (4) hours of continuing professional education at least once every two (2) years shall be instruction on the requirements of this subtitle or KRS 360.100, or a combination of both.
- (2) For the purposes of subsection (1) of this section, the continuing professional education courses approved and designated by the *commissioner*~~[executive director]~~ shall meet the minimum requirements set forth in Section 1505(b) of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto. The education courses approved and designated by the *commissioner*~~[executive director]~~ shall also be reviewed and approved by the Nationwide Mortgage Licensing System and Registry unless the Nationwide Mortgage Licensing System and Registry provides otherwise.
- (3) For the purposes of subsection (1) of this section, the *commissioner*~~[executive director]~~ may accept as credit towards the completion of the continuing professional education requirements in this state, the completion of continuing professional education requirements in any other state so long as the education has met the requirements set forth in subsections (1) and (2) of this section.
- (4) For good cause shown, the *commissioner*~~[executive director]~~ may grant an extension during which the continuing education requirement of this section may be completed, but the extension may not exceed thirty (30) days. What constitutes good cause for the extension of time rests within the discretion of the *commissioner*~~[executive director]~~.
- (5) The certificate of registration of any mortgage loan originator or mortgage loan processor that fails to comply with the continuing professional education requirements of this section and who has not been granted an extension of time to comply in accordance with subsection (4) of this section shall expire and shall promptly be deemed surrendered to the *commissioner*~~[executive director]~~ without demand.

➔Section 792. 286.8-275 is amended to read as follows:

- (1) Any person having knowledge or believing that a violation of this subtitle or any other illegal act or practice is being or has been committed may provide the *commissioner*~~[executive director]~~ a report of information pertinent to his or her knowledge or belief and any additional relevant information the *commissioner*~~[executive director]~~ may request.
- (2) Documents, materials, or other information in the possession or control of the *commissioner*~~[executive director]~~ that is provided according to this section shall be confidential by law, privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.872 to 61.884. These documents, materials, or other information shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any civil action unless, after written notice to the *commissioner*~~[executive director]~~ and a hearing, a court of competent jurisdiction determines the *commissioner*~~[executive director]~~ would not be unduly prejudiced.
- (3) Neither the *commissioner*~~[executive director]~~ nor any person who received documents, materials, or other information while acting under the authority of the *commissioner*~~[executive director]~~ shall be permitted or required to testify in any civil action concerning any confidential documents, materials, or other information subject to subsection (2) of this section.
- (4) In order to assist in the performance of the *commissioner's*~~[executive director's]~~ duties, the *commissioner*~~[executive director]~~ may:
 - (a) Use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the *commissioner's*~~[executive director's]~~ official duties;
 - (b) Share the documents, materials, or other information, including confidential and privileged documents, materials, or other information subject to subsections (2) and (3) of this section, with other state, federal, and international law enforcement authorities or the Conference of State Bank Supervisors or its affiliate

if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, and other information; and

- (c) Enter into agreements governing the sharing and use of information including the furtherance of any regulatory or legal action brought as part of the recipient's official duties.
- (5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the *commissioner*~~{executive director}~~ under this section or as a result of sharing as authorized in subsection (4) of this section.

➔Section 793. KRS 286.8-280 is amended to read as follows:

- (1) In the absence of malice, fraud, or negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information required by this subtitle or requested by the *commissioner*~~{executive director}~~.
- (2) This section shall not abrogate or modify any common law or statutory privileges or immunity enjoyed by any person.

➔Section 794. KRS 286.8-285 is amended to read as follows:

- (1) (a) In addition to other duties imposed upon the *commissioner*~~{executive director}~~ in this subtitle, the *commissioner*~~{executive director}~~ shall be authorized to participate in the establishment and implementation of the Nationwide Mortgage Licensing System and Registry and to implement and comply with the minimum requirements set forth in the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto.
- (b) For such purpose, the *commissioner*~~{executive director}~~ is authorized to waive or modify, in whole or in part, by rule or by order, any or all of the requirements of this subtitle and to establish new requirements as reasonably necessary to carry out the purpose of this section.
- (c) The *commissioner*~~{executive director}~~ shall have authority to establish relationships or contracts with other governmental agencies, the Nationwide Mortgage Licensing System and Registry, or entities affiliated with the system that are necessary to carry out the purpose of this section.
- (d) The *commissioner*~~{executive director}~~ may establish interim procedures to promote and establish an orderly and efficient transition for the registration, review, and acceptance of new applications. The *commissioner*~~{executive director}~~ may also establish interim procedures and expedited review and registration procedures for previously registered individuals.
- (e) The *commissioner*~~{executive director}~~ may use the Nationwide Mortgage Licensing System and Registry as an agent for receiving, requesting, and distributing information to and from any source so directed by the *commissioner*~~{executive director}~~.
- (2) The *commissioner*~~{executive director}~~ shall establish a process whereby licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the *commissioner*~~{executive director}~~.
- (3) The *commissioner*~~{executive director}~~ shall annually request audited financial reports, including inquiring as to the budget and fees collected, both proposed and actual, from the Nationwide Mortgage Licensing System and Registry.
- (4) The *commissioner*~~{executive director}~~ shall annually request any nonconfidential protocols or reports for the security and safeguarding of personal information maintained by the Nationwide Mortgage Licensing System and Registry, including the following:
 - (a) Inquiring as to whether the system has implemented and complied with the data security guidelines set forth in the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6801;
 - (b) Inquiring as to the results of any nonconfidential periodic data protection audits that the system may conduct; and
 - (c) Inquiring as to whether any security breaches have occurred resulting in the substantial likelihood that personal information may be misused or stolen.

- (5) The **commissioner**~~executive director~~ shall annually request from the Nationwide Mortgage Licensing System and Registry the following statistical information, if available, relating to the examinations taken by applicants seeking registration as a loan originator in Kentucky during the preceding calendar year:
- (a) The total number of tested individuals, along with any relevant demographic information available such as race, ethnicity, or gender;
 - (b) The total number of individuals who received a passing score on the examination, along with any relevant demographic information available such as race, ethnicity, or gender;
 - (c) The total number of individuals who did not receive a passing score on the examination, along with any relevant demographic information available such as race, ethnicity, or gender; and
 - (d) All mean, average, or scaled scoring data.
- (6) When requested by the General Assembly, the **commissioner**~~executive director~~ shall review and report to the General Assembly the content of any information received from the Nationwide Mortgage Licensing System and Registry pursuant to subsection (3), (4), or (5) of this section.
- (7) Notwithstanding any provision to the contrary in this subtitle or in KRS Chapter 61, the **commissioner**~~executive director~~ shall regularly report violations of this subtitle, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.

➔Section 795. KRS 286.8-290 is amended to read as follows:

- (1) The following mortgage loan originators shall be subject to subsections (3) and (4) of this section, but shall be exempt from the registration and regulatory requirements of KRS 286.8-255:
- (a) An individual employed by the following institutions and acting on behalf of such institutions:
 1. A depository institution;
 2. A subsidiary that is:
 - a. Owned and controlled by a depository institution; and
 - b. Regulated by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, or the Federal Deposit Insurance Corporation; or
 3. An institution regulated by the Farm Credit Administration;
 - (b) A licensed attorney who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
 - (c) A natural person who originates a mortgage loan on behalf of an immediate family member of the natural person unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator; and
 - (d) A natural person who originates a mortgage loan secured by a dwelling that served as the natural person's residence unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator.
- (2) The following mortgage loan processors shall be subject to subsections (3) and (4) of this section, but shall be exempt from the registration and regulatory requirements of KRS 286.8-255:
- (a) Any natural person exempted in subsection (1) of this section; and
 - (b) Any natural person employed by a person exempted in KRS 286.8-020(1)(a), (b), (c), (d), (e), (f), or (g) and acting on behalf of such person.
- (3) Notwithstanding any provisions to the contrary set forth in this subtitle, no mortgage loan originator or mortgage loan processor shall impede the **commissioner**~~executive director~~ or an examiner of the

commissioner~~{executive director}~~ from interviewing any person regarding any potential violations of this subtitle.

- (4) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan originator and mortgage loan processor shall make available and grant access to the **commissioner**~~{executive director}~~ or an examiner of the **commissioner**~~{executive director}~~ the records in the originator's or processor's possession or control that are subject to the provisions of this subtitle.

➔Section 796. KRS 286.8-990 is amended to read as follows:

- (1) This section shall be known and cited as the "Kentucky Residential Mortgage Fraud Act."
- (2) A person is guilty of residential mortgage fraud when, with the intent to defraud, that person does any of the following in connection with the mortgage lending process:
- (a) Employs a device, scheme, or artifice to defraud;
 - (b) Engages in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
 - (c) Fails to disburse funds in accordance with a loan commitment;
 - (d) Knowingly makes or attempts to make any material misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, mortgage broker, borrower, or any other person or entity involved in the mortgage lending process relies on it;
 - (e) Knowingly uses or facilitates or attempts to use any misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process relies on it;
 - (f) Receives or attempts to receive proceeds or any other funds in connection with a residential mortgage closing that the person knew, or should have known, resulted from a violation of paragraph (a), (b), (c), (d), or (e) of this subsection;
 - (g) Knowingly causes to be filed with the **commissioner**~~{executive director}~~ or in any proceeding under this subtitle any document that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect; or
 - (h) Conspires or solicits another to violate any of the provisions of this subsection.
- (3) It shall be sufficient in any prosecution under this section for residential mortgage fraud to show that the party accused acted with the intent to deceive or defraud. It shall be unnecessary to show that any particular person or entity was harmed financially in the transaction or that the person or entity to whom the deliberate misstatement, misrepresentation, or omission was made relied upon the misstatement, misrepresentation, or omission.
- (4) In any criminal proceeding brought under this section, the crime shall be construed to have been committed:
- (a) In the county in which the residential real property for which a mortgage loan is being sought is located;
 - (b) In any county in which any act was performed in furtherance of the violation;
 - (c) In any county in which any person alleged to have violated this section had control or possession of any proceeds of the violation;
 - (d) If a closing occurred, in any county in which the closing occurred; or
 - (e) In any county in which a document containing a deliberate misstatement, misrepresentation, or omission is filed with the official registrar of deeds or with the Division of Motor Vehicles.
- (5) Upon referral by the **commissioner**~~{executive director}~~, the Kentucky Real Estate Commission, the Attorney General, the Kentucky Board of Appraisers, or other parties; or upon its own investigation of available evidence concerning any violation of this subtitle; the proper Commonwealth's attorney or district attorney may institute the appropriate criminal proceedings under this section.

- (6) Unless the conduct is prohibited by some other provision of law providing for greater punishment, a violation of this section involving a mortgage loan is a Class D felony for the first or second offense and a Class C felony for each subsequent offense.
- (7) (a) All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this section shall be subject to forfeiture to the Commonwealth. However, the forfeiture of any real or personal property shall be subordinate to any security interest in the property taken by a lender in good faith as collateral for the extension of credit and recorded as provided by law, and no real or personal property shall be forfeited under this section against an owner who made a bona fide purchase of the property without knowledge of a violation of this section.
 - (b) In addition to the provisions of paragraph (a) of this subsection, courts may order restitution to any person who has suffered a financial loss due to violation of this section.
- (8) In the absence of fraud, bad faith, or malice, a person shall not be subject to an action for civil liability for filing reports or furnishing other information regarding suspected residential mortgage fraud to a regulatory or law enforcement agency.
- (9) Nothing in this subtitle shall limit the powers of the state to punish any person for any conduct that constitutes a crime.
- (10) The court may assess a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000,) against any person who is convicted of violating any provision of this section.
- (11) Any person who knowingly engages in the business of residential mortgage lending regulated by this subtitle without first securing a license or registration therefore shall be guilty of a Class A misdemeanor.

➔Section 797. KRS 286.9-010 is amended to read as follows:

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

- (1) "Affiliate" means a person who directly or indirectly through one (1) or more intermediaries controls or is controlled by, or is under common control with, a licensee;
- (2) "Applicant" means a person filing an application or renewal application for a license under this subtitle;
- (3) "Archive" means to copy data to a long-term storage mechanism apart from the database;
- (4) "Cashing" means providing currency for a payment instrument;
- (5) "Check" means any check, draft, money order, personal money order, travelers' check, or other demand instrument for the transmission or payment of money;
- (6) "Closed" or "close" means that one (1) of the following has occurred in connection with a deferred deposit service transaction concerning the customer's payment instrument:
 - (a) The payment instrument is redeemed by the customer by payment to the licensee of the face amount of the payment instrument in cash;
 - (b) The payment instrument is exchanged by the licensee for a cashier's check or cash from the customer's financial institution;
 - (c) The payment instrument is deposited by the licensee, and the licensee has evidence that the person has satisfied the obligation;
 - (d) The payment instrument is collected by the licensee or its agent through any civil remedy available under the laws of this state; or
 - (e) Any other reason that the **commissioner**~~executive director~~ may deem to be proper under this subtitle;
- (7) "Consideration" means any premium or fee charged of any kind for the sale of goods or services in excess of the cash price of the goods or services;
- (8) "Control" means:
 - (a) Ownership of, or the power to vote, directly or indirectly, twenty-five percent (25%) or more of a class of voting securities or voting interests of a licensee or applicant, or the person in control of a licensee or applicant;

- (b) The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority over a licensee or applicant, or the person in control of a licensee or applicant; or
 - (c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or the person in control of a licensee or applicant;
- (9) "Customer" means a person who inquires into the availability of or applies for a deferred presentment service transaction or a person who enters into a deferred presentment service transaction;
 - (10) "Customer transaction data" means all data reported to the database pertinent to a particular customer transaction, including the date of the transaction, identification of the licensee and location, the sum of money involved, the time payment is deferred, fees charged, any alleged violations of this subtitle, and any identifying customer information;
 - (11) "Database" means the database described in KRS 286.9-140;
 - (12) "Database provider" means one (1) of the following:
 - (a) A third-party provider selected by the *commissioner*~~{executive director}~~ under KRS 286.9-140 to operate the statewide database described in that section; or
 - (b) The *commissioner*~~{executive director}~~, if the *commissioner*~~{executive director}~~ has not selected a third-party provider under KRS 286.9-140;
 - (13) "Deferred deposit service business" means a person who engages in deferred deposit transactions;
 - (14) "Deferred deposit transaction" or "deferred presentment service transaction" means, for consideration, accepting a payment instrument, and holding the payment instrument for a period of time prior to deposit or presentment in accordance with an agreement with or any representation made to the customer whether express or implied;
 - (15) "Delete" means to erase data by overwriting the data;
 - (16) "*Commissioner*~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Financial Institutions;
 - (17) "Identifying customer information" means the name of the customer, his or her Social Security number, driver license number, or other state-issued identification number, address, any account numbers or information specific to a payment instrument provided by a customer to a licensee, a bank, savings bank, savings and loan association, or credit union, and any other nonpublic, personal financial information of a customer entered into the database or that comes into the possession of the database provider through customer or licensee inquiry or report;
 - (18) "Licensee" means a person duly licensed by the *commissioner*~~{executive director}~~ under this subtitle to conduct check cashing or deferred deposit service business in the Commonwealth;
 - (19) "Maturity date" means the date on which a payment instrument is authorized to be redeemed or presented for payment;
 - (20) "*Department*~~{Office}~~" means the *Department*~~{Office}~~ of Financial Institutions;
 - (21) "Payment instrument" means a check, draft, money order, or traveler's check, for the transmission or payment of money sold or issued to one (1) or more persons, whether or not such instrument is negotiable; and
 - (22) "Person" means any individual, partnership, association, joint stock association, trust, corporation, or other entity however organized.

➔Section 798. KRS 286.9-020 is amended to read as follows:

Except as provided in KRS 286.9-030, no person shall engage in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a license. A separate license shall be required for each location from which the business of cashing checks or accepting deferred deposit transactions is conducted. Any person engaged in that business on the effective date of this section may continue to engage in the business without a license until the *commissioner*~~{executive director}~~ shall have acted upon his *or her* application for a license if the application is filed within sixty (60) days after April 14, 1998.

➔Section 799. KRS 286.9-035 is amended to read as follows:

- (1) Any deferred deposit transaction agreement made with a person who is not licensed under this subtitle shall be void, and the person shall not collect any principal, fee, interest, charges, or recompense whatsoever.
- (2) The *commissioner*~~[executive director]~~ may void a deferred deposit transaction agreement when it is determined by the *commissioner*~~[executive director]~~ that the licensee has violated any provision of this subtitle. The licensee shall be allowed to recover from the customer any principal paid by the licensee to the customer, but the licensee shall not recover any service fee or other charge related to the deferred deposit transaction.
- (3) For purposes of this section, "payment instrument" also includes debit authorization, electronic funds transfer, and any other form of electronic transmission of money.

➔Section 800. KRS 286.9-040 is amended to read as follows:

To qualify for a license, an applicant shall satisfy the following requirements:

- (1) The applicant shall deposit with the *commissioner*~~[executive director]~~ one (1) of the following instruments:
 - (a) An irrevocable letter of credit in the following amounts:
 1. If an applicant has only one (1) business location, the amount shall be fifty thousand dollars (\$50,000);
 2. If an applicant has two (2) to five (5) business locations, the amount shall be one hundred thousand dollars (\$100,000);
 3. If an applicant has six (6) to ten (10) business locations, the amount shall be one hundred fifty thousand dollars (\$150,000);
 4. If an applicant has eleven (11) to twenty (20) business locations, the amount shall be two hundred thousand dollars (\$200,000);
 5. If an applicant has twenty-one (21) to thirty (30) business locations, the amount shall be three hundred thousand dollars (\$300,000);
 6. If an applicant has thirty-one (31) to forty (40) business locations, the amount shall be four hundred thousand dollars (\$400,000); and
 7. If an applicant has more than forty (40) business locations, the amount shall be five hundred thousand dollars (\$500,000);
 - (b) A corporate surety bond made payable to the *commissioner*~~[executive director]~~ in the same amount that is required in paragraph (1)(a) of this section;
 - (c) Evidence that the applicant has established an account payable to the *commissioner*~~[executive director]~~ in a federally insured financial institution in this state and has deposited money of the United States in an amount equal to the amount of the required letter of credit; or
 - (d) A savings certificate of a federally insured financial institution in this state for an amount payable that is equal to the amount of the required letter of credit and that is not available for withdrawal except by direct order of the *commissioner*~~[executive director]~~. Interest earned on the certificate accrues to the applicant.
- (2) Every instrument required in this section shall provide for suit thereon by any person who has a cause of action under this subtitle. The total liability of the surety, to all persons, cumulative or otherwise, shall not exceed the amount specified in the bond.
- (3) Every instrument required in this section shall be made payable to the *commissioner*~~[executive director]~~.
- (4) Every instrument required in this section shall be available for the recovery of expenses, fines, and fees levied by the *commissioner*~~[executive director]~~ under this subtitle, and for losses or damages that are determined by the *commissioner*~~[executive director]~~ to have been incurred by any customer as a result of the applicant's or licensee's failure to comply with the requirements of this subtitle.
- (5) Every instrument required in this section shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three (3) years after the act upon which it is based.

- (6) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted honestly, carefully, and efficiently. In determining whether this qualification has been met, the **commissioner**~~[executive director]~~ may review and approve:
- (a) The business record and the capital adequacy of the applicant;
 - (b) The competence, experience, integrity, and financial ability of any person who:
 1. Is a director, officer, supervisory employee, or five percent (5%) or more shareholder of the applicant; or
 2. Owns or controls the applicant; and
 - (c) Any record, on the part of the applicant or any person referred to in subparagraph (b)1. and 2. of:
 1. Any criminal activity;
 2. Any fraud or other act of personal dishonesty;
 3. Any act, omission, or practice which constitutes a breach of a fiduciary duty; or
 4. Any suspension, revocation, or removal, by any agency or department of the United States or any state, from participation in the conduct of any business.

➔Section 801. KRS 286.9-050 is amended to read as follows:

Each application for a license shall be in writing and under oath to the **department**~~[office]~~, in a form prescribed by the **commissioner**~~[executive director]~~, and shall include the following:

- (1) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;
- (2) The location at which the initial registered office of the applicant shall be located in this Commonwealth;
- (3) The complete address of any locations at which the applicant proposes to engage in the business of cashing checks; and
- (4) Other data and information the **department**~~[office]~~ may require with respect to the applicant, its directors, trustees, officers, members, or agents.

➔Section 802. KRS 286.9-060 is amended to read as follows:

Each application for a license shall be accompanied by:

- (1) An investigation fee of five hundred dollars (\$500) for Kentucky residents and five hundred dollars (\$500) for nonresidents of Kentucky for each location which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof;
- (2) Audited financial statements prescribed by the **commissioner**~~[executive director]~~; and
- (3) Evidence that the applicant has complied or will comply with all workers', and unemployment compensation laws of Kentucky.

➔Section 803. KRS 286.9-070 is amended to read as follows:

- (1) Upon the filing of a completed application in a form prescribed by the **commissioner**~~[executive director]~~, accompanied by the fee and documents required in KRS 286.9-060, the **commissioner**~~[executive director]~~ shall investigate to ascertain whether the qualifications prescribed by KRS 286.9-040 have been satisfied. If the **commissioner**~~[executive director]~~ finds that the qualifications have been satisfied, and if the **commissioner**~~[executive director]~~ approves the documents, he or she shall issue to the applicant a license to engage in the business of cashing checks or deferred deposit transactions in this Commonwealth.
- (2) The license shall be kept conspicuously posted in the place of business of the licensee.
- (3) A license issued under this section shall remain in force and effect through the remainder of the fiscal year ended June 30 following its date of issuance, unless surrendered, suspended, or revoked under this subtitle. A license issued under this subtitle shall expire by June 30 following the date of its issuance unless renewed by

the filing of a completed renewal application and payment of the required fees with the **commissioner**~~[executive director]~~.

- (4) A licensee shall notify the **commissioner**~~[executive director]~~ in writing at least fifteen (15) business days before any change in the licensee's business location or name.
- (5) A licensee shall file a written request for a change of control of that licensee with the **commissioner**~~[executive director]~~ at least fifteen (15) business days prior to any change of control of the licensee. The **commissioner**~~[executive director]~~ may require additional information considered necessary to determine whether a new application for a license is required. The person who requests the approval for a change of control shall pay the cost incurred by the **commissioner**~~[executive director]~~ in investigating the change of control request.
- (6) A license issued under this subtitle shall be transferable or assignable in cases of ownership changes of the business or to facilitate the transfer or assignment of a license if the licensee is closing an alternate office location, subject to approval of the **commissioner**~~[executive director]~~ and based on existing criteria of new applicant approvals in accordance with this section.
- (7) The **commissioner**~~[executive director]~~ may deem an application or renewal application abandoned when the application received is incomplete and the applicant fails to provide any required information or fee under this subtitle or fails to respond to a request by the **commissioner**~~[executive director]~~ for further information.

→Section 804. KRS 286.9-071 is amended to read as follows:

The **commissioner**~~[executive director]~~ shall not issue additional deferred deposit service business licenses for a period of ten (10) years after July 1, 2009.

→Section 805. KRS 286.9-073 is amended to read as follows:

Every person licensed under this subtitle shall maintain an agent in this Commonwealth for service of process. The name, address, telephone number, and electronic mail address of the agent shall be filed with the application. The **commissioner**~~[executive director]~~ shall be notified in writing by the licensee at least five (5) days prior to any change in the status of an agent.

→Section 806. KRS 286.9-074 is amended to read as follows:

- (1) Each licensee shall keep and use in its business any books, accounts, financial reports, and records the **commissioner**~~[executive director]~~ may require to administer and regulate the provisions of this subtitle and the administrative regulations promulgated under this subtitle. Every licensee shall preserve the books, accounts, financial reports, and records for a minimum of three (3) years, unless applicable state or federal law requires a longer retention period.
- (2) Records required to be preserved under this section may be maintained in an electronic retrievable format, or other similar form of medium, provided that it is readily accessible to examination, investigation, and inspection by the **commissioner**~~[executive director]~~.
- (3) Any person who ceases operating a business licensed under this subtitle shall, at least thirty (30) days prior to the discontinuance of the business, notify the **commissioner**~~[executive director]~~ in writing of the physical location where the records required to be kept under this subtitle will be preserved or archived. The records shall be made accessible to the **commissioner**~~[executive director]~~ upon five (5) business days' written notice.
- (4) Any person who ceases operating as a business licensed under this subtitle shall designate a custodian of records and notify the **commissioner**~~[executive director]~~ of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve all records required under this subtitle and allow the **commissioner**~~[executive director]~~ access to the records for examination and investigation upon demand.
- (5) The **commissioner**~~[executive director]~~ may approve a written request for the destruction of records required to be preserved under this subtitle prior to the minimum retention period described in subsection (1) of this section.

→Section 807. KRS 286.9-075 is amended to read as follows:

- (1) Any person aggrieved by the conduct of a licensee under this subtitle in connection with the licensee's regulated activities may file a written complaint with the **commissioner**~~[executive director]~~ who may investigate the complaint.
- (2) In the course of the investigation initiated by a complaint or by the **commissioner**~~[executive director]~~, the **commissioner**~~[executive director]~~ may:
 - (a) Subpoena witnesses;
 - (b) Administer oaths;
 - (c) Examine any individual under oath; and
 - (d) Compel the production of records, books, papers, contracts, or other documents relevant to the investigation.
- (3) If any person fails to testify or to comply with a subpoena from the **commissioner**~~[executive director]~~ under this section, the **commissioner**~~[executive director]~~ may petition any court of competent jurisdiction for enforcement.
- (4) The license of any licensee under this subtitle who fails to comply with a subpoena of the **commissioner**~~[executive director]~~ may be suspended pending compliance with the subpoena.
- (5) The **commissioner**~~[executive director]~~ shall have administrative power to investigate all complaints filed by any person if the complaints are not criminal in nature and if they relate to the check cashing or the deferred deposit service business.

➔Section 808. KRS 286.9-080 is amended to read as follows:

- (1) Each license may be renewed for the ensuing twelve (12) months period upon the timely submission of a completed renewal application and payment to the **commissioner**~~[executive director]~~ annually on or before June 20 of each year a license fee of five hundred dollars (\$500) for the first location and five hundred dollars (\$500) for each additional location.
- (2) The **commissioner**~~[executive director]~~ may reinstate a license that has expired within thirty-one (31) days of the expiration of the license if the licensee pays a late fee in the amount of one hundred dollars (\$100) and a reinstatement fee of five hundred dollars (\$500).
- (3) A license shall not be reinstated where the renewal application, fees, or any required information is received on or after August 1 of the year that the application was due.

➔Section 809. KRS 286.9-090 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this subtitle.
- (2) To assure compliance with the provisions of this subtitle, the **commissioner**~~[executive director]~~ may examine the business, books, and records of any licensee, and each licensee shall pay an examination fee sufficient to cover the cost of the examination based upon fair compensation for time and actual expense as established by order or administrative regulations.
- (3) The affairs of every check cashing and deferred deposit service business licensee and the records required to be maintained by KRS 286.9-074 are subject at any time, or from time to time, to such periodic, special, or other examinations by the **commissioner**~~[executive director]~~ or an examiner of the **commissioner**~~[executive director]~~ within or without this state and with or without notice to the licensee, as the **commissioner**~~[executive director]~~ deems necessary or appropriate in the public interest. All books, papers, and records of assets of the licensee shall be subject to the **commissioner's**~~[executive director's]~~ inspection.
- (4) Reports of examination, related working papers, or other confidential information in the possession or control of the **commissioner**~~[executive director]~~ that is provided according to this subtitle shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. These reports of examination, related working papers, or other confidential information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any civil action, unless after notice to the **commissioner**~~[executive director]~~ and a hearing, a court of competent jurisdiction determines that the **commissioner**~~[executive director]~~ would not be prejudiced. However, the **commissioner**~~[executive director]~~

may use such reports, working papers, and other confidential information in the furtherance of any regulatory or legal action brought as a part of the *commissioner*~~{executive director's}~~ official duties.

- (5) Neither the *commissioner*~~{executive director}~~ nor any person who received documents, materials, reports, or other information while acting under the authority of the *commissioner*~~{executive director}~~ shall be required to testify in any civil action concerning any reports of examination, related working papers, or other confidential information subject to subsection (4) of this section.
- (6) In order to assist in the performance of the *commissioner*~~{executive director's}~~ duties, the *commissioner*~~{executive director}~~ may:
 - (a) Share documents, materials, annual reports, reports of examination or other information, including the confidential and privileged documents, materials, reports, or information subject to subsections (4) and (5) of this section, with other state, federal, and international regulatory agencies, and with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, reports, or other information;
 - (b) Receive documents, materials, reports, or other information, including otherwise confidential and privileged documents, materials, reports, or information from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any documents, materials, reports, or information received with notice or the understanding that they are confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, reports, or information;
 - (c) Enter into agreements governing the sharing and use of information, including the furtherance of any regulatory or legal action brought as part of the recipient's official duties;
 - (d) Disclose to the public a list of persons licensed under this subtitle or the aggregate financial data concerning those licensees; and
 - (e) Disclose to the public any order issued under this subtitle that is the result of an administrative or legal action against a licensee, agent of a licensee, responsible individual, key shareholder, executive officer, or director.
- (7) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, reports, or information shall occur as a result of disclosure to the *commissioner*~~{executive director}~~ under this subsection or as a result of sharing as authorized in subsection (6) of this section.

➔Section 810. KRS 286.9-100 is amended to read as follows:

- (1) Any fee charged by a licensee for cashing a check or entering into a deferred deposit transaction shall be disclosed in writing to the bearer of the check prior to cashing the check or entering into a deferred deposit transaction, and the fee shall be deemed a service fee and not interest. A licensee shall not charge a service fee in excess of fifteen dollars (\$15) per one hundred dollars (\$100) on the face amount of the deferred deposit check. A licensee shall prorate any fee, based upon the maximum fee of fifteen dollars (\$15) per one hundred dollars (\$100). This service fee shall be for a period of at least fourteen (14) days.
- (2) Before a licensee shall deposit with any bank or other depository institution a check cashed by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.
- (3) No licensee shall cash a check payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the board of directors or similar governing body of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.
- (4) No licensee shall indicate through advertising, signs, billhead, or otherwise that checks may be cashed without identification of the bearer of the check; and any person seeking to cash a check shall be required to submit reasonable identification as prescribed by the *commissioner*~~{executive director}~~. The provisions of this subsection shall not prohibit a licensee from cashing a check simultaneously with the verification and establishment of the identity of the presenter by means other than the presentation of identification.
- (5) Within two (2) business days after being advised by a financial institution that a payment instrument has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or otherwise represents the proceeds of illegal activity, the licensee shall notify the *commissioner*~~{executive director}~~ and the prosecutor or law enforcement authority in the county in which the check was received. If a

payment instrument is returned to the licensee by a financial institution for any of these reasons, the licensee shall not release the payment instrument without the written consent of the prosecutor or law enforcement authority, or a court order.

- (6) No licensee shall alter or delete the date on any payment instrument accepted by the licensee.
- (7) No licensee shall engage in unfair or deceptive acts, practices, or advertising in the conduct of the licensed business.
- (8) No licensee shall require a customer to provide security for the transaction or require the customer to provide a guaranty from another person.
- (9) A licensee shall not have more than two (2) deferred deposit transactions from any one (1) customer at any one time. The total proceeds received by the customer from all of the deferred deposit transactions shall not exceed five hundred dollars (\$500).
- (10)
 - (a) Prior to the establishment of the common database of deferred deposit transactions established by KRS 286.9-140, each licensee shall inquire of any customer seeking to present a deferred deposit transaction, whether the customer has any outstanding deferred deposit transactions from any licensee.
 - (b) If the customer represents in writing that the customer has no more than one (1) deferred deposit transaction outstanding to any licensee and that the total proceeds received by the customer from the outstanding deferred deposit transaction issued by the customer does not equal or exceed five hundred dollars (\$500), a licensee may accept a deferred deposit transaction in an amount that, when combined with the customer's other outstanding deferred deposit transaction, does not exceed five hundred dollars (\$500) of total proceeds received by the customer.
 - (c) If the customer represents in writing that the customer has more than one (1) deferred deposit transaction outstanding to licensees or if the total proceeds received by the customer from the deferred deposit transactions equal or exceed five hundred dollars (\$500), a licensee shall not enter into another deferred deposit transaction with that customer until the customer represents to the licensee in writing that the customer qualifies to enter into a new deferred deposit transaction under the requirements set forth in this subtitle.
 - (d) If the database described in KRS 286.9-140 is unavailable due to technical difficulties with the database, as determined by the ~~commissioner~~~~executive director~~, the licensee shall utilize the process established in this subsection to verify deferred deposit transactions.
- (11) A licensee shall not use any device or agreement, including agreements with an affiliate of a licensee, with the intent to obtain greater charges than are authorized in this subtitle.
- (12) No licensee shall agree to hold a deferred deposit transaction for more than sixty (60) days.
- (13) Each deferred deposit transaction shall be made according to a written agreement that shall be dated and signed by the customer and the licensee or an authorized agent of the licensee at the licensed location, and made available to the ~~commissioner~~~~executive director~~ upon request. The customer shall receive a copy of this agreement.
- (14) A licensee or its affiliate shall not for a fee renew, roll over, or otherwise consolidate a deferred deposit transaction for a customer.
- (15) No individual who enters into a deferred deposit transaction with a licensee shall be convicted under the provisions of KRS 514.040.
- (16) No licensee who enters into a deferred deposit transaction with an individual shall prosecute or threaten to prosecute an individual under the provisions of KRS 514.040.
- (17) Each licensee shall conspicuously display in each of its deferred deposit business locations a sign supplied by the ~~commissioner~~~~executive director~~ that gives the following notice: "No person who enters into a post-dated or deferred deposit transaction with this business establishment will be prosecuted for or convicted of writing cold checks or of theft by deception under the provisions of KRS 514.040."
- (18) A licensee may not enter into a deferred deposit transaction with a customer who has two (2) open deferred deposit transactions.

(19) A licensee shall verify a customer's eligibility to enter into a deferred presentment service transaction by doing one (1) of the following, as applicable:

- (a) If the **commissioner**~~[executive director]~~ has not implemented a database under KRS 286.9-140 or the database described in KRS 286.9-140 is not fully operational, as determined by the **commissioner**~~[executive director]~~, the licensee shall verify that the customer meets the eligibility requirements for a deferred presentment service transaction under this subtitle. The licensee shall maintain a database of all of the licensee's transactions at all of its locations and search that database to meet its obligation under this subtitle.
- (b) If the **commissioner**~~[executive director]~~ has implemented a database under KRS 286.9-140 and the database described in that section is fully operational, as determined by the **commissioner**~~[executive director]~~, the licensee shall promptly and accurately access the database through an Internet real-time connection, and verify that the customer meets the eligibility requirements for a deferred presentment service transaction under this subtitle.

➔Section 811. KRS 286.9-102 is amended to read as follows:

- (1) Each licensee who engages in deferred deposit transactions shall give the customer the disclosures in writing required by the Consumer Credit Protection Act (15 U.S.C. sec. 1601). Proof of this disclosure shall be made available to the **commissioner**~~[executive director]~~ upon request.
- (2) Each licensee shall conspicuously display a schedule of all fees, and charges for all services provided by the licensee that are authorized by this subtitle. The notice shall be posted at each location where a licensee conducts its business under this subtitle.
- (3) A licensee may charge, collect, and receive check collection charges made by a financial institution for each check returned or dishonored for any reason, provided that the terms and conditions upon which check collection charges will be charged to the customer are set forth in advance in the written disclosure.
- (4) Any personal check accepted from a customer must be payable to the licensee.
- (5) Before a licensee shall present for payment or deposit a check accepted by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

➔Section 812. KRS 286.9-104 is amended to read as follows:

- (1) Each licensee shall file an annual report with the **commissioner**~~[executive director]~~ by March 1 of each year, containing the following information:
 - (a) The names and addresses of each person owning a controlling interest in each license;
 - (b) The location of all places of business operated by the licensee and the nature of the business conducted at each location;
 - (c) The names and addresses of all affiliated entities regulated under this subtitle and doing business in this state;
 - (d) Balance sheets, statement of income and expenses, and other statistical information as may be reasonably required by the **commissioner**~~[executive director]~~, consistent with generally accepted accounting practices, for the purpose of determining the general results of operations under this subtitle; and
 - (e) If the licensee is a corporation, the names and addressees of its principal officers and directors; or if the licensee is a partnership, the names and addresses of the partners; or if the licensee is a limited liability company, the names and addresses of the board of directors of the limited liability company.
- (2) If the licensee holds two (2) or more licenses or is affiliated with other licensees, a composite report may be filed.
- (3) All reports shall be filed in a form as may reasonably be required by the **commissioner**~~[executive director]~~ and shall be sworn to by a responsible officer of the licensee.
- (4) The information submitted by licensees under this section shall be held in confidence by the **department**~~[office]~~ and the **commissioner**~~[executive director]~~.

➔Section 813. KRS 286.9-105 is amended to read as follows:

- (1) Every licensee required to register with the United States Treasury Financial Crimes Enforcement Network shall file with the **commissioner**~~{executive director}~~ all reports by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements as set forth in the Bank Secrecy Act, 31 U.S.C. secs. 5311 to 5332, 31 C.F.R. pt. 103, and other federal and state laws pertaining to money laundering, for every transaction in this state. Every licensee required to register with the United States Treasury Financial Crimes Enforcement Network shall maintain copies of these reports in its records in compliance with KRS 286.9-074, or for a time period longer than allowed by KRS 286.9-074, where federal law prescribes.
- (2) The timely filing with the appropriate federal agency of a complete and accurate report required under subsection (1) of this section is deemed to be in compliance with the requirements of subsection (1) of this section, unless the **commissioner**~~{executive director}~~ notifies the licensee that reports of the type required in subsection (1) of this section are not being regularly and comprehensively transmitted to the federal agency.

➔Section 814. KRS 286.9-110 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may suspend, revoke, place on probation, condition, restrict, refuse to issue or renew a license, accept the surrender of a license in lieu of revocation or suspension, order that refunds to customers be made, or issue a cease-and-desist order, if the **commissioner**~~{executive director}~~ finds that the person, licensee, or a person in control of a licensee:
 - (a) Has committed any fraud, engaged in any dishonest activities, or made any misrepresentation;
 - (b) Does not meet, has failed to comply with, or has violated any provisions of this subtitle or any administrative regulation issued pursuant thereto, or any order of the **commissioner**~~{executive director}~~ issued pursuant thereto, or has violated any other law in the course of its or his or her dealings as a licensee;
 - (c) Has made a false statement in the application for the license or failed to give a truthful reply to a question in the application;
 - (d) Has demonstrated his or her incompetence or untrustworthiness to act as a licensee;
 - (e) Is unfit, through lack of financial responsibility or experience, to conduct the business of a check-cashing or deferred deposit service business, as the case may be;
 - (f) Does not conduct his or her business in accordance with the law or conducts business by a method that includes, or would include, activities that are illegal where performed, or has willfully violated any provision of this subtitle; or any administrative regulation promulgated or order of the **commissioner**~~{executive director}~~ issued hereunder;
 - (g) Is insolvent;
 - (h) Is the subject of an administrative cease-and-desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the person, applicant, or licensee;
 - (i) Has made or caused to be made to the **commissioner**~~{executive director}~~ any false representation of material fact or has suppressed or withheld from the **commissioner**~~{executive director}~~ any information that the applicant or licensee possesses and which, if submitted by him or her, would have rendered the applicant or licensee ineligible to be licensed under this subtitle;
 - (j) Has refused to permit an examination or investigation by the **commissioner**~~{executive director}~~ of his or her books and affairs or has refused or failed, within a reasonable time, to furnish any information or records, or make any report that may be required or requested by the **commissioner**~~{executive director}~~;
 - (k) Has been convicted of a felony;
 - (l) Has been convicted of any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty;
 - (m) Has had any license, registration, or claim of exemption related to the financial services industry denied, revoked, suspended, conditioned, restricted, or probated under the laws of this state, any other state, or the United States, or has surrendered, withdrawn, or terminated any license, registration, or claim of

- exemption issued or registration granted by this state or any other jurisdiction under threat of administrative action;
- (n) Has employed or contracted with a person who has failed to license or has had a license, registration, or claim of exemption denied, revoked, suspended, conditioned, restricted, or probated in this Commonwealth or another state;
 - (o) Has failed to pay any required fee under this subtitle;
 - (p) Has abandoned an application or renewal application by failing to provide the **commissioner**~~{executive director}~~ any information required under this subtitle, or requested by the **commissioner**~~{executive director}~~, to complete an application;
 - (q) Has failed to comply with an administrative or court order imposing child support obligations;
 - (r) Has failed to pay state income taxes or to comply with any administrative or court order directing the payment of state income tax;
 - (s) Has failed to properly verify a customer's eligibility for a deferred deposit transaction;
 - (t) Has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110;
 - (u) Has suspended payment of its obligations or has made an assignment for the benefit of its creditors;
 - (v) Has violated any of the recordkeeping and reporting requirements of the United States government including 31 U.S.C. secs. 5311 to 5332 and 31 C.F.R. pt. 103; or
 - (w) No longer meets the requirements under this subtitle to hold a license.
- (2) If the reason for revocation, suspension, restriction, condition, or probation of a licensee's license at any one location is of general application to all locations operated by a licensee, the **commissioner**~~{executive director}~~ may revoke, suspend, restrict, condition, or probate all licenses issued to a licensee.
 - (3) Any person who has had a license denied by the **commissioner**~~{executive director}~~ shall not be eligible to apply for a license under this subtitle until after expiration of one (1) year from the date of denial.
 - (4) Any person who has had a license revoked by the **commissioner**~~{executive director}~~ shall not be eligible to apply for a license under this subtitle until after expiration of three (3) years from the date of revocation. A person whose license has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license under this subtitle.
 - (5) Any person whose license has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension under this section is prohibited from participating in any business activity of a licensee under this subtitle and from engaging in any business activity on the premises where a licensee under this subtitle is conducting its business.
 - (6) The surrender or expiration of a license shall not affect the person's civil or criminal liability for acts committed prior to the license surrender or expiration. Revocation, suspension, refusal to renew, surrender, or expiration of a license shall not impair or affect the obligation of any preexisting contract between a licensee and a customer. The surrender or expiration of a license shall not affect a proceeding to suspend or revoke a license.
 - (7) The **commissioner**~~{executive director}~~ may notify the Department of Revenue, which may institute an action in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court, or any court of competent jurisdiction, for the recovery of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.
 - (8) The **commissioner**~~{executive director}~~ may file a complaint in the Franklin Circuit Court, or any court of competent jurisdiction, for a temporary restraining order or injunction against any person, where the **commissioner**~~{executive director}~~ has reason to believe from evidence satisfactory to the **commissioner**~~{executive director}~~ that such person has violated, or is about to violate, a provision in this subtitle, for the purpose of restraining and enjoining such person from continuing or engaging in the violation or doing any act in furtherance thereof. The court shall have jurisdiction over the proceeding and shall have the power to enter an order or judgment awarding preliminary or final injunctive relief and any other relief that the court deems proper. Any person who violates a temporary restraining order or injunction issued by the court

entered as a result of a violation of this subtitle shall be held in contempt of court and the court may assess a civil penalty in an amount equivalent to the amounts found in KRS 286.9-991.

➔Section 815. KRS 286.9-120 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may file an administrative complaint against any person if it appears on grounds satisfactory to the **commissioner**~~{executive director}~~ that a potential or actual violation of this subtitle has been committed and when the person may be subject to the penalties of KRS 286.9-071, 286.9-110, and 286.9-991. The **commissioner**~~{executive director}~~ shall serve the administrative complaint to the last known address of the person named in the complaint. Service shall be by certified mail or personal delivery. The person named in the administrative complaint shall be entitled to an administrative hearing conducted in accordance with KRS Chapter 13B but only upon timely receipt of a written answer and request for an administrative hearing within twenty (20) days of the mailing or hand delivery of the administrative complaint. If timely requested, an administrative hearing shall be held in accordance with the provisions of KRS Chapter 13B. If an answer is not timely filed, or a written request for a hearing is not timely filed, the **commissioner**~~{executive director}~~ may enter a final order.
- (2) No license shall be denied, limited, conditioned, restricted, probated, suspended, or revoked unless the applicant or licensee is afforded the opportunity for a hearing to be conducted in accordance with KRS Chapter 13B.

➔Section 816. KRS 286.9-125 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may enter an emergency order suspending, conditioning, limiting, or restricting a license issued under this subtitle without notice or hearing if it appears upon grounds satisfactory to the **commissioner**~~{executive director}~~ that the licensee has engaged or is engaging in unsafe, unsound, or illegal practices that pose an imminent threat to the public interest.
- (2) One (1) or more of the following circumstances shall be considered sufficient grounds for an emergency order under this section if it appears on grounds satisfactory to the **commissioner**~~{executive director}~~ that:
 - (a) The licensee does not meet or has failed to comply with more than one (1) of the requirements of this subtitle and the violations appear to be willful;
 - (b) The licensee is in such financial condition that it cannot continue in business with safety to its customers;
 - (c) The licensee has been indicted, charged with, or found guilty of any act involving fraud, deception, theft, or breach of trust, or is the subject of an administrative cease-and-desist order or similar order, or of a permanent or temporary injunction currently in effect entered by any court or agency of competent jurisdiction;
 - (d) The licensee has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of doing business, or has engaged in any course of business that has worked or tended to work a fraud or deceit upon any person or would so operate;
 - (e) The licensee has refused to permit an examination, or has refused or failed, within a reasonable time, to furnish any information or make any report that may have been requested or required by the **commissioner**~~{executive director}~~ in connection with an investigation or examination;
 - (f) The licensee has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state of the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by this state or any other jurisdiction under threat of administrative action; or
 - (g) The deposit required under KRS 286.9-040(1) has terminated, expired, or otherwise no longer remains in effect.
- (3) An emergency order issued under this section becomes effective when signed by the **commissioner**~~{executive director}~~. The emergency order shall be delivered by personal delivery or certified mail to the last known address of the person. The order shall be deemed served upon delivery or upon return of the order.

- (4) A party aggrieved by an emergency order issued by the *commissioner*~~{executive director}~~ under this section may request an emergency hearing. The request for hearing shall be filed with the *commissioner*~~{executive director}~~ within twenty (20) days of service of the emergency order.
- (5) Upon receipt of a written request for an emergency hearing, the *commissioner*~~{executive director}~~ shall conduct an emergency hearing as required under KRS 13B.125, within ten (10) working days from the date of receipt of the request for hearing, unless the parties agree otherwise.
- (6) An emergency order issued under this section shall remain in effect until it is stayed, withdrawn, or superseded by an order of the *commissioner*~~{executive director}~~ or until it is terminated by a court order.

➔Section 817. KRS 286.9-128 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ may enter into a consent order with another person at any time for the purpose of resolving a matter arising under this subtitle. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this subtitle, or an administrative regulation promulgated under this subtitle, or an order issued under this subtitle has been violated.
- (2) Any consent order that the *commissioner*~~{executive director}~~ enters into to resolve a matter arising under this subtitle shall be deemed an administrative action and a public record.

➔Section 818. KRS 286.9-130 is amended to read as follows:

The *commissioner*~~{executive director}~~ may stay, suspend, or postpone the effective date of an order issued under this subtitle, pending the administrative proceeding and the issuance of a final order resulting from the proceeding, upon written request by the affected person or licensee.

➔Section 819. KRS 286.9-140 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ shall, on or before July 1, 2010, implement a common database with real-time access through an Internet connection for deferred deposit service business licensees as provided in this subtitle unless implementing the database by that date would be financially impracticable for the *commissioner*~~{executive director}~~ to design and operate a database or because a contract with a qualified third-party provider has not been entered into. The database shall be accessible to the *department*~~{office}~~ and the deferred deposit service business licensee to verify whether any deferred deposit transactions are outstanding for a particular person. A deferred deposit service business licensee shall accurately and promptly submit such data before entering into each deferred deposit transaction in such format as the *commissioner*~~{executive director}~~ may require by rule or order, including the customer's name, Social Security number or employment authorization alien number, address, driver's license number, amount of the transaction, date of transaction, date that the completed transaction is closed, and any additional information required by the *commissioner*~~{executive director}~~. The *commissioner*~~{executive director}~~ may adopt rules to administer and enforce the provisions of this subtitle and to assure that the database is used by deferred deposit service business licensees in accordance with this subtitle.
- (2) The *commissioner*~~{executive director}~~ shall impose a fee of one dollar (\$1) per transaction for data required to be submitted by a deferred deposit service business licensee, which fee may be charged to the customer.
- (3) The *commissioner*~~{executive director}~~ may operate the database described in subsection (1) of this section or may select and contract with a third-party provider to operate the database. If the *commissioner*~~{executive director}~~ contracts with a third-party provider for the operation of the database, all of the following apply:
 - (a) The *commissioner*~~{executive director}~~ shall ensure that the third-party provider selected as the database provider operates the database pursuant to the provisions of this subtitle;
 - (b) The *commissioner*~~{executive director}~~ shall consider cost of service and ability to meet all the requirements of this subtitle in selecting a third-party provider as the database provider;
 - (c) In selecting a third-party provider to act as the database provider, the *commissioner*~~{executive director}~~ shall give strong consideration to the third-party provider's ability to prevent fraud, abuse, and other unlawful activities associated with deferred presentment service transactions and provide additional tools for the administration and enforcement of this subtitle;

- (d) The third-party provider shall use the data collected under this subtitle only as prescribed in this subtitle and the contract with the **department**~~{office}~~ and for no other purpose;
 - (e) If the third-party provider violates this subtitle, the **commissioner**~~{executive director}~~ may terminate the contract and the third-party provider may be barred from becoming a party to any other state contracts;
 - (f) A person injured by the third-party provider's violation of this subtitle may maintain a civil cause of action against the third-party provider and may recover actual damages plus reasonable attorney's fees and court costs; and
 - (g) The **commissioner**~~{executive director}~~ may require that the third-party provider collect the fee assessed in subsection (2) of this section from the licensee. The third-party provider shall remit the fee collected from the licensee to the **commissioner**~~{executive director}~~ no later than the first day of each month. The third-party provider shall deposit any fee collected in a separate escrow account in a federally insured financial institution and shall hold the fee deposited in trust for the Commonwealth of Kentucky.
- (4) The database described in subsection (1) of this section shall allow a deferred deposit service business licensee accessing the database to do all of the following:
- (a) Verify whether a customer has any open deferred deposit transactions with any deferred deposit business service licensee that have not been closed;
 - (b) Provide information necessary to ensure deferred deposit service business licensee compliance with any requirements imposed by the United States Treasury Office of Foreign Assets Control and United States Treasury Office of Financial Crimes Enforcement Network; and
 - (c) Track and monitor the number of customers who notify a deferred deposit service business licensee of violations of this subtitle, the number of times a deferred deposit service business licensee agreed that a violation occurred, the number of times that a deferred deposit service business licensee did not agree that a violation occurred, the amount of restitution paid, and any other information the **commissioner**~~{executive director}~~ requires by rule or order.
- (5) While operating the database, the database provider shall do all of the following:
- (a) Establish and maintain a process for responding to transaction verification requests due to technical difficulties occurring with the database that prevent the licensee from accessing the database through the Internet;
 - (b) Comply with any applicable federal and state provisions to prevent identity theft;
 - (c) Provide accurate and secure receipt, transmission, and storage of customer data; and
 - (d) Meet the requirements of this subtitle.
- (6) When the database provider receives notification that a deferred deposit service transaction has been closed, the database provider shall designate the transaction as closed in the database immediately, but in no event after 11:59 p.m. on the day the **commissioner**~~{executive director}~~ or database provider receives notification.
- (7) The database provider shall automatically designate a deferred deposit service transaction as closed in the database five (5) days after the transaction maturity date unless a deferred deposit service business licensee reports to the database provider before that time that the transaction remains open because of the customer's failure to make payment; that the transaction is open because the customer's payment instrument or an electronic redeposit is in the process of clearing the banking system; or that the transaction remains open because the customer's payment instrument is being returned to the deferred deposit service business licensee for insufficient funds, a closed account, or a stop payment order; or because of any other factors determined by the **commissioner**~~{executive director}~~. If a deferred deposit service business licensee reports the status of a transaction as open in a timely manner, the transaction remains an open transaction until it is closed and the database provider is notified that the transaction is closed.
- (8) If a deferred deposit service business licensee stops providing deferred deposit service transactions, the database provider shall designate all open transactions with that licensee as closed in the database sixty (60) days after the date the deferred deposit service business licensee stops offering deferred deposit service transactions, unless the deferred deposit service business licensee reports to the database provider before the expiration of the sixty (60) day period which of its transactions remain open and the specific reason each

transaction remains open. The deferred deposit service business licensee shall also provide to the ~~commissioner~~~~executive director~~ a reasonably acceptable plan that outlines how the deferred deposit service business licensee will continue to update the database after it stops offering deferred presentment service transactions. The ~~commissioner~~~~executive director~~ shall promptly approve or disapprove the plan and immediately notify the deferred deposit service business licensee of the ~~commissioner's~~~~executive director's~~ decision. If the plan is disapproved, the deferred deposit service business licensee may submit a new plan or may submit a modified plan for the deferred deposit service business licensee to follow. If at any time the ~~commissioner~~~~executive director~~ reasonably determines that a deferred deposit service business licensee that has stopped offering deferred deposit service transactions is not updating the database in accordance with its approved plan, the ~~commissioner~~~~executive director~~ shall immediately close or instruct the database provider to immediately close all remaining open transactions of that deferred deposit service business licensee.

- (9) The response to an inquiry to the database provider by a deferred deposit service business licensee shall state only that a person is eligible or ineligible for a new deferred deposit service transaction and describe the reason for that determination. Only the person seeking the transaction may make a direct inquiry to the database provider to request a more detailed explanation of a particular transaction that was the basis for the ineligibility determination. Any information regarding any person's transaction history is confidential; is not subject to public inspection; is not a public record subject to the disclosure requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884; is not subject to discovery, subpoena, or other compulsory process, except in an administrative or legal action arising under this subtitle; and shall not be disclosed to any person other than the ~~commissioner~~~~executive director~~.
- (10) The ~~commissioner~~~~executive director~~ may access the database provided under subsection (1) of this section only for purposes of an investigation of, examination of, or enforcement action concerning an individual database provider, licensee, customer, or other person.
- (11) The ~~commissioner~~~~executive director~~ shall investigate violations of and enforce this subtitle. The ~~commissioner~~~~executive director~~ shall not delegate his or her responsibilities under this subsection to any third-party provider.
- (12) (a) The ~~commissioner~~~~executive director~~ shall make a determination that the database is fully operational and shall send written notification to each licensee subject to the provisions of this subtitle:
 1. That the database has been implemented; and
 2. Of the exact date that the database shall be considered operational for the data entry requirement established in paragraph (b) of this subsection.
 (b) A deferred deposit service business licensee shall promptly and accurately enter into the database all transactions undertaken by the licensee upon receipt of the written notification established in paragraph (a) of this subsection.
- (13) The ~~commissioner~~~~executive director~~ may, by rule or order, do all of the following:
 - (a) Require that data be retained in the database only as required to ensure deferred deposit service business licensee compliance with this subtitle;
 - (b) Require that customer transaction data in the database are archived within three hundred sixty-five (365) days after the customer transaction is closed unless needed for a pending enforcement or legal action;
 - (c) Require that any identifying customer information is deleted from the database when data are archived; and
 - (d) Require that data in the database concerning a customer transaction are deleted from the database three (3) years after the customer transaction is closed or, if any administrative, legal, or law enforcement action is pending, three (3) years after the administrative, legal, or law enforcement action is completed, whichever is later.
- (14) The ~~commissioner~~~~executive director~~ may maintain access to data archived under subsection (13) of this section for examination, investigation, or legislative or policy review.
- (15) A deferred deposit service business licensee may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database, provided the deferred deposit licensee accurately and promptly submits such data as required before entering into a deferred deposit transaction with a customer.

- (16) The *commissioner*~~{executive director}~~ may use the database to administer and enforce this subtitle.
- (17) The *commissioner*~~{executive director}~~ may require a database provider to file a report by March 1 of each year containing the following information:
- (a) The total number and dollar amount of deferred deposit transactions entered into in the calendar year ending December 31 of the previous year;
 - (b) The total number and dollar amount of deferred deposit transactions outstanding as of December 31 of the previous year;
 - (c) The total dollar amount of fees collected for deferred deposit transactions as of December 31 of the previous year;
 - (d) The minimum, maximum, and average dollar amount of deferred deposit transactions entered into, the total dollar amount of the net charge-offs and write-offs, and the net recoveries of licensees as of December 31 of the previous year;
 - (e) The average deferred deposit transaction amount, the average number of transactions, and the average aggregate deferred deposit transaction amount entered into per customer as of December 31 of the previous year;
 - (f) The average number of days a customer was engaged in a deferred deposit transactions for the previous year; and
 - (g) An estimate of the average total fees paid per customer for deferred deposit transactions for the previous year.
- (18) Enforcement of this section shall be effective ninety (90) days after the database implementation date established by the *commissioner*~~{executive director}~~ as set forth in subsection (12) of this section.

➔Section 820. KRS 286.9-990 is amended to read as follows:

- (1) Any person who intentionally violates any provision of this subtitle, or violates any administrative regulation promulgated hereunder, or violates any order of the *commissioner*~~{executive director}~~, shall be guilty of a Class A misdemeanor. Each transaction in violation of this subtitle and each day that a violation continues shall constitute a separate offense.
- (2) This section shall not be deemed to limit the power of the *commissioner*~~{executive director}~~ to enforce any of the administrative penalties found in this subtitle.
- (3) For purposes of this section, "payment instrument" also includes debit authorization, electronic funds transfer, and any other form of electronic transmission of money.

➔Section 821. KRS 286.9-991 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ may levy a civil penalty against a person who violates any provision of, or administrative regulation promulgated under, this subtitle or any order issued by the *commissioner*~~{executive director}~~ under this subtitle.
- (2) The civil penalty shall be not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) per violation for each day the violation is outstanding, plus the state's costs and expenses for the examination, investigation, and prosecution of this matter, including reasonable attorney's fees and court costs.
- (3) Any civil penalties imposed may be in addition to any other remedy or penalty imposed in this subtitle.

➔Section 822. KRS 286.10-200 is amended to read as follows:

As used in KRS 286.10-200 to 286.10-285 and KRS 286.10-991, unless the context requires otherwise:

- (1) "Capital" means the assets of a business entity less the liabilities of that business entity. Assets and liabilities shall be measured according to generally accepted accounting principles or relevant pronouncements of the financial accounting standards board;
- (2) "*Department*~~{Office}~~" means the *Department*~~{Office}~~ of Financial Institutions;

- (3) "Person" means any sole proprietorship, general partnership, corporation, limited liability company, or limited liability partnership duly qualified to do business in Kentucky;
- (4) "Pledgor" means any individual who executes a title pledge agreement as defined in subsection (5) of this section;
- (5) "Title pledge agreement" means a thirty (30) day written agreement whereby a title pledge lender agrees to make a loan of money to a pledgor, and the pledgor agrees to give the title pledge lender a security interest in unencumbered titled personal property owned by the pledgor, subject to the terms and conditions of KRS 286.10-200 to 286.10-285 and KRS 286.10-991. A pledgor shall have no personal liability on a title pledge agreement and a title pledge agreement shall not be considered a debt transaction for any purpose of law;
- (6) "Title pledge lender" means any person engaged in the business of making title pledge agreements;
- (7) "Title pledge office" means the location at which, or premises in which, a title pledge lender regularly conducts business; and
- (8) "Titled personal property" means any personal property the ownership of which is evidenced and delineated by a state issued certificate of title but shall not include mobile homes.

➔Section 823. KRS 286.10-210 is amended to read as follows:

No person shall engage in the business of a title pledge lender without having first obtained a license. Any person engaged in the business of title pledge lending on July 15, 1998, may continue to engage in the business without a license until the ~~commissioner~~~~executive director~~ shall have acted upon his *or her* application for a license, if the application is filed within sixty (60) days after July 15, 1998.

➔Section 824. KRS 286.10-215 is amended to read as follows:

To qualify for a license, an applicant shall apply to the ~~department~~~~office~~ and satisfy the following requirements:

- (1) Be operating as a sole proprietorship, general partnership, limited liability partnership, corporation, or limited liability company duly qualified to do business in Kentucky;
- (2) Demonstrate the existence of initial capital of and the maintenance of, at least one hundred thousand dollars (\$100,000) for the security of all of the applicant's licensed title pledge offices within the Commonwealth;
- (3) Demonstrate the existence of a bond, with approved surety, in the amount of one hundred thousand dollars (\$100,000) for the security of all of the applicant's licensed title pledge offices within the Commonwealth. This bond shall be maintained for the benefit and security of the title pledge borrowers and for the benefit and security of the Commonwealth with respect to the civil and criminal penalties provided in KRS 286.10-991; and
- (4) Represent that the business will be operated lawfully, fairly, and ethically in accordance with KRS 286.10-200 to 286.10-285 and KRS 286.10-991.

➔Section 825. KRS 286.10-220 is amended to read as follows:

Each application for a title pledge lending license shall be filed with the ~~department~~~~office~~, and the application shall provide the following:

- (1) The name of the beneficial owner if a sole proprietorship; or in the case of a corporation, all individuals serving as officers or directors; or in the case of a partnership or limited liability company, the members thereof;
- (2) The street address where the title pledge office is to be operated;
- (3) Proof of the capital and surety bond requirements set forth in KRS 286.10-215, accompanied by an unaudited financial statement from a certified public accountant;
- (4) An affidavit from each individual set forth in subsection (1) of this section stating that each individual has not been convicted of a felony within the ten (10) year period preceding the date of application;
- (5) Certified funds in the amount of five hundred dollars (\$500) payable to the department; and
- (6) Other information as required by the ~~commissioner~~~~executive director~~.

➔Section 826. KRS 286.10-225 is amended to read as follows:

- (1) Following verification by the **department**~~{office}~~ of the information contained in the application, every person having satisfied the provisions of KRS 286.10-200 to 286.10-285 and KRS 286.10-991 and having paid the business taxes and any other taxes required by law shall be granted a license as set forth in this section. The license issued under this section shall state the name of the person to whom issued, the place of business, and street address where the title pledge office is located. The license shall entitle the person to do business at the place designated on the license. The license shall not be transferable from one (1) person to another but, upon approval of the **commissioner**~~{executive director}~~, may be transferred from one (1) location to another within the county of the location originally licensed.
- (2) A title pledge lender license shall be renewed each year upon payment of an annual fee of five hundred dollars (\$500) and compliance with the provisions of KRS 286.10-200 to 286.10-285 and KRS 286.10-991.

➔Section 827. KRS 286.10-230 is amended to read as follows:

- (1) Every title pledge lender doing business under the laws of this Commonwealth shall be subject to inspection by the **commissioner**~~{executive director}~~ or by an examiner appointed by the **commissioner**~~{executive director}~~ in accordance with KRS 286.1-440. Examination shall be made of every title pledge lender at least once and not more than twice every twenty-four (24) months unless it appears from examination or from the report of the title pledge lender that it has failed to comply with laws or administrative regulations relating to title pledge lenders or has engaged in unsafe or unsound practices.
- (2) The **commissioner**~~{executive director}~~, deputy **commissioner**~~{director}~~, and each examiner may compel the appearance of any person for the purpose of the examination, which shall be made in the presence of one (1) of the officers of the title pledge lender, or the lender's designee.

➔Section 828. KRS 286.10-235 is amended to read as follows:

In undertaking the examination of any title pledge lender, neither the Commonwealth, the **commissioner**~~{executive director}~~, nor any examiner employed by the Commonwealth shall become liable to any pledgor of the title pledge lender if the examination or an omission in the examination fails to fully and effectively disclose the financial condition of the title pledge lender.

➔Section 829. KRS 286.10-240 is amended to read as follows:

- (1) Reports of examination, and correspondence that relates to the report of examination, of a title pledge lender shall be considered confidential information. No officer or director of a title pledge lender or employee of the **department**~~{office}~~ shall release any information contained in the examination, except if:
 - (a) Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality have been issued by a court of competent jurisdiction; or
 - (b) The information is referred to an appropriate prosecuting attorney for possible criminal proceedings, to outside persons providing professional services to the title pledge lender, or to outside persons for the purpose of evaluating the title pledge lender for possible acquisition. Reports of examination released to outside persons providing professional services to the title pledge lender or for the purpose of evaluating the title pledge lender for possible acquisition, shall require a written request from the outside person and prior approval by the board of directors or an executive committee of the title pledge lender.
- (2) The **department**~~{office}~~ may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities.
- (3) Every official report concerning a title pledge lender, and every report of examination, shall be prima facie evidence of the facts stated therein for all purposes in any action in which the **department**~~{office}~~ or title pledge lender is a party.

➔Section 830. KRS 286.10-245 is amended to read as follows:

A fee shall be collected by the **department**~~{office}~~ for any examination as set forth in KRS 286.10-230. The fee shall be sufficient to cover the cost of the examination based upon fair compensation for time and actual expense.

➔Section 831. KRS 286.10-250 is amended to read as follows:

- (1) Every title pledge lender shall keep a consecutively numbered record of every title pledge agreement executed. A copy of the title pledge agreement shall be maintained for a period of two (2) years from the date the title pledge agreement was executed, and shall include the following:
 - (a) A clear and accurate description of the titled personal property, including its vehicle identification number, license plate number, year, make, model, type, and color;
 - (b) The date of the title pledge agreement;
 - (c) The amount of the loan made in accordance with the title pledge agreement;
 - (d) The date of maturity of the loan; and
 - (e) The name, date of birth, Social Security number, and residence address of the pledgor, together with a photocopy of the pledgor's motor vehicle operator's license.
- (2) The pledgor shall sign the title pledge agreement, and shall be provided with a copy of the agreement. The title pledge agreement shall also be signed by the title pledge lender or the lender's employee or agent.
- (3) This information shall be maintained at the title pledge office location, approved by the ~~department~~~~office~~, and made available for inspection by the law enforcement agencies where the title pledge lender is located during the regular business hours of the title pledge office.

➔Section 832. KRS 286.10-285 is amended to read as follows:

A title pledge lender shall not:

- (1) Accept a pledge from a person under eighteen (18) years of age, from anyone who appears to be intoxicated, or from any person known to the title pledge lender to have been convicted of larceny, burglary, or robbery;
- (2) Make any agreement giving the title pledge lender any recourse against the pledgor other than the title pledge lender's right to take possession of the titled personal property and certificate of title upon the pledgor's default, and to sell the titled personal property;
- (3) Accept any waiver, in writing or otherwise, or any right or protection accorded a pledgor under KRS 286.10-200 to 286.10-285 and KRS 286.10-991;
- (4) Fail to exercise reasonable care to protect from loss or damage titled personal property or certificates of title in the physical possession of the title pledge lender;
- (5) Purchase pledged titled personal property in the operation of its business;
- (6) Maintain more than one (1) title pledge office per license;
- (7) Violate the provisions of KRS 286.10-260 or any administrative regulation promulgated by the ~~department~~~~office~~;
- (8) Operate a title pledge office on the same premises as a pawnbroker as defined in KRS 226.010; or
- (9) Lend moneys in excess of four thousand dollars (\$4,000) to any one (1) title pledge borrower at a given time.

➔Section 833. KRS 286.10-991 is amended to read as follows:

- (1) Every person who knowingly violates any of the provisions of KRS 286.10-200 to 286.10-285 or this section is guilty of a Class A misdemeanor. Upon conviction of such a Class A misdemeanor the license of the title pledge lender may be suspended or revoked by the ~~department~~~~office~~.
- (2) Notwithstanding any other law to the contrary, apart from or in addition to any sanctions which may be imposed under subsection (1) of this section, upon an administrative finding by the ~~department~~~~office~~ that a title pledge lender has violated the provisions of KRS 286.10-260(3), the license of the title pledge lender may be revoked or suspended for a period, specified by the ~~department~~~~office~~, not to exceed forty-five (45) days. Notwithstanding the provisions of KRS 286.10-205, or any other law to the contrary, upon a finding by the ~~department~~~~office~~ that a title pledge lender has repeatedly and persistently engaged in a pattern of violating the provisions of KRS 286.10-260(3), the license of the title pledge lender may be revoked or suspended for a period specified by the ~~department~~~~office~~, of not less than ninety (90) days.
- (3) In addition to the sanctions which may be imposed under subsection (2) of this section, the ~~department~~~~office~~ may impose a fine against any person for a violation of KRS 286.10-200 to 286.10-285 or this section of no less than five hundred dollars (\$500) and no more than one thousand dollars (\$1,000) per violation.

- (4) During the period of any suspension or following any revocation, the title pledge lender shall not engage, in any county within this Commonwealth, in the business of making title pledge agreements with pledgors.

➔Section 834. KRS 286.11-003 is amended to read as follows:

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

- (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under common control with, another person;
- (2) "Agent" means a person authorized by written agreement and designated by the licensee to act on behalf of a licensee under the provisions of this subtitle;
- (3) "Applicant" means a person filing an application or renewal application for a license under this subtitle;
- (4) "Control" means:
 - (a) Ownership of, or the power to vote, directly or indirectly, twenty-five percent (25%) or more of a class of voting securities or voting interests of a licensee or applicant, or person in control of a licensee or applicant;
 - (b) The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or applicant, or person in control of a licensee or applicant; or
 - (c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or person in control of a licensee or applicant;
- (5) "Controlling person" means any person in control of a licensee;
- (6) "Director" means a member of a licensee's or applicant's board of directors if the applicant or licensee is a corporation, or manager if the applicant or licensee is a limited liability company, or a partner if the applicant or licensee is a partnership;
- (7) "Electronic instrument" means a card or other tangible object for the transmission or payment of money, including a stored value card or device, which contains a microprocessor chip, magnetic stripe, or other means for storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in the issuer's goods and services;
- (8) "~~Commissioner~~~~Executive director~~" means the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Financial Institutions;
- (9) "Executive officer" means the president, chairperson of the executive committee, responsible individual, chief financial officer, and any other person who performs similar functions;
- (10) "Financial institution" means any person doing business under the laws of any state or commonwealth or the United States relating to banks, bank holding companies, savings banks, savings and loan associations, trust companies, or credit unions;
- (11) "Insolvent" means that appearing upon examination of any licensee or its agent that its liabilities exceeds its assets or it cannot meet its obligations in the usual and ordinary course of business for any reason;
- (12) "Key shareholder" means any person, or group of persons acting in concert, who is the owner of twenty percent (20%) or more of any voting class of an applicant's or licensee's stock;
- (13) "Licensee" means a person licensed under this subtitle;
- (14) "Material litigation" means litigation that according to generally accepted accounting principles is significant to an applicant's or a licensee's financial health, and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records, including any adjudication against an applicant or licensee by a federal or state administrative or regulatory agency relating to a violation of the Bank Secrecy Act, 31 U.S.C. secs. 5311-5332 and 31 C.F.R. pt. 103, regardless of whether the applicant or licensee has admitted liability or fault;
- (15) "Monetary value" means a medium of exchange whether or not redeemable in money;

- (16) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government or other recognized medium of exchange, including a monetary unit of account established by an intergovernmental organization or by agreement between two (2) governments;
- (17) "Money transmission" means engaging in the business of receiving money or monetary value to transmit, deliver, or instruct to be transmitted or delivered, money or monetary value to another location inside or outside the United States by any and all means, including but not limited to wire, facsimile, electronic transfer, or issuing stored value;
- (18) "Money transmitter" means a person that is engaged in money transmission;
- (19) "Net worth" means the excess of assets over liabilities as determined by generally accepted accounting principles;
- (20) "~~Department~~~~Office~~" means the Kentucky ~~Department~~~~Office~~ of Financial Institutions;
- (21) "Outstanding payment instrument" means any payment instrument issued by the licensee which has been sold or issued in the United States directly by the licensee or any payment instrument issued by the licensee which has been sold by an agent of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the issuer;
- (22) (a) "Payment instrument" means:
1. A check, draft, money order, traveler's check, or other written or electronic instrument or order for the transmission or payment of money, sold or issued to one (1) or more persons, whether or not such instrument is negotiable; or
 2. The purchase or the deposit of funds for the purchase of a check, draft, money order, traveler's check, or other written or electronic instrument;
- (b) "Payment instrument" does not include any credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services;
- (23) "Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, organization, joint venture, government and any subdivision, agency or instrumentality thereof, or any other legal or commercial entity;
- (24) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium, and is retrievable in perceivable form;
- (25) "Remit" means either to make direct payment of the funds to the licensee or its representatives authorized to receive those funds, or to deposit the funds in a bank, credit union, or savings and loan association, or other similar financial institution in an account specified by the licensee;
- (26) "Responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money transmission by the licensee in this state;
- (27) "State" means a state or commonwealth of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession that is subject to the jurisdiction of the United States;
- (28) "Stored value" means monetary value that is evidenced by an electronic record; and
- (29) "Unsafe or unsound practice" means a practice or conduct by a person licensed to provide money transmission, or an agent of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers.

➔Section 835. KRS 286.11-009 is amended to read as follows:

- (1) Each application for a license under this subtitle shall be made in writing and in a form and medium prescribed by regulation by the ~~commissioner~~~~executive director~~. The application shall state or contain the following:
- (a) The legal name of the applicant, business addresses, and residential addresses, if applicable, of the applicant, and any fictitious or trade name used by the applicant in conducting its business;

- (b) The legal name, residential and business addresses, date of birth, Social Security number, and employment history for the five (5) year period preceding the filing of the application, of the applicant's proposed responsible individual;
 - (c) A list and description of any criminal conviction, other than a traffic violation, of the applicant and proposed responsible individual, for the ten (10) year period preceding the filing of the application. The **commissioner**~~{executive director}~~ may request a copy of any criminal conviction from the applicant, which shall be promptly provided by the applicant to the **commissioner**~~{executive director}~~ within ten (10) working days of the request;
 - (d) A list and description of any material litigation of the applicant and proposed responsible individual, for the ten (10) year period preceding the filing of the application. The **commissioner**~~{executive director}~~ may request a copy of any material litigation from the applicant, which shall be promptly provided by the applicant to the **commissioner**~~{executive director}~~ within ten (10) working days of the request;
 - (e) A description of the activities conducted by the applicant and a history of operations, including, if applicable, a description of any money transmission that has been previously provided by the applicant in this state;
 - (f) A list of other states or countries in which the applicant is licensed to engage in money transmission or other similar money services, and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state or country;
 - (g) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money transmission business involving the proposed responsible individual;
 - (h) A description of the source of money and credit to be used by the applicant to provide money transmissions;
 - (i) A sample form of contract for an agent;
 - (j) A sample form of payment instrument;
 - (k) Information concerning any bankruptcy, reorganization, or receivership proceedings involving or affecting the applicant or the proposed responsible individual;
 - (l) A list identifying the name, physical location or locations, and telephone number at which the applicant and its proposed agents intend to conduct money transmission business in the state at the time of the filing of the license application;
 - (m) The name, address, and telephone number of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which such payment instruments will be payable;
 - (n) A copy of the written procedures that will be provided by the applicant or licensee to its agent or agents;
 - (o) That neither the applicant, nor any executive officer, nor person who exercises control over the applicant, nor key shareholder, nor any proposed agent, nor the proposed responsible individual, is listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury or the United States Department of State under Presidential Executive Order No. 13224 as a potential threat to commit terrorist acts and to finance terrorist acts; and
 - (p) Any other information regarding the background, experience, character, financial responsibility, or general fitness of the applicant, the applicant's responsible individual, or agent that the **commissioner**~~{executive director}~~ may require by rule or order.
- (2) If the applicant is a corporation, limited liability company, partnership, or other entity, then the applicant shall also provide:
- (a) A copy of the applicant's filed articles of incorporation;
 - (b) The name, address, and telephone number of the registered process agent of the applicant in this state;
 - (c) If applicable, then a certificate of good standing from the state or country in which the applicant was incorporated or formed;

- (d) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;
 - (e) The legal name, any fictitious or trade name, all business and residence addresses, date of birth, Social Security number, and employment history for the ten (10) year period preceding the filing of the application for each executive officer, board director, key shareholder, or person that has control of the applicant;
 - (f) Copies and description of material litigation for the ten (10) year period prior to the filing date of the application of every executive officer or key shareholder of the applicant;
 - (g) Copies and descriptions of criminal convictions, other than traffic violations, for the ten (10) year period prior to the filing date of the application of every executive officer or key shareholder of the applicant;
 - (h) A copy of the applicant's audited financial statements for the most recent fiscal year or, if the applicant is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the applicant's most recent audited consolidated annual financial statements and, in each case, if available, for the two (2) year period preceding the filing of the application;
 - (i) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two (2) year period preceding the filing of the application;
 - (j) If the applicant is publicly traded, then a copy of the most recent report filed with the United States Securities and Exchange Commission pursuant to 15 U.S.C. sec. 78m;
 - (k) If the applicant is a wholly owned subsidiary of:
 1. A corporation publicly traded in the United States, then a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed with the United States Securities and Exchange Commission pursuant to 15 U.S.C. sec. 78m; or
 2. A corporation publicly traded outside of the United States, a copy of similar documentation for the most recent fiscal year filed with the regulator of the parent corporation's domicile outside the United States.
- (3) Every corporate applicant, at the time of filing of an application for a license under this subtitle and at all times after a license is issued, shall be in good standing in the state of its incorporation.
- (4) Every applicant shall, at the time of the filing of an application for a license under this subtitle and at all times after a license is issued, be registered or qualified to do business in this state.
- (5) The **commissioner**~~{executive director}~~ is authorized, for good cause, to waive any requirement of this section with respect to any license application or to permit a license applicant to submit substituted information in its license application in lieu of the information required by this section.

➔Section 836. KRS 286.11-013 is amended to read as follows:

- (1) Each application shall be accompanied by a surety bond or other similar security acceptable to the **commissioner**~~{executive director}~~, in the amount of at least five hundred thousand dollars (\$500,000). The **commissioner**~~{executive director}~~ may increase the amount of the surety bond, or other similar security, to a maximum of five million dollars (\$5,000,000), upon the basis of the financial condition of an applicant, as evidenced by net worth, transaction volume, or other relevant criteria that the **commissioner**~~{executive director}~~ may establish by order or rule.
- (2) The surety bond, or other similar security acceptable to the **commissioner**~~{executive director}~~, shall be in a form satisfactory to the **commissioner**~~{executive director}~~ and shall hold and bind the principal and surety to the Commonwealth of Kentucky for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with the sale and issuance of payment instruments or money transmissions by the licensee and its agent. The aggregate liability of the surety bond or other similar security accepted shall not exceed the principal sum of the bond.

- (3) A claimant may maintain a civil action on the surety bond, or other similar security acceptable to the **commissioner**~~{executive director}~~, against a licensee, or the **commissioner**~~{executive director}~~ may maintain an action on behalf of the claimant, in the Franklin Circuit Court, or in any other court of competent jurisdiction, either in one (1) action or in successive actions.
- (4) A licensee shall at all times maintain a surety bond, or other similar security acceptable to the **commissioner**~~{executive director}~~, in the amount and type required under subsections (1) and (2) of this section. The **commissioner**~~{executive director}~~ may, at any time, accept a substitute or replacement surety bond, or other acceptable similar security, from the licensee, provided that the requirements of subsections (1) and (2) are met.
- (5) The surety bond, or other similar security acceptable to the **commissioner**~~{executive director}~~, shall be continuous and remain in effect until canceled. The licensee shall provide the **commissioner**~~{executive director}~~ with at least a thirty (30) day written notice of the intent to cancel the surety bond or other similar security accepted by the **commissioner**~~{executive director}~~. The cancellation of the surety bond or other acceptable security shall not affect any liability incurred or accrued during the thirty (30) day notice of cancellation period.
- (6) A surety bond, or other security acceptable to the **commissioner**~~{executive director}~~, shall remain in place and cover claims for at least five (5) years after the date of any violation of this subtitle by the licensee or its agent, or the date the licensee ceases providing money transmission services in this state, whichever date occurs last. The **commissioner**~~{executive director}~~ may permit the licensee to reduce or eliminate the surety bond, or other similar security approved by the **commissioner**~~{executive director}~~, prior to the expiration of the five (5) years, to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced.

➔Section 837. KRS 286.11-015 is amended to read as follows:

- (1) Every licensee shall, at all times, maintain permissible investments that have a market value that is computed in accordance with generally accepted accounting principles. These investments shall not be less than the aggregate amount of all outstanding payment instruments.
- (2) Except to the extent otherwise limited in subsection (5) of this section, the following investments are permissible for a licensee:
 - (a) Cash, time deposits, savings deposits, demand deposits, a certificate of deposit, or senior debt obligation of an insured depository institution as defined in 12 U.S.C. sec. 1813 or as defined under 12 U.S.C. sec. 1781;
 - (b) Banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the federal reserve system and is eligible for purchase by a federal reserve bank;
 - (c) An investment bearing a rating of one (1) of the three (3) highest grades as defined by a nationally recognized organization that rates securities;
 - (d) An investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;
 - (e) Receivables that are payable to a licensee from its agents, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection, if the aggregate amount of receivables under this paragraph does not exceed twenty percent (20%) of the total permissible investments of a licensee and the licensee does not hold, at one (1) time, receivables under this paragraph in any one (1) person aggregating more than ten percent (10%) of the licensee's total permissible investments.
- (3) The following investments are permissible under this section, but only to the extent specified as follows:
 - (a) An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this paragraph do not exceed twenty percent (20%) of the total permissible investments of a licensee and the licensee does not, at one (1) time, hold investments under this paragraph in any one (1) person aggregating more than ten percent (10%) of the licensee's total permissible investments;

- (b) A share of a person traded on a national securities exchange or a national over-the-counter market or a share or certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission pursuant to 15 U.S.C. secs. 80a-1 to 80a-64, and whose portfolios are restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if:
 - 1. The aggregate of investments under this paragraph does not exceed twenty percent (20%) of the total permissible investments of a licensee; and
 - 2. The licensee does not, at one (1) time, hold investments under this paragraph in any one (1) person aggregating more than ten percent (10%) of the licensee's total permissible investments; and
- (c) A demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange, if:
 - 1. The aggregate amount of principal and interest outstanding under demand-borrowing agreements under this paragraph does not exceed twenty percent (20%) of the total permissible investments of a licensee; and
 - 2. The licensee does not, at one (1) time, hold principal and interest outstanding under demand-borrowing agreements under this paragraph with any one (1) person aggregating more than ten percent (10%) of the licensee's total permissible investments.
- (4) The aggregate of investments under subsection (3) of this section shall not exceed fifty percent (50%) of the total permissible investments of a licensee.
- (5) The **commissioner**~~{executive director}~~ may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money, time deposits, savings deposits, demand deposits, and certificates of deposit issued by a federally insured financial institution. The **commissioner**~~{executive director}~~ may by rule or order allow other types of investments that the **commissioner**~~{executive director}~~ determines to be substantially equivalent to other permissible investments in regards to safety and soundness.
- (6) Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of insolvency or bankruptcy of the licensee.

➔Section 838. KRS 286.11-019 is amended to read as follows:

- (1) Upon the filing of a complete application, the **commissioner**~~{executive director}~~ shall investigate the competence, experience, character, financial condition, and responsibility of the applicant. The **commissioner**~~{executive director}~~ may conduct an on-site investigation of the applicant, the reasonable cost of which shall be paid by the applicant. The **commissioner**~~{executive director}~~ shall review each application on a case-by-case basis. If the **commissioner**~~{executive director}~~ finds that the applicant has the competence, experience, character, financial condition, and responsibility, and has fulfilled the requirements of this subtitle, then the **commissioner**~~{executive director}~~ shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this state. If any of these requirements has not been met, then the **commissioner**~~{executive director}~~ shall deny the application, in writing setting out the reason for the denial.
- (2) The **commissioner**~~{executive director}~~ shall approve, or deny in writing, every completed application for a license within one hundred twenty (120) days from the date a complete application is submitted, which period may be extended for good cause by the **commissioner**~~{executive director}~~.
- (3) The **commissioner**~~{executive director}~~ may deny a license application where the applicant does not meet the requirements of this subtitle or for any of the grounds under KRS 286.11-039.
- (4) The **commissioner**~~{executive director}~~ may probate, place conditions upon, or refuse to issue or renew any license issued under this subtitle.
- (5) The **commissioner**~~{executive director}~~ may in writing deny or refuse to renew the designation of an agent by a licensee for any of the grounds found in KRS 286.11-041.
- (6) A person is deemed to have received a copy of a written denial issued by the **commissioner**~~{executive director}~~ in this section within three (3) days of its mailing.

- (7) Any person who has had his *or her* license application or designation as an agent denied by the **commissioner**~~[executive director]~~ may file a written application for an administrative hearing in accordance with KRS Chapter 13B. The written application shall be filed with the **commissioner**~~[executive director]~~ within twenty (20) days of the date of the denial.
- (8) A written application for an appeal shall be made in good faith and shall briefly state the reason or reasons the person is aggrieved, together with the grounds to be relied upon as a basis for the relief to be sought at the hearing.
- (9) Any person who has had his *or her* license application, or designation as an agent, denied by the **commissioner**~~[executive director]~~ may not file another application for a license, or designation as an agent, under this subtitle for one (1) year after the date of the denial.

➔Section 839. KRS 286.11-021 is amended to read as follows:

- (1) A licensee under this subtitle shall pay an annual renewal fee of five hundred dollars (\$500) no later than September 20 of each year.
- (2) The renewal fee shall be accompanied by a written renewal report, in a form prescribed by the **commissioner**~~[executive director]~~, which shall include:
 - (a) A copy of the licensee's most recent audited annual financial statement, or if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation, or the licensee's most recent audited financial statement;
 - (b) For the most recent quarter for which data is available prior to the date of the filing of the renewal application, but in no event more than one hundred twenty (120) days prior to the renewal date, a list of the number of payment instruments sold by the licensee in the state, the dollar amount of those instruments, and the dollar amount of those instruments currently outstanding;
 - (c) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the **commissioner**~~[executive director]~~ on any other report required to be filed under this subtitle;
 - (d) A list of the licensee's permissible investments under this subtitle and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in KRS 286.11-015; and
 - (e) A list of the locations, including names, physical addresses, and telephone numbers, in this state where the licensee or agent of the licensee engages in money transmission.
- (3) The failure of a licensee to pay the annual renewal fee or file the written renewal report, by the renewal date of September 20, shall result in the expiration of the licensee's license by operation of law by September 30 of the same year. The **commissioner**~~[executive director]~~ may reinstate the license if the licensee becomes compliant with this subtitle and pays a civil penalty equal to the amount of the annual renewal fee, as specified in this section, within thirty (30) days of the expiration of the license.

➔Section 840. KRS 286.11-023 is amended to read as follows:

A licensee shall file a written report with the **commissioner**~~[executive director]~~ within fifteen (15) business days of its knowledge of the occurrence of any one (1) of the events listed below. In the written report, the licensee shall describe the event and its expected impact on the licensee's activities in the state:

- (1) Any material change in information provided in a licensee's application or renewal report;
- (2) The cancellation or other impairment of the licensee's bond or other similar security accepted by the **commissioner**~~[executive director]~~;
- (3) Insolvency or the filing for bankruptcy or reorganization under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110, by the licensee, responsible individual, any agent, or any key officers or directors;
- (4) The filing of a petition by or against the licensee, or any agent of the licensee, for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

- (5) The filing of any material litigation against the licensee by any state or federal governmental authority, or by any country in which the licensee engages in the business of money transmission or is licensed;
- (6) Any felony indictment of the licensee, responsible individual, agent, or any of its key officers or directors;
- (7) Any felony conviction of the licensee, responsible individual, agent, or any of its key officers or directors;
- (8) Any misdemeanor conviction of the licensee, responsible individual, agent, or any of its key officers or directors of any misdemeanor involving the business of money transmission; and
- (9) Any misdemeanor conviction of the licensee, responsible individual, agent, or any of its key officers or directors of any misdemeanor involving fraud, theft, or breach of trust.

➔Section 841. KRS 286.11-025 is amended to read as follows:

- (1) A licensee shall give the **commissioner**~~[executive director]~~ written notice of a proposed change of control within fifteen (15) days after learning of the proposed change of control and at least thirty (30) days prior to the proposed change of control.
- (2) A licensee shall file a written request for approval of the acquisition with the **commissioner**~~[executive director]~~. A licensee shall also submit, with the notice, a nonrefundable fee of one hundred dollars (\$100).
- (3) After review of a request for approval under subsection (1) of this section, the **commissioner**~~[executive director]~~ may require the licensee to provide additional information concerning the proposed person in control.
- (4) The **commissioner**~~[executive director]~~ shall approve a request for change of control under subsection (1) of this section if, after investigation, the **commissioner**~~[executive director]~~ determines that the person or group of persons requesting approval has the competence, experience, character, financial condition, and responsibility to operate the licensee or person in control of the licensee in a lawful and proper manner and that the interest of the public will not be jeopardized by the change of control.
- (5) The following persons are exempt from the requirements of subsection (1) of the section, but the licensee shall notify the **commissioner**~~[executive director]~~, within fifteen (15) days after learning of a change of control:
 - (a) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the security holders or holders of voting interests of a licensee or person in control of a licensee;
 - (b) A person that acquires control of a licensee by devise or descent;
 - (c) A person that acquires control as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law; and
 - (d) A person that the **commissioner**~~[executive director]~~ exempts by regulation or order if it is in the public interest to do so.
- (6) Subsection (1) of this section does not apply to public offerings of securities.
- (7) Before filing a request for approval to acquire control, a person may request in writing a determination from the **commissioner**~~[executive director]~~ as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the **commissioner**~~[executive director]~~ determines that the person would not be a person in control of a licensee, then the **commissioner**~~[executive director]~~ may enter an order or respond in writing, to that effect, and the proposed person and transaction shall not be subject to the requirements of this section.

➔Section 842. KRS 286.11-027 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may conduct an examination or investigation of a licensee or any of its agents, as it relates to the business of money transmission.
- (2) The **commissioner**~~[executive director]~~ may conduct an examination or investigation in conjunction with representatives of other agencies of this state or agencies of another state or of the federal government. Instead of an examination, the **commissioner**~~[executive director]~~ may accept the examination report of an agency of this state or of another state or of the federal government or a report prepared by an independent licensed or certified public accountant. The reasonable expenses incurred by the **department**~~[office]~~, other Kentucky agencies, agencies of another state, agencies of the federal government, or an independent licensed or certified accountant in making such examination, investigation, or report shall be borne by the licensee.

- (3) A joint examination or an acceptance of an examination report does not preclude the **commissioner**~~[executive director]~~ from conducting an examination as provided by law. A joint report or a report accepted under this subsection is an official report of the **commissioner**~~[executive director]~~ for all purposes.
- (4) A licensee or agent is deemed to consent to the **commissioner's**~~[executive director's]~~ examination or investigation, whether or not prior notice is given to the licensee or agent, of the books, records, and business operations of the licensee or agent of the licensee.
- (5) A report of examination of a licensee under this section shall be considered confidential and privileged and not subject to disclosure under the Kentucky Open Records Act, KRS 61.870 to 61.884. However, a licensee may disclose a Kentucky report of examination to a financial institution upon written request from the financial institution for the purpose of assisting the financial institution in its compliance with the Bank Secrecy Act, 31 U.S.C. secs. 5311 to 5332 and 31 C.F.R. pt. 103. The licensee shall provide written notice to the **commissioner**~~[executive director]~~ of the disclosure of the Kentucky report of examination at the same time that disclosure is made to the financial institution.

➔Section 843. KRS 286.11-029 is amended to read as follows:

- (1) Each licensee shall make, keep, and preserve the following books, accounts, and other records for a period of five (5) years, and these records shall be open to inspection by the **commissioner**~~[executive director]~~:
 - (a) A record or records of each payment instrument sold;
 - (b) A general ledger containing all assets, liability, capital, income, and expense accounts, which general ledger shall be posted at least monthly;
 - (c) Bank statements and bank reconciliation records;
 - (d) Records of outstanding payment instruments;
 - (e) Records of each payment instrument paid within the five (5) year period;
 - (f) A list of the names, addresses, and telephone numbers of all of the licensee's agents;
 - (g) Copies of all currency transaction reports and suspicious activity reports filed in compliance with KRS 286.11-031; and
 - (h) Any other record the **commissioner**~~[executive director]~~ may reasonably require by order or regulation.
- (2) Records required to be maintained in this subtitle may be kept in an electronic retrievable format or other similar form of medium.
- (3) Records may be maintained by a licensee or agent at a location other than within this state so long as they are made accessible to the **commissioner**~~[executive director]~~ upon seven (7) business days' written notice.

➔Section 844. KRS 286.11-031 is amended to read as follows:

- (1) Every licensee and its agent shall file with the **commissioner**~~[executive director]~~ all reports by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements as set forth in the Bank Secrecy Act, 31 U.S.C. secs. 5311 to 5332, 31 C.F.R. pt. 103, and other federal and state laws pertaining to money laundering, for every transaction in this state. Every licensee and its agent shall maintain copies of these reports in its records in compliance with KRS 286.11-029.
- (2) The timely filing of a complete and accurate report required under subsection (1) of this section with the appropriate federal agency is deemed compliance with the requirements of subsection (1) of this section, unless the **commissioner**~~[executive director]~~ notifies the licensee that reports of the type required in subsection (1) of this section are not being regularly and comprehensively transmitted to the federal agency.

➔Section 845. KRS 286.11-033 is amended to read as follows:

- (1) Documents, materials, reports, or other information in the possession or control of the **commissioner**~~[executive director]~~ that is provided according to this subtitle shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. These documents, materials, reports, or other information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any civil action, unless, after notice to the **commissioner**~~[executive director]~~ and a hearing, a court of competent jurisdiction determines that the **commissioner**~~[executive director]~~ would not be prejudiced.

However, the *commissioner*~~[executive director]~~ may use the documents, materials, reports, or other information in the furtherance of any regulatory or legal action brought as a part of the *commissioner's*~~[executive director's]~~ official duties.

- (2) Neither the *commissioner*~~[executive director]~~ nor any person who received documents, materials, reports, or other information while acting under the authority of the *commissioner*~~[executive director]~~ shall be permitted or required to testify in any civil action concerning any confidential documents, materials, reports, or information subject to subsection (1) of this section.
- (3) In order to assist in the performance of the *commissioner's*~~[executive director's]~~ duties, the *commissioner*~~[executive director]~~:
 - (a) May share documents, materials, reports, or other information, including the confidential and privileged documents, materials, reports, or information subject to subsections (1) and (2) of this section, with other state, federal, and international regulatory agencies, with the Money Transmitter Regulators Association, its affiliates or subsidiaries, and with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, reports, or other information;
 - (b) May receive documents, materials, reports, or other information, including otherwise confidential and privileged documents, materials, reports, or information from the Money Transmitter Regulators Association, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any documents, materials, reports, or information received with notice or the understanding that they are confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, reports, or information;
 - (c) May enter into agreements governing the sharing and use of information, including the furtherance of any regulatory or legal action brought as part of the recipient's official duties;
 - (d) May disclose to the public a list of persons licensed under this subtitle or the aggregate financial data concerning those licensees; and,
 - (e) May disclose to the public any order issued under this subtitle that is the result of an administrative or legal action against a licensee, agent of a licensee, responsible individual, key shareholder, executive officer, or director.
- (4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, reports, or information shall occur as a result of disclosure to the *commissioner*~~[executive director]~~ under this subsection or as a result of sharing as authorized in subsection (3) of this section.

➔Section 846. KRS 286.11-035 is amended to read as follows:

Licensees desiring to conduct licensed activities through agents shall authorize each agent to operate pursuant to an express written contract, which shall include the following provisions:

- (1) That the licensee designates the person as its agent with authority to engage in money transmission on behalf of the licensee as authorized under this subtitle;
- (2) That the agent shall operate in full compliance with this subtitle, and rules promulgated under this subtitle, and any order issued by the *commissioner*~~[executive director]~~ pursuant to this subtitle;
- (3) That neither a licensee nor an agent of the licensee may authorize subagents;
- (4) That the agent shall timely remit all money legally due to the licensee in accordance with the terms of the written contract between the licensee and the agent;
- (5) That the licensee and agent are subject to regulation by the *commissioner*~~[executive director]~~; and
- (6) That the licensee and agent shall comply with applicable federal and state law.

➔Section 847. KRS 286.11-037 is amended to read as follows:

- (1) An agent shall not make any fraudulent statements or misrepresentations to a licensee or to the *commissioner*~~[executive director]~~.

- (2) All money transmissions, or sale, or issuance of payment instrument activities conducted by agents shall be strictly in accordance with the licensee's written procedures provided to the agent.
- (3) An agent shall timely remit all money legally due to the licensee in accordance with the terms of the contract between the licensee and the agent. The *commissioner*~~{executive director}~~ shall have the discretion to set, by regulation or order, the maximum remittance time.
- (4) An agent shall act only as authorized under the contract with the licensee.
- (5) All funds, less fees, received by an agent of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an agent for transmission shall, from the time the funds are received by the agent until such time when the funds or an equivalent amount are remitted by the agent to the licensee, constitute trust funds owned by and belonging to the licensee. If an agent commingles any of these funds with any other funds or property owned or controlled by the agent, then all commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.
- (6) An agent shall report to the licensee the theft, forgery, or loss of payment instruments within twenty-four (24) hours from the time it knew of the theft, forgery, or loss.

➔Section 848. KRS 286.11-039 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ may issue a written order to suspend or revoke a license issued under this subtitle if the *commissioner*~~{executive director}~~ finds that:
 - (a) The licensee no longer meets the requirements to hold a license under this subtitle;
 - (b) Any fact or condition exists that, if it had existed at the time the licensee applied for its license, would have been grounds for denying the application;
 - (c) The licensee's net worth, as determined in accordance with generally accepted accounting principles, falls below the required net worth as prescribed in KRS 286.11-011, and the licensee, after ten (10) days written notice from the *commissioner*~~{executive director}~~, fails to take such action as the *commissioner*~~{executive director}~~ deems necessary to remedy such deficiency;
 - (d) The licensee violates any provision of this subtitle, any administrative regulation promulgated thereunder, or order of the *commissioner*~~{executive director}~~ issued under authority of this subtitle, or any other state law or regulation related to the business of money transmission;
 - (e) The licensee is conducting its business in an unsafe or unsound manner;
 - (f) The licensee engages in an unfair and deceptive act or practice;
 - (g) The licensee engages in fraud, intentional misrepresentation, or gross negligence;
 - (h) The licensee is insolvent;
 - (i) The licensee has suspended payment of its obligations or has made an assignment for the benefit of its creditors;
 - (j) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101-110;
 - (k) The licensee fails to cooperate in an examination, investigation, or subpoena issued by the *commissioner*~~{executive director}~~;
 - (l) The licensee fails to make any report required by this subtitle;
 - (m) The licensee has been found to have violated any of the recordkeeping and reporting requirements of the United States government including 31 U.S.C. secs. 5311 to 5332 and 31 C.F.R. pt. 103;
 - (n) The competence, experience, character, financial condition, or responsibility of the licensee indicates that it is not in the public interest to permit the licensee to continue to provide money transmission services;
 - (o) The licensee has been convicted of a felony;

- (p) The licensee has been convicted of a misdemeanor related to the business of money transmission;
 - (q) The licensee has been convicted of a misdemeanor involving theft, fraud, or breach of trust;
 - (r) The licensee has failed to terminate or suspend its agent's authority to act on its behalf when the licensee knew, or has been given reasonable notice that its agent violated, or is about to violate, a material provision of this subtitle, an administrative regulation promulgated thereunder, or an order of the **commissioner**~~{executive director}~~, or any grounds that are found in KRS 286.11-041; or
 - (s) The licensee, its responsible individual, or any agent, key shareholder, executive officer, director, or other person in control of the licensee are listed or become listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury or United States Department of State under Presidential Executive Order No. 13224 as a potential threat to commit terrorist acts or to finance terrorist acts.
- (2) A licensee who has had his *or her* license revoked or suspended by the **commissioner**~~{executive director}~~ may file a written application for an administrative hearing in accordance with KRS Chapter 13B.
 - (3) A person is deemed to have received a copy of the written order of revocation or suspension with three (3) days of its mailing.
 - (4) A written application for an appeal shall be made with the **commissioner**~~{executive director}~~ within twenty (20) days of the date of the order of suspension or revocation and shall be made in good faith and shall briefly state the reason or reasons the person is aggrieved, together with the grounds to be relied upon.
 - (5) The **commissioner**~~{executive director}~~ shall not issue a license again under this subtitle to any person whose license has been revoked until three (3) years after the date of the revocation, and thereafter, not until the person again qualifies under the applicable provisions of this subtitle. A person whose license has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license under this subtitle.
 - (6) In determining whether a licensee is engaging in an unsafe or unsound practice under subsection (1)(e) of this section, the **commissioner**~~{executive director}~~ may consider the size and condition of the licensee's provision of money transmissions, the magnitude of the loss, the gravity of the violation of this subtitle, the administrative regulation adopted, or order issued under this subtitle, any action taken by another state or federal government against the licensee, or the previous conduct of the licensee.

➔Section 849. KRS 286.11-041 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may issue a written order suspending or revoking the designation of an agent if the **commissioner**~~{executive director}~~ finds that:
 - (a) The agent violates this subtitle or a rule adopted or an order issued under this subtitle;
 - (b) The agent does not cooperate with an examination, investigation, or subpoena issued by the **commissioner**~~{executive director}~~;
 - (c) The agent has engaged in fraud, intentional misrepresentation, or gross negligence;
 - (d) The agent has been convicted of a felony;
 - (e) The agent has been convicted of a misdemeanor related to the business of money transmission;
 - (f) The agent has been convicted of a misdemeanor involving theft, fraud, or breach of trust;
 - (g) The competence, experience, character, or general fitness of the agent or a person in control of the agent indicates that it is not in the public interest to permit the agent to be engaged in the business of money transmission;
 - (h) The agent is engaged in or is engaging in an unsafe or unsound practice;
 - (i) The agent is engaged in, or is engaging in, an unfair and deceptive act or practice as that act or practice relates to the business of money transmission;
 - (j) The agent is insolvent;
 - (k) The agent has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110; or

- (l) The agent fails to timely remit all money legally due to its licensee as required by this subtitle; or
 - (m) The agent, any executive officer, or other person in control of the agent is listed or become listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury or United States Department of State under Presidential Executive Order No. 13224 as a potential threat to commit terrorist acts or to finance terrorist acts.
- (2) In determining whether an agent is engaging in an unsafe or unsound practice under subsection (1)(h) of this section, the **commissioner**~~{executive director}~~ may consider the size and condition of the agent's provision of money transmissions, the magnitude of the loss, the gravity of the violation of this subtitle, the administrative regulation adopted, or order issued under this subtitle, any action taken by another state or federal government against the agent, or the previous conduct of the agent.
 - (3) Any person who has his *or her* designation as an agent revoked or suspended by the **commissioner**~~{executive director}~~ may file a written application for an administrative hearing in accordance with KRS Chapter 13B.
 - (4) An agent is deemed to have received a copy of the written order of revocation or suspension within three (3) days of its mailing.
 - (5) A written application for an appeal shall be made with the **commissioner**~~{executive director}~~ within twenty (20) days of the date of the order of suspension or revocation in good faith and shall briefly state the reason or reasons the agent is aggrieved, together with the grounds to be relied upon.
 - (6) The **commissioner**~~{executive director}~~ shall not designate a person as an agent again under this subtitle where the designation of an agent has been revoked, until after three (3) years after the date of revocation, and thereafter, not until the person again qualifies under the applicable provisions of this subtitle. Any person whose designation as an agent has been revoked twice by the **commissioner**~~{executive director}~~ shall be deemed permanently revoked and shall not again be eligible for designation as an agent under this subtitle.

➔Section 850. KRS 286.11-043 is amended to read as follows:

- (1) If the **commissioner**~~{executive director}~~ has reason to believe or determines that a violation of this subtitle, regulation adopted, or an order issued under this subtitle, by any person, licensee, or agent has occurred or will occur, then *the commissioner*~~{he}~~ may issue an order to show cause why an order to cease and desist should not be issued requiring the person, licensee, or agent to cease and desist from the violation.
- (2) The **commissioner**~~{executive director}~~ may enter an order to cease and desist if the person, licensee, or agent fails to show cause for the violation of the subtitle, regulation, or order within ten (10) days of the date of the receipt of the order of show cause.
- (3) The **commissioner**~~{executive director}~~ may petition the Franklin Circuit Court, or any court of competent jurisdiction, for an issuance of a temporary or permanent injunction, or any other appropriate judicial order, against any person, licensee, or agent that violates this subtitle, regulation adopted, or order issued.
- (4) An order issued under this section becomes effective when signed by the **commissioner**~~{executive director}~~. The order shall be delivered by certified mail to the last known address of the person, licensee, or agent. The order shall be deemed received by the person, licensee, or agent within three (3) days of its mailing with the United States Postal Service.
- (5) The **commissioner**~~{executive director}~~ may issue an order against a licensee to cease and desist from providing money transmission through an agent that is subject of a separate order from the **commissioner**~~{executive director}~~.
- (6) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding.

➔Section 851. KRS 286.11-045 is amended to read as follows:

- (1) If the **commissioner**~~{executive director}~~ has reason to believe or determines that a violation of this subtitle or of a regulation adopted, or an order issued under this subtitle, by a licensee or agent will cause immediate or irreparable harm to the public health, safety, or welfare, then the **commissioner**~~{executive director}~~ may enter an emergency order suspending, limiting, or restricting the licensee's license or the designation of an agent, without prior notice or hearing.

- (2) One (1) or more of the following circumstances shall be considered grounds for an emergency order suspending, limiting, or restricting a license or designation of an agent under this section:
- (a) The licensee's or agent's indictment or conviction of a felony for a crime involving theft, fraud, or breach of trust;
 - (b) The licensee's or agent's indictment or conviction under the USA PATRIOT Act of 2001, Pub. L. No. 107-56;
 - (c) The suspension or revocation of any other money transmitter license or equivalent license held by the licensee, or designation held by the agent in another state or country;
 - (d) The licensee, its responsible individual, or any agent, key shareholder, executive officer, director, or other person in control of the licensee are listed or become listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury or United States Department of State under Presidential Executive Order No. 13224 as a potential threat to commit terrorist acts or to finance terrorist acts; or
 - (e) Insolvency, or the filing of an application of bankruptcy, reorganization, arrangement, or other relief under bankruptcy, or an adjudication under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110 by the licensee or agent.
- (3) An emergency order issued under this section becomes effective when signed by the **commissioner**~~{executive director}~~. The emergency order shall be delivered by certified mail to the last known address of the licensee or agent. The order shall be deemed received by the licensee or agent within three (3) days of its mailing with the United States Postal Service.
- (4) A licensee or agent aggrieved by an emergency order issued by the **commissioner**~~{executive director}~~ under this section may file with the **commissioner**~~{executive director}~~ a written appeal for an emergency hearing. The application for a hearing shall be filed with the **commissioner**~~{executive director}~~ within twenty (20) days of the date of the emergency order.
- (5) Upon receipt of a written appeal by any licensee or agent aggrieved by an emergency order issued under this section, the **commissioner**~~{executive director}~~ shall conduct an emergency hearing as required under KRS 13B.125, within ten (10) working days from the date of receipt of the appeal, unless the parties agree otherwise. The hearing officer shall render a written decision affirming, modifying, or reversing the emergency order within five (5) working days of the completion of the hearing. The emergency order shall be affirmed if there is substantial evidence of a violation of law that constitutes an immediate danger to the public health, safety, or welfare.

➔Section 852. KRS 286.11-047 is amended to read as follows:

The **commissioner**~~{executive director}~~ may levy a civil penalty against a person that violates any provision of or administrative regulation promulgated under this subtitle or order issued by the **commissioner**~~{executive director}~~ under this subtitle. The civil penalty shall be not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) per day for each day the violation is outstanding, plus the state's costs and expenses for the examination, investigation, and prosecution of this matter, including reasonable attorney's fees and court costs.

➔Section 853. KRS 286.11-049 is amended to read as follows:

The **commissioner**~~{executive director}~~ may enter into a consent order with another person at any time, in order to resolve a matter arising under this subtitle. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this subtitle, or an administrative regulation promulgated under this subtitle, or an order issued under this subtitle has been violated. Any consent order that the **commissioner**~~{executive director}~~ enters into in order to resolve a matter arising under this subtitle shall be deemed an administrative action and a public record.

➔Section 854. KRS 286.11-051 is amended to read as follows:

The **commissioner**~~{executive director}~~ may stay, suspend, or postpone the effective date of an order issued under this subtitle, pending the administrative proceeding and the issuance of a final order resulting from the proceeding, upon written request by the affected person, licensee, or agent.

➔Section 855. KRS 286.11-053 is amended to read as follows:

- (1) Any person aggrieved by the entry of an order by the *commissioner*~~{executive director}~~ under this subtitle may file written application for an administrative hearing.
- (2) The written application for a hearing under this subtitle shall be made in good faith and shall state the reasons or grounds the person is so aggrieved and the remedy sought at the hearing.
- (3) Any application for a hearing under this subtitle shall be filed with the *commissioner*~~{executive director}~~ within twenty (20) days of the date of the order.
- (4) If the *commissioner*~~{executive director}~~ finds that the application for a hearing is made in good faith, and that the applicant would be aggrieved as claimed if his *or her* grounds are established, then a hearing shall be held in accordance with KRS Chapter 13B.
- (5) An appeal from the *commissioner*~~{executive director}~~ shall be taken only from a final order.
- (6) The appeal from a final order issued by the *commissioner*~~{executive director}~~ shall be granted as a matter of right to the Franklin Circuit Court.

➔Section 856. KRS 286.11-055 is amended to read as follows:

- (1) Any person aggrieved by the conduct of a licensee or agent under this subtitle in connection with the licensee's or agent's regulated activities may file a written complaint with the *commissioner*~~{executive director}~~ who may investigate the complaint.
- (2) In the course of the investigation initiated by a complaint or by the *commissioner*~~{executive director}~~, the *commissioner*~~{executive director}~~ may:
 - (a) Subpoena witnesses;
 - (b) Administer oaths;
 - (c) Examine any individual under oath; and
 - (d) Compel the production of records, books, papers, contracts, or other documents relevant to the investigation.
- (3) If any person fails to testify or to comply with a subpoena from the *commissioner*~~{executive director}~~ under this section, then the *commissioner*~~{executive director}~~ may petition the Franklin Circuit Court or any court of competent jurisdiction for enforcement.
- (4) The license of any licensee or the designation of an agent under this subtitle who fails to comply with a subpoena of the *commissioner*~~{executive director}~~ may be suspended pending compliance with the subpoena.
- (5) The *commissioner*~~{executive director}~~ may investigate all complaints filed by any person.

➔Section 857. KRS 286.11-061 is amended to read as follows:

- (1) The *department*~~{office}~~ shall exercise all administrative functions of the state in relation to the regulation, supervision, and licensing of money transmitters.
- (2) The *commissioner*~~{executive director}~~ may promulgate, amend, and repeal any administrative regulations, forms, and orders as are necessary to interpret and enforce the provisions of this subtitle.
- (3) The *commissioner*~~{executive director}~~ may request any additional information as *the commissioner*~~{he}~~ deems necessary to interpret and carry out any of the provisions of this subtitle from any applicant, licensee, agent, responsible individual, controlling person, executive officer, or key shareholder.

➔Section 858. KRS 292.310 is amended to read as follows:

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

- (1) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities, except as otherwise provided in this chapter.
 - (a) "Agent" does not include an individual who represents:
 1. An issuer in:

- a. Effecting a transaction in a security exempted by subsection (1), (2), (3), (10), or (11) of KRS 292.400, or subsection (5), (9), or (12) thereof if no commission or other remuneration is received for the sale of such securities or effecting a transaction in a security exempted by KRS 292.400(15) even if commission or other remuneration is received for the sale of such security provided that the individual offers or sells no other security except securities exempted by KRS 292.400(15);
 - b. Effecting transactions exempted by KRS 292.410 unless otherwise required;
 - c. Effecting transactions in a covered security under Section 18(b)(3) or 18(b)(4)(d) of the Securities Act of 1933 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in Kentucky;
 - d. Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or
 - e. Effecting other transactions if the individual primarily performs, or is intended primarily to perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the individual's compensation is not based, in whole or in part, upon the amount of purchases or sales of the issuer's own securities effected for the issuer; or
2. A broker-dealer in effecting transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.
- (b) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions is an "agent" only if he otherwise comes within the definition in this subsection;
- (2) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:
- (a) An agent, issuer, bank, savings institution, or trust company;
 - (b) A person that effects transactions in this state exclusively in securities exempted by KRS 292.400(15); or
 - (c) A person who has no place of business in this state:
 1. If he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
 2. If during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in this paragraph;
- (3) "Certified" means, when used in regard to financial statements, examined and reported upon in accordance with generally accepted auditing standards with an opinion expressed by a certified public accountant;
- (4) "~~Commissioner~~~~Executive director~~" means the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Financial Institutions or any individual employee of the ~~Department~~~~Office~~ of Financial Institutions expressly designated by order of the ~~commissioner~~~~executive director~~ to act in the ~~commissioner's~~~~executive director's~~ place;
- (5) "Covered advisor" means any person who is registered under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3;
- (6) "Covered security" means any security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder;
- (7) "~~Department~~"~~"Office"~~ means the ~~Department~~~~Office~~ of Financial Institutions of the Commonwealth of Kentucky;

- (8) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;
- (9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;
- (10) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:
- (a) A bank, savings institution, or trust company;
 - (b) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;
 - (c) A broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
 - (d) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
 - (e) A person whose advice, analyses, or reports relate only to securities exempted by KRS 292.400(1);
 - (f) A person who has no place of business in this state if:
 - 1. His only clients in this state are other investment advisers, covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
 - 2. During any period of twelve (12) consecutive months he does not have more than five (5) clients other than those specified in subparagraph 1;
 - (g) An investment adviser representative or a person excluded from the definition of investment adviser representative;
 - (h) A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment Advisors Act of 1940;
 - (i) A covered adviser; or
 - (j) Such other persons not within the intent of this subsection as the **commissioner**~~executive director~~ may by rule or order designate;
- (11) "Investment adviser representative" means:
- (a) With respect to any investment adviser registered or required to be registered under this chapter, any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:
 - 1. Makes any recommendations or otherwise renders advice regarding securities;
 - 2. Manages accounts or portfolios of clients;
 - 3. Determines which recommendation or advice regarding securities should be given;
 - 4. Solicits, offers, or negotiates for the sale of or sells investment advisory services; or
 - 5. Supervises employees who perform any of the functions described in this paragraph; and
 - (b) With respect to any covered adviser, any person defined as an investment adviser representative who has a place of business located in Kentucky, as those terms are defined in Rule 203A-3 promulgated in accordance with the Investment Advisors Act of 1940.
- (12) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons

performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of distribution;

- (13) "Nonissuer" means not directly or indirectly for the benefit of the issuer;
- (14) "Person" means an individual, a limited liability company, a corporation, a partnership, a limited partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;
- (15) "Rule" or "regulation" means either or both administrative rules or administrative regulations promulgated by any governmental or other regulatory or self-regulatory entity, as the context requires;
- (16) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;
- (17) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after January 1, 1961;
- (18) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, life settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;
- (19) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico;
- (20) "Life settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Life settlement investment" does not include:
 - (a) Any transaction between an owner and a life settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720;
 - (b) Any transfer of ownership or beneficial interest in a life insurance policy from a life settlement provider to another life settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720 or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;
 - (c) The bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
 - (d) The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with Subtitle 15 of KRS Chapter 304; and
- (21) Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.
 - ➔Section 859. KRS 292.320 is amended to read as follows:

- (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:
 - (a) To employ any device, scheme, or artifice to defraud;
 - (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
 - (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
- (2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
 - (a) To employ any device, scheme, or artifice to defraud the other person; or
 - (b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.
- (3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:
 - (a) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client unless the client is an "accredited investor," as defined by Rule 501 of the Securities Act of 1933;
 - (b) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and
 - (c) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.
- (4) Paragraph (a) of subsection (3) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in paragraph (b) of subsection (3) of this section includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one (1) or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.
- (5) Subsection (3)(a) of this section shall also not apply to a contract with any person or class of persons that the **commissioner**~~executive director~~ by rule or regulation or by order upon application determines does not need the protections of subsection (3)(a) of this section. The **commissioner**~~executive director~~ may grant a conditional or unconditional exemption based on factors which include the person's or persons' financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, or other factors as the **commissioner**~~executive director~~ determines are consistent with this section.

➔Section 860. KRS 292.325 is amended to read as follows:

- (1) Except as otherwise provided in this section, the **commissioner**~~executive director~~ may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature, radio, television, or other advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, as part of a registered offering or as a part of an exemption offering required to be filed under KRS 292.415.
- (2) The provisions of this section shall not require a covered adviser to file with the **commissioner**~~executive director~~ any documents listed in subsection (1) of this section or any document, except a prospectus, relating to a covered security.

➔Section 861. KRS 292.327 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may require the filing of any of the following documents with respect to a covered security under Section 18(b)(2) of the Securities Act of 1933:
- (a) Prior to the initial offer of such covered security in this state, all documents that are part of a current federal registration statement filed with the United States Securities and Exchange Commission under the Securities Act of 1933 or a notice form adopted by the **commissioner**~~{executive director}~~ in lieu thereof, together with a consent to service of process signed by the issuer and with payment of a filing fee as follows:
 1. Five hundred dollars (\$500) for an investment company, other than a unit investment trust, that is registered or that has filed a registration statement, under the Investment Company Act of 1940; or
 2. Three hundred dollars (\$300) for a unit investment trust that is registered or that has filed a registration statement under the Investment Company Act of 1940; and
 - (b) After the initial offer of such covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the United States Securities and Exchange Commission under the Securities Act of 1933, or a notice form adopted by the **commissioner**~~{executive director}~~ in lieu thereof, which shall be filed concurrently with the **commissioner**~~{executive director}~~;
 - (c) Except for a notice filing by a unit investment trust, which shall be effective indefinitely, all notice filings for such covered securities are effective for a period of one (1) year upon receipt by the **commissioner**~~{executive director}~~ of a properly completed filing, including the correct fee, unless another date is requested by the issuer. An annual filing shall be required of an open-end investment company that continuously offers or sells its securities in this state, which filing shall consist of the documents specified in paragraph (a) of this subsection, exclusive of the consent to service of process, and a filing fee in the amount of five hundred dollars (\$500). The annual renewal filing shall be effective upon the expiration of the prior filing period if it is properly completed, including the correct fee, and is received by the **commissioner**~~{executive director}~~ on or before the expiration date;
 - (d) Amendments to a notice filing are effective upon receipt by the **commissioner**~~{executive director}~~. Termination of a notice filing is effective upon receipt by the **commissioner**~~{executive director}~~ of notice of the termination; and
 - (e) Notwithstanding the provisions of paragraphs (a) to (d) of this subsection, for the period ended October 10, 1999, the **commissioner**~~{executive director}~~ may require the registration of a covered security issued by any issuer for which a fee has not been properly paid and the improper payment has not been remedied within ten (10) business days following receipt of written notification from the **commissioner**~~{executive director}~~ to the issuer of the nonpayment or underpayment of the fee, as required by this chapter.
- (2) The **commissioner**~~{executive director}~~ shall require the filing of, with respect to any security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933, a notice on SEC Form D, a two hundred fifty dollar (\$250) filing fee, and a consent to service of process signed by the issuer no later than fifteen (15) days after the first sale of such covered security in this state.
- (3) The **commissioner**~~{executive director}~~ may require the filing of any document filed with the United States Securities and Exchange Commission under the Securities Act of 1933 with respect to a covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, together with a filing fee in the amount of two hundred fifty dollars (\$250).
- (4) The **commissioner**~~{executive director}~~ may issue a stop order suspending the offer and sale of a covered security, except a covered security under Section 18(b)(1) of the Securities Act of 1933, upon finding that:
- (a) The order is necessary or appropriate in the public interest or for the protection of investors; and
 - (b) There is a failure to comply with any condition established under this section.
- (5) The **commissioner**~~{executive director}~~ may waive any or all of the provisions of this section upon finding that they are not necessary or appropriate in the public interest or for the protection of investors.

➔Section 862. KRS 292.330 is amended to read as follows:

- (1) It is unlawful for any person to transact business in this state as a broker-dealer or agent, unless the person is registered under this chapter. It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. It is unlawful for any investment adviser that is required to be registered under this chapter to employ an investment adviser representative unless the investment adviser representative is registered under this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:
- (a) The person is so registered under this chapter;
 - (b) The person is registered as a broker-dealer under this chapter; or
 - (c) The person is approved, and remains approved, by the Kentucky Economic Development Finance Authority as an investment fund manager pursuant to KRS 154.20-256.
- (2) It is unlawful for any covered adviser to transact business in this state unless:
- (a) The person has made a notice filing with the **commissioner**~~{executive director}~~ consisting of a copy of those documents that have been filed by the covered adviser with the United States Securities and Exchange Commission and that the **commissioner**~~{executive director}~~ by rule or order requires to be filed together with consent to service of process and the fee prescribed in subsection (11)(b) of this section;
 - (b) The person is registered as a broker-dealer under this chapter;
 - (c) The person's only clients are investment companies as defined in the Investment Company Act of 1940, or insurance companies; or
 - (d) The person is excluded from the definition of investment adviser under KRS 292.310(10)(a) to (h) and (j).

It is unlawful for an investment adviser representative to be employed by a covered adviser who is required to make a notice filing with the **commissioner**~~{executive director}~~ unless the investment adviser representative is registered under this chapter.

- (3) A broker-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the **commissioner**~~{executive director}~~ or the **commissioner's**~~{executive director's}~~ designee an application together with a consent to service of process pursuant to KRS 292.430 and payment of the fee prescribed in subsection (11).
- (a) Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions (except any partner, officer, or director or other such person whose registration as an agent is denied, suspended, or revoked under subsection (13)) without the filing of applications for registration as agents or the payment of fees for registration as agents.
 - (b) Except for any partner, officer, director, or other person whose registration as an investment adviser representative is denied, suspended, or revoked under subsection (13) of this section, registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer, director, or a person occupying a similar status or performing similar functions, without the filing of applications for registration as investment adviser representatives or the payment of fees for registration, as investment adviser representatives.
 - (c) The registration application shall contain whatever information the **commissioner**~~{executive director}~~ requires concerning such matters as:
 1. The applicant's form and place of organization;
 2. The applicant's proposed method of doing business;
 3. The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and in the case of an investment adviser, the qualifications and business history of an employee;

4. Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and
 5. The applicant's financial condition and history.
- (4) If no denial order is in effect and no proceeding is pending under subsection (13), registration becomes effective at noon of the thirtieth day after an application is filed, except as otherwise noted in this subsection:
- (a) The **commissioner**~~{executive director}~~ may specify an earlier effective date and may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.
 - (b) The **commissioner**~~{executive director}~~ may by rule establish a procedure for transfer of an agent or an investment adviser representative whereby registration may become effective prior to the filing of an application; but any registration so transferred shall not be effective for more than thirty (30) days, unless within that thirty (30) days a properly completed application is filed.
 - (c) The thirtieth day effective day is tolled if, before 5 p.m. **eastern time**~~{EST}~~ of the thirtieth day, the **commissioner**~~{executive director}~~ notifies the applicant that the application is incomplete or that he intends to deny the application, pending the completion of the application or a hearing and final order on the intent to deny the application or the waiver of a hearing through the failure to request a hearing with fifteen (15) days of receiving notice of the intent to deny the application, as applicable.
- (5) The **commissioner**~~{executive director}~~ may require as a condition of registration that the applicant (and, in the case of a corporation or partnership, the officers, directors, or partners) pass a written examination as evidence of knowledge of the securities business.
- (6) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the **commissioner**~~{executive director}~~ may by rule require the existence and maintenance of a minimum liquid net capital for registered broker-dealers and investment advisers and a minimum ratio between net capital and aggregate indebtedness, or both.
- (7) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the **commissioner**~~{executive director}~~ may by rule require registered broker-dealers, agents, and investment advisers to post surety bonds in an amount up to \$25,000, and may determine their conditions, except under this subsection that no such bond may be required of any registrant whose net capital exceeds \$100,000. An appropriate deposit of cash or securities shall be accepted in lieu of any required surety bond. Every surety bond shall provide for suit thereon by any person who has a cause of action under KRS 292.480, and every such bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three (3) years after the later of the sale or other act upon which it is based or the discovery of the sale or act.
- (8) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934, the **commissioner**~~{executive director}~~ may by rule require registered broker-dealers to carry fidelity bonds, covering its agents, general partners, and officers, in such form, covering such risks, and in such amounts (not exceeding \$250,000) as he deems necessary for the protection of the public; and he may by rule require registered broker-dealers to furnish satisfactory evidence that they have such bonds.
- (9) Every registration of a broker-dealer, agent, investment adviser, and investment adviser representative and every notice filing shall be effective until December 31 of the year of registration or notice unless the **commissioner**~~{executive director}~~ by rule extends or lessens the registration or notice period may be renewed as hereinafter provided. The **commissioner**~~{executive director}~~ may by rule increase or reduce the registration fee or notice filing fee set forth in subsection (11) of this section should the registration period or notice period be extended or lessened.
- (a) The registration of an agent is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application or a notice filed with the **commissioner**~~{executive director}~~ or the **commissioner's**~~{executive director's}~~ designee. When an agent begins or terminates a connection with an issuer or registered broker-dealer, the agent and the issuer or broker-dealer shall promptly notify the **commissioner**~~{executive director}~~ or the **commissioner's**~~{executive director's}~~ designee.
 - (b) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser specified in his application or with a covered adviser specified in a notice filed with the **commissioner**~~{executive director}~~ or the **commissioner's**~~{executive director's}~~

designee. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser representative and the investment adviser shall promptly notify the *commissioner*~~[executive director]~~ or the *commissioner's*~~[executive director's]~~ designee. When an investment adviser representative begins or terminates a connection with a covered adviser, the investment adviser representative shall notify the *commissioner*~~[executive director]~~ or the *commissioner's*~~[executive director's]~~ designee.

- (10) Registration of a broker-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the *commissioner*~~[executive director]~~ or the *commissioner's*~~[executive director's]~~ designee prior to the expiration thereof an application containing the information the *commissioner*~~[executive director]~~ may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative filed with the *commissioner*~~[executive director]~~ or the *commissioner's*~~[executive director's]~~ designee by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A notice filing by a covered adviser may be renewed by filing with the *commissioner*~~[executive director]~~ or the *commissioner's*~~[executive director's]~~ designee a notice filing consisting of any documents filed with the United States Securities and Exchange Commission as the *commissioner*~~[executive director]~~ may require by rule or order. A registered broker-dealer or investment adviser may file an application for registration of a successor and a covered adviser may file a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the year without payment of any fee.
- (11) (a) The fee for initial or renewal registration shall be one hundred twenty dollars (\$120) for a broker-dealer, one hundred dollars (\$100) for an investment adviser, fifty dollars (\$50) for an agent, fifty dollars (\$50) for an investment adviser representative, and fifty dollars (\$50) for transfer of an agent or investment adviser representative, none of which fees shall be refundable.
- (b) The fee for notice filings shall be one hundred dollars (\$100) for a covered adviser.
- (12) (a) Every registered broker-dealer, firm employing issuer agents, and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the *commissioner*~~[executive director]~~ by rule prescribes. All records required shall be preserved for three (3) years unless the *commissioner*~~[executive director]~~ by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the *commissioner*~~[executive director]~~, be made available at any time for examination by him either in the principal office of the registrant or by production of exact copies thereof in this state. If a broker-dealer is registered with the United States Securities and Exchange Commission, the books and records required by this section are limited to those that the Securities Act of 1934 requires the broker-dealer to maintain. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to those books and records requirements of that state, provided the adviser is registered in that state and in compliance with its recordkeeping requirements.
- (b) Every registered broker-dealer and investment adviser shall file such reports as the *commissioner*~~[executive director]~~ by rule prescribes. If a broker-dealer is registered with the United States Securities and Exchange Commission, the reports required by this section are limited to those required under the Securities Act of 1934. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to the reporting requirements of that state, provided the adviser is registered in that state and in compliance with its reporting requirements.
- (c) If the information contained in any document filed with the *commissioner*~~[executive director]~~ or the *commissioner's*~~[executive director's]~~ designee is or becomes inaccurate or incomplete in any material respect, the broker-dealer or investment adviser, as applicable, shall promptly file a correcting amendment. In the case of a covered adviser, the adviser shall file only copies of those documents required to be filed with the Securities and Exchange Commission.
- (d) The *commissioner*~~[executive director]~~ may make periodic examinations, within or without this state, of each broker-dealer, firm employing issuer agents, and investment adviser at such times and in such scope as he determines. These examinations may be made without prior notice to the broker-dealer, firm employing issuer agents, or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer, firm employing issuer agents, or investment adviser

whose business is examined but the expense so payable shall not exceed an amount which the **commissioner**~~{executive director}~~ by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the **commissioner**~~{executive director}~~, insofar as he deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

- (e) The **commissioner**~~{executive director}~~ may by rule prohibit unreasonable charges, profits, commissions, or other compensation of broker-dealers and investment advisers.
 - (f) The **commissioner**~~{executive director}~~ may prescribe rules for the conduct of business by broker-dealers and investment advisers which he finds appropriate in the public interest and for the protection of investors.
 - (g) The **commissioner**~~{executive director}~~ may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby documents may be filed and maintained in a central depository system with the National Association of Securities Dealers or other agencies or authorities. It is the intent of this paragraph that the **commissioner**~~{executive director}~~ be provided power to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with the states and federal authorities. The **commissioner**~~{executive director}~~ may permit initial and renewal registration filings required under this chapter to be filed with the Securities and Exchange Commission, the National Association of Securities Dealers, or other similar authorities. The **commissioner**~~{executive director}~~ may accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states.
- (13) (a) The **commissioner**~~{executive director}~~ may by order deny, suspend, or revoke registration of any broker-dealer, agent, investment adviser, or investment adviser representative, or bar or censure any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment with a registered broker-dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in the Commonwealth of Kentucky, if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:
1. Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;
 2. Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor law or any rule or order under this chapter or a predecessor law;
 3. Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony, or has pending against him any such criminal charge;
 4. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
 5. Is the subject of an order of the **commissioner**~~{executive director}~~ denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;
 6. Is the subject of any of the following orders that are currently effective and were issued within the last five (5) years:
 - a. An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, limiting or revoking the person's license as a broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms;

- b. An order of a self-regulatory organization finding a violation of federal law or a rule of the self-regulatory organization;
 - c. A United States Postal Service fraud order;
 - d. A cease and desist or other administrative order entered after notice and opportunity for hearing by the *commissioner*~~[executive director]~~, the securities agency or administrator of another state, or a Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or
 - e. An order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act;
7. Has engaged in dishonest or unethical practices in the securities business;
 8. Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the *commissioner*~~[executive director]~~ may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;
 9. Is not qualified on the basis of such factors as training, experience, or knowledge of the securities business, except as provided in paragraph (b) below; or the *commissioner*~~[executive director]~~ may by order, deny, suspend, or revoke any registration if he finds that the order is in the public interest and that the applicant or registrant:
 - a. Has failed reasonably to supervise his agents if he is a broker-dealer or his employees or investment adviser representatives if he is an investment adviser; or
 - b. Has failed to pay the proper filing fee; but the *commissioner*~~[executive director]~~ may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected; or
 10. Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking; or within the past five (5) years, has been the subject of an action of a securities regulator or a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a state, federal, or foreign jurisdiction suspending or expelling the person from membership in the exchange or self-regulatory organization.

The *commissioner*~~[executive director]~~ may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty (30) days.

- (b) The following provisions govern the application of subparagraph 9. of paragraph (a) of this subsection:
1. The *commissioner*~~[executive director]~~ may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself if he is an individual or an agent of the broker-dealer;
 2. The *commissioner*~~[executive director]~~ may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself if he is an individual or any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;
 3. The *commissioner*~~[executive director]~~ may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;
 4. The *commissioner*~~[executive director]~~ shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;

5. The **commissioner**~~{executive director}~~ shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser or an investment adviser representative, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser or an investment adviser representative;
 6. The **commissioner**~~{executive director}~~ may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as investment adviser representatives and persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.
- (c) The **commissioner**~~{executive director}~~ may by order summarily postpone an application for registration or suspend a registration pending final determination of any proceeding under this section. A summary suspension of an existing registration shall only be made based upon a finding by the **commissioner**~~{executive director}~~ that such action is in the public interest and that there is substantial evidence of a violation of law that constitutes an immediate danger to the public. KRS 13B.125 shall apply to the entry of a summary suspension of a registration. An appeal of a summary suspension shall address only the necessity of a summary action and shall not constitute an appeal of the merits of the underlying violation of the law. Upon the entry of the order, the **commissioner**~~{executive director}~~ shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the **commissioner**~~{executive director}~~, the order will remain in effect until it is modified or vacated by the **commissioner**~~{executive director}~~. If a hearing is requested or ordered, the **commissioner**~~{executive director}~~, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.
 - (d) If the **commissioner**~~{executive director}~~ finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental disability or to the control of a conservator or guardian, or cannot be located after reasonable search, the **commissioner**~~{executive director}~~ may by order cancel the registration or application.
 - (e) Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the **commissioner**~~{executive director}~~ may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the **commissioner**~~{executive director}~~ by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the **commissioner**~~{executive director}~~ may nevertheless institute a revocation or suspension proceeding under subparagraph 2. of paragraph (a) of this subsection within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective. A notice filing may be withdrawn or terminated by providing notice of the withdrawal or termination, as the case may be, to the **commissioner**~~{executive director}~~; the withdrawal or termination is effective upon receipt by the **commissioner**~~{executive director}~~ of the notice.
 - (f) No order may be entered under any part of this section except the first sentence of paragraph (c) of this subsection without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or representative), opportunity for hearing, and written findings of fact and conclusions of law.
- (14) Notwithstanding subsection (1) of this section, any broker-dealer, agent, investment adviser or investment adviser representative, or transaction or class of transactions by such persons, for which the **commissioner**~~{executive director}~~ expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors shall be exempt from registration under this section. The **commissioner**~~{executive director}~~ may require that persons exempted from registration under this provision file such forms and information for notice purposes and be bound by one (1) or several provisions of this section as the **commissioner**~~{executive director}~~ deems necessary and appropriate in the public interest or

for the protection of investors and the *commissioner*~~[executive director]~~ may impose filing fees in connection therewith, provided however, that the amount of the fee shall not exceed the fee which would be due in the event the exempt person were required to obtain registration.

➔Section 863. KRS 292.350 is amended to read as follows:

- (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under KRS 292.360:
 - (a) Any security whose issuer and any predecessors have been in continuous operation for at least five (5) years if:
 1. There has been no default during the current fiscal year or within the three (3) preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and
 2. The issuer and any predecessors during the past three (3) fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which equal at least five percent (5%) of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within thirty (30) days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within ninety (90) days of the date of filing the registration statement), or if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three (3) full fiscal years, equal at least five percent (5%) of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;
 - (b) Any security registered for nonissuer distribution if any security of the same class has ever been registered under this chapter or a predecessor law, or the security being registered was originally issued pursuant to an exemption under this chapter or a predecessor law or, if previously publicly offered and sold, was not offered and sold within this state.
- (2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380 and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:
 - (a) A statement demonstrating eligibility for registration by notification;
 - (b) With respect to the issuer: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;
 - (c) With respect to any person on whose behalf any part of the offering is to be made, if such person is an officer, director, partner, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the issuer, his name and address; the amount of securities held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;
 - (d) A description of the securities being registered;
 - (e) Total amount of securities to be offered and amount of securities to be offered in this state;
 - (f) The price at which the securities are to be offered for sale to the public, if other than at the market price thereof; any known variation therefrom at which any portion of the offering is to be made to any persons, other than as underwriting and selling discounts or commissions; and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value, if any);
 - (g) Names and addresses of the managing underwriters, if any, and a description of the plan of distribution, if any, of any securities which are to be offered otherwise than through an underwriter;

- (h) Description of any security options outstanding or to be created in connection with the offering;
 - (i) Any adverse order, judgment, or decree previously entered in connection with the securities being registered by any court or securities and exchange commission;
 - (j) A copy of any offering circular or prospectus, if any, intended, or ordered by the **commissioner**~~[executive director]~~, to be used in connection with the offering;
 - (k) In the case of any registration under paragraph (b) of subsection (1) which does not also satisfy the conditions of paragraph (a) of subsection (1), a certified balance sheet of the issuer as of its last fiscal year ended and a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement and a statement of income for each of the two (2) fiscal years preceding the date of the certified balance sheet, the last of which is to be certified, and for any period between the close of the last fiscal year and the date of the last balance sheet or for the period of the issuer's and any predecessor's existence if less than two (2) years; and
 - (l) Such additional information as the **commissioner**~~[executive director]~~ may by rule or order require.
- (3) If no stop order is in effect and no proceeding is pending under KRS 292.390, a registration statement under this section automatically becomes effective at three o'clock eastern standard time in the afternoon (3:00 p.m.) of the fifth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the **commissioner**~~[executive director]~~ determines.

➔Section 864. KRS 292.360 is amended to read as follows:

- (1) Any security for which a registration statement under the Securities Act of 1933 or an offering statement under Regulation A of the Securities Act of 1933 has been filed with the Securities and Exchange Commission in connection with the same offering may be registered by coordination.
- (2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380, and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:
 - (a) One (1) copy of the latest form of prospectus or offering circular filed under the Securities Act of 1933 or Regulation A promulgated under that Act together with all amendments thereto;
 - (b) The amount of securities to be offered in this state;
 - (c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;
 - (d) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;
 - (e) If the **commissioner**~~[executive director]~~ by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) of the issuer currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;
 - (f) If the **commissioner**~~[executive director]~~ requests, any other information, or copies of any other documents, filed under the Securities Act of 1933 or Regulation A promulgated under that Act; and
 - (g) An undertaking to forward promptly to the **commissioner**~~[executive director]~~ all amendments to the federal registration statement or offering statement, other than an amendment which merely delays the effective date.
- (3) A registration statement under this section automatically becomes effective with the **commissioner**~~[executive director]~~ at the moment the federal registration statement or offering statement becomes effective or is qualified, if all the following conditions are satisfied:
 - (a) No stop order is in effect and no proceeding is pending under KRS 292.390;
 - (b) The registration statement has been on file with the **commissioner**~~[executive director]~~ for at least ten (10) days; and
 - (c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or such shorter period as the

commissioner~~{executive director}~~ permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the *commissioner*~~{executive director}~~ by telephone, telegram, or other electronic means of the date and time when the federal registration statement or offering statement became effective or was qualified and the content of the price amendment, if any, and shall promptly file a post-effective amendment, containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

- (4) Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the *commissioner*~~{executive director}~~ may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (3) of this section, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of subsection (3) of this section as to notice and post-effective amendment, the stop order is void as of the time of its entry. The *commissioner*~~{executive director}~~ may by rule or otherwise waive either or both of the conditions specified in paragraphs (b) and (c) of subsection (3) of this section. If the federal registration statement or offering statement becomes effective or is qualified before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective with the *commissioner*~~{executive director}~~ as soon as all the conditions are satisfied. If the registrant advises the *commissioner*~~{executive director}~~ of the date when the federal registration statement or offering statement is expected to become effective or to be qualified, the *commissioner*~~{executive director}~~ shall promptly advise the registrant by telephone, telegram, or other electronic means, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under KRS 292.390; but this advice by the *commissioner*~~{executive director}~~ does not preclude the institution of such a proceeding at any time.
- (5) Notwithstanding subsection (3) of this section, a registration statement under the Securities Act of 1933 that becomes effective immediately upon filing with the Securities and Exchange Commission shall become effective under this section automatically at the time the registration statement, in the form filed with the Securities and Exchange Commission, is properly filed, along with the appropriate fee, with the *commissioner*~~{executive director}~~.

➔Section 865. KRS 292.370 is amended to read as follows:

- (1) Any security may be registered by qualification.
- (2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380 and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:
- (a) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;
- (b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five (5) years; the amount of securities of the issuer held by him as of a specified date within ninety (90) days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any subsidiary effected within the past three (3) years or proposed to be effected by him or any of his associates as defined in the rules promulgated under the Securities Exchange Act of 1934;
- (c) With respect to persons covered in paragraph (b): the remuneration paid to all such persons in the aggregate during the past twelve (12) months, and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer (together with all predecessors, parents, and subsidiaries), and the amount paid and to be paid to each of those who received or are to receive more than fifteen thousand dollars (\$15,000);

- (d) With respect to any person not named in paragraph (b), owning of record, or beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in paragraphs (b) and (c) other than his occupation;
- (e) With respect to every promoter, not named in paragraphs (b) and (d), if the issuer was organized within the past three (3) years: the information specified in paragraphs (b) and (c), any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;
- (f) The capitalization and long-term debt (on both a current and pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, good will, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities;
- (g) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price or the method by which it is to be computed; and any variation therefrom at which any portion of the offering is to be made to any persons or class of persons, other than the underwriters, with a specification of such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering); the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;
- (h) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including good will) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the cost basis or book value of the assets in the hands of the vendors (if they are officers, directors, partners, or controlling shareholders of the issuer), the names of any persons who have received commissions in connection with the acquisition and the amounts of any such commissions and any other expenses in connection with the acquisition (including the cost of borrowing money to finance the acquisition);
- (i) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph (b), (c), (d), (e), (g), or (h) and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options;
- (j) The dates of, parties to, and general effect, concisely stated, of every management, employment, or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer or any of its significant subsidiaries is a party and which may materially affect its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);
- (k) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;
- (l) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;
- (m) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;
- (n) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

- (o) A signed or conformed copy of an opinion of counsel, as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state, in addition to such matters as the **commissioner**~~executive director~~ may request whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer, and whether or not the offering, as contemplated in the registration statement will comply with the requirements of any claimed exemption from the registration provisions of the Securities Act of 1933;
- (p) Financial statements of the issuer that meet the following requirements:
1. If the maximum proceeds to be received from the offering do not exceed two million dollars (\$2,000,000), a balance sheet as of the end of the most recent fiscal year and, if the date of the most recent fiscal year end is more than four (4) months prior to the date of filing, a balance sheet as of a date within four (4) months prior to the filing of the registration statement; and statements of income for the last fiscal year preceding the date of the most recent balance sheet filed and for the period, if any, between the close of such fiscal year and the date of the most recent balance sheet filed. The balance sheet and income statement for the most recent fiscal year shall be audited if the financial statements have previously been audited for other purposes. Otherwise, all financial statements may be unaudited;
 2. If the maximum proceeds to be received from the offering do not exceed five million dollars (\$5,000,000), a balance sheet as of the end of the most recent fiscal year and, if the date of the most recent fiscal year end is more than four (4) months prior to the date of filing, a balance sheet as of a date within four (4) months prior to the filing of the registration statement; and statements of income, cash flows, and changes in stockholders equity for each of the two (2) fiscal years preceding the date of the most recent balance sheet filed and for the period, if any, between the close of the most recent of the fiscal years and the date of the most recent balance sheet filed. The balance sheet and statements of income, cash flows, and changes in stockholders equity for the most recent fiscal year shall be audited; all other financial statements may be unaudited;
 3. If the maximum proceeds to be received from the offering exceed five million dollars (\$5,000,000), a balance sheet as of the end of the most recent fiscal year and, if the date of the most recent fiscal year end is more than four (4) months prior to the date of filing, a balance sheet as of a date within four (4) months prior to the filing of the registration statement; and statements of income, cash flows, and changes in stockholders equity for each of the three (3) fiscal years preceding the date of the most recent balance sheet filed and for the period, if any, between the close of the most recent of the fiscal years and the date of the most recent balance sheet filed. The balance sheet and statements of income, cash flows, and changes in stockholders equity for the most recent fiscal year shall be audited; all other financial statements may be unaudited;
 4. Notwithstanding the provisions of this paragraph, if the issuer has been in existence for less than one (1) fiscal year, the balance sheet shall be as of a date not more than four (4) months prior to the date of filing of the registration statement, and the statements of income, cash flows, and changes in stockholders equity shall be for the period from inception through the date of the balance sheet filed;
 5. If any part of the proceeds of the offering is to be applied to the purchase of any business whose annual sales or revenues for its most recent fiscal year are in excess of twenty percent (20%) of the issuer's sales or revenues for its most recent fiscal year or involves the acquisition of assets in excess of twenty percent (20%) of the issuer's assets as of its most recent fiscal year end, except as specifically exempted by the **commissioner**~~executive director~~, the same financial statements which would be required if that business were the issuer shall be filed;
 6. The **commissioner**~~executive director~~, where necessary or appropriate in the public interest or for the protection of investors, may permit the omission of one (1) or more of the financial statements or the substitution of appropriate statements of comparable character, and may waive the requirement that the financial statements be audited; and
 7. The financial statements required by this subsection shall be prepared as to form and content in accordance with generally accepted accounting principles;

- (q) The written consent of an accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if the person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement; and
- (r) Such additional information as the *commissioner*~~[executive director]~~ requires by rule or order.

➔ Section 866. KRS 292.380 is amended to read as follows:

- (1) Except as otherwise expressly provided in this chapter, a registration statement under this chapter becomes effective when the *commissioner*~~[executive director]~~ so orders. The *commissioner*~~[executive director]~~ may require as a condition of registration under this chapter that a prospectus containing any designated part of the appropriate information specified in this chapter be sent or given to each person to whom an offer is made before or concurrently with:
 - (a) The first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;
 - (b) The confirmation of any sale made by or for the account of any such person;
 - (c) Payment pursuant to any such sale; or
 - (d) Delivery of the security pursuant to any such sale, whichever first occurs; but the *commissioner*~~[executive director]~~ shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.
- (2) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under this chapter or a predecessor law within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The *commissioner*~~[executive director]~~ may by rule or otherwise permit the omission of any item of information or document from any registration statement.
- (3) The *commissioner*~~[executive director]~~ may require as a condition of registration by qualification or coordination that (a) the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount or (b) any security issued within the past three (3) years, or to be issued, to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be delivered in escrow. The *commissioner*~~[executive director]~~ may by rule or order determine the conditions of any escrow or impounding required hereunder. The *commissioner*~~[executive director]~~ shall not reject a depository solely because of location in another state. All securities delivered in escrow to the *commissioner*~~[executive director]~~ or some other depository satisfactory to him prior to January 1, 1968, which have not previously been released shall be released from escrow and all securities delivered in escrow to the *commissioner*~~[executive director]~~ or some other depository satisfactory to him subsequent to January 1, 1968 which have not previously been released shall be released from escrow no later than ten (10) years after the date of delivery into escrow.
- (4) The *commissioner*~~[executive director]~~ may also require as a condition of registration by qualification that the issuer undertake to keep the securities registered under this chapter for a period of up to five (5) years or until the securities become exempt securities under KRS 292.400 or become covered securities, and that the issuer forward to its security holders audited annual financial statements during the period for which the shares are registered. The *commissioner*~~[executive director]~~ may by rule or order impose other undertakings.
- (5) For the registration of securities by notification, coordination, or qualification, there shall be paid to the *commissioner*~~[executive director]~~ an examination fee of one hundred twenty-five dollars (\$125) and a registration fee of three-fiftieths of one percent (0.06%) of the aggregate offering price of the securities which are to be offered in this state, but the registration fee shall in no case be less than sixty dollars (\$60) nor more than one thousand two hundred dollars (\$1,200). The examination fee and the registration fee shall be payable in separate checks. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under KRS 292.390, the *commissioner*~~[executive director]~~ shall retain the examination fee. For a registration by notification for market-making purposes only the examination fee need be paid.

- (6) When securities are registered by notification or by coordination or by qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration statement is effective for one (1) year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under KRS 292.390. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction:
- (a) So long as the registration statement is effective; and
 - (b) Between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under KRS 292.390 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one (1) year from its effective date if any securities of the same class are outstanding.

A registration statement may be withdrawn otherwise only in the discretion of the *commissioner*~~[director]~~.

➔Section 867. KRS 292.390 is amended to read as follows:

- (1) The *commissioner*~~[executive-director]~~ may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:
- (a) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under KRS 292.380(5) as of its effective date, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;
 - (b) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering by:
 1. The person filing the registration statement;
 2. The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or
 3. Any underwriter;
 - (c) The security registered or sought to be registered is the subject of an administrative stop order or a similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but:
 1. The *commissioner*~~[executive-director]~~ may not institute a proceeding against an effective registration statement under this paragraph more than one (1) year from the date of the order or injunction relied on; and
 2. He may not enter an order under this paragraph on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;
 - (d) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;
 - (e) The offering has worked or tended to work a fraud upon purchasers or would so operate;
 - (f) The offering has been, or would be, made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensations, or promoters' profits or participation, or unreasonable amounts or kinds of options;
 - (g) When a security is sought to be registered by notification it is not eligible for such registration;

- (h) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by KRS 292.360(2)(g);
 - (i) The applicant or registrant has failed to pay the proper registration fee; but the **commissioner**~~{executive director}~~ may enter only a denial order under this paragraph and he shall vacate any such order when the deficiency has been corrected;
 - (j) Commissions, compensation, and selling and other transaction expenses greater than twenty percent (20%) in the aggregate, or such other amount specified in the guidelines adopted by the North American Securities Administrators Association, would be paid directly or indirectly, in consideration for the sale of securities sought to be registered.
- (2) The **commissioner**~~{executive director}~~ may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next thirty (30) days.
- (3) The **commissioner**~~{executive director}~~ may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of a stop order under any part of this section, the **commissioner**~~{executive director}~~ shall promptly notify the issuer of the securities, the applicant or registrant, and the person on whose behalf the securities are to be or have been offered that the order has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen (15) days and none is ordered by the **commissioner**~~{executive director}~~, the **commissioner**~~{executive director}~~ shall enter his written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the **commissioner**~~{executive director}~~. If a hearing is requested or ordered, the **commissioner**~~{executive director}~~, after notice of and opportunity for hearing to the issuer and to the applicant or registrant, shall enter his written finding of fact and conclusions of law and may modify or vacate the order. The **commissioner**~~{executive director}~~ may modify or vacate a stop order if he finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

➔Section 868. KRS 292.400 is amended to read as follows:

KRS 292.340 to 292.390 shall not apply to any of the following:

- (1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one (1) or more of the foregoing; or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institutions, or trust company organized and supervised under the laws of any state;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;
- (5) Securities issued by corporations formed under KRS Chapter 279;
- (6) Any security issued or guaranteed by any federal credit union or any credit union;
- (7) Any security issued or guaranteed by any common carrier, public utility, or holding company which is:
 - (a) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;
 - (b) Regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or
 - (c) Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

- (8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Chicago Stock Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, the Chicago Board Options Exchange, or any other stock exchange approved by the **commissioner**~~executive director~~; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. This exemption is available only for securities listed on Tier I of those exchanges having more than one (1) tier;
- (9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidence an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of any renewal;
- (11) Any security issued in connection with an employee stock purchase, stock option, savings, pension, profit-sharing, or similar benefit plan, including any underlying security. For those plans that do not qualify under Section 401 of the Internal Revenue Code and that provide for contribution by employees, the securities are exempt if a notice specifying the terms of the plan is filed with the **commissioner**~~executive director~~ before the securities are issued or before December 31, 1998, and the **commissioner**~~executive director~~ does not disallow the exemption within the next five (5) business days. The **commissioner**~~executive director~~ may, by rule, modify any requirement for a specific class of issuers or impose additional requirements for this exemption or waive any requirement;
- (12) Securities issued by corporations formed under or which have adopted the provisions of KRS 272.101 to 272.345 and patronage dividends or refunds be they in the form of stock, book equities, letters of credit, or letters of advice issued by any agricultural cooperative association which are the result of distributable earnings or savings;
- (13) Memberships and voting stock issued by cooperative corporations formed under or which have adopted the provisions of KRS 272.020 to 272.050, and patronage refunds issued by cooperative corporations which are the result of distributable earnings or savings;
- (14) Any security for which the **commissioner**~~executive director~~ expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors; or
- (15) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state.

➔Section 869. KRS 292.410 is amended to read as follows:

- (1) Except as expressly provided, KRS 292.330 to 292.390 shall not apply to any of the following transactions:
 - (a) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;
 - (b) Any nonissuer distribution of an outstanding security by a registered broker-dealer, if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest, or dividends on the security;
 - (c) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the **commissioner**~~executive director~~ may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;
 - (d) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
 - (e) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel first mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of

trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

- (f) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (g) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
- (h) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
- (i) The offer or sale of a security by the issuer of the security if all of the following conditions are met:
 1. The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation. The following shall not constitute general solicitation within the meaning of this section:
 - a. Solicitation of indications of interest in accordance with the terms and conditions as the ~~commissioner~~~~executive director~~ may adopt by rule; or
 - b. Offers to sell securities and the dissemination of written offering materials in accordance with the terms of this section at least thirty (30) days after the withdrawal of an application by the issuer to register the same class of securities;
 2. The issuer reasonably believes that each purchaser of the securities is acquiring the securities for investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for reasonable belief may include:
 - a. Obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and
 - b. Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under this chapter, and setting forth or referring to the restrictions on transferability and sale of the securities; and
 3. The transaction satisfies one (1) of the following conditions:
 - a. Each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer;
 - b. There are not more than fifteen (15) purchasers in Kentucky described in subdivision a. of this subparagraph, plus an unlimited number of purchasers who are "accredited investors" as defined by Rule 501 of the Securities Act of 1933; or
 - c. The aggregate offering price of the securities, including securities sold outside of Kentucky, does not exceed one million dollars (\$1,000,000), the total number of purchasers who are not accredited investors, including purchasers outside of Kentucky, does not exceed thirty-five (35), and each purchaser either receives all of the material facts with respect to the decision to invest in the security or is an accredited investor or a purchaser described in subdivision a. of this subparagraph;
 4. Persons receiving commissions, finders fees, or other remuneration in connection with sales of securities in reliance on this subsection are not relieved of compliance with KRS 292.330;
 5. The ~~commissioner~~~~executive director~~ may by rule deny the exemption provided in this subsection to a particular class of issuers or may make the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter;
 6. The ~~commissioner~~~~executive director~~ may, by order, increase the maximum number of purchasers or the maximum offering amount provided in paragraph 3.c. of this subsection upon

request if the **commissioner**~~{executive director}~~ determines that any such increase is necessary or appropriate in the public interest or for the protection of investors. Any request to increase either or both of the conditions shall be made in writing to the **commissioner**~~{executive director}~~ before any sale in reliance on the requested increase and shall be accompanied by the following:

- a. A statement of the amount of the increase in the maximum offering amount or in the number of purchasers being requested, and the issuer's reasons for requesting the increase;
 - b. A copy of any offering circular or other written materials being distributed to prospective purchasers;
 - c. A copy of the written representation and legend serving as the issuer's basis for reasonable belief of a purchaser's investment intent and awareness of restrictions on the transferability and resale of the security being acquired; and
 - d. A filing fee of two hundred fifty dollars (\$250);
- (j) Any offer or sale of a preorganization certificate or subscription, if:
1. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;
 2. The number of subscribers does not exceed twenty-five (25); and
 3. No payment is made by any subscriber;
- (k) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state;
- (l) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;
- (m) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;
- (n) Any transaction incident to a right of conversion or a statutory or judicially-approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;
- (o) Any transaction by a person who does not control, and is not controlled by or under common control with, the issuer if:
1. The transaction is at a price reasonably related to the current market price;
 2. The security is registered under Section 12 of the Securities Exchange Act of 1934 and the issuer files reports pursuant to Section 13 of that act; and
 3. Copies of such federal registration statements, reports, forms or exhibits as the **commissioner**~~{executive director}~~ may by rule or order require are filed with the **commissioner**~~{executive director}~~;
- (p) Any transaction by a person who may control, or may be controlled by or under common control with, the issuer if:
1. The transaction is at a price reasonably related to the current market price;
 2. The security is registered under Section 12 of the Securities Exchange Act of 1934 and the issuer files reports pursuant to Section 13 of that act;

3. Copies of such federal registration statements, forms, reports, or exhibits as the **commissioner**~~{executive director}~~ may by rule or order require are filed with the **commissioner**~~{executive director}~~; and
 4. Such sales by any such person comply with such rules as the **commissioner**~~{executive director}~~ may prescribe; or
- (q) Any transaction for which the **commissioner**~~{executive director}~~ by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors.
- (2) The **commissioner**~~{executive director}~~ may by order deny or revoke the exemption specified in KRS 292.400(6), (9), or (12) or in this section with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the **commissioner**~~{executive director}~~ may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon entry of a summary order, the **commissioner**~~{executive director}~~ shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the **commissioner**~~{executive director}~~, the order will remain in effect until it is modified or vacated by the **commissioner**~~{executive director}~~. If a hearing is requested or ordered, the **commissioner**~~{executive director}~~, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order to extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order. In any proceeding under this chapter, the burden of proving an exemption from a definition is upon the person claiming it.

➔Section 870. KRS 292.415 is amended to read as follows:

- (1) Before any security may be issued as an exempt security under KRS 292.400(9) or (12), a claim of exemption must first be filed with the **commissioner**~~{executive director}~~ and the **commissioner**~~{executive director}~~ by order shall not have determined that the exemption is unavailable within the next ten (10) full business days. A claim of exemption filed under this section shall be in such form and contain such information as the **commissioner**~~{executive director}~~ by rule or order requires and each offering shall be effective for a maximum of twelve (12) consecutive months unless the **commissioner**~~{executive director}~~ by rule or order extends such period of time, not to exceed five (5) years.
- (2) The issuer may make offers, but not sales, before and during the ten (10) business day period required by subsection (1) of this section, if:
 - (a) Each prospective purchaser is advised in writing that the offer is preliminary and subject to material change; and
 - (b) No enforceable offer to purchase the securities may be made by a prospective purchaser, and no consideration in any form may be accepted or received, directly or indirectly, from a prospective purchaser, before the termination of the ten (10) business day period and any order disallowing the exemption has been vacated.

The **commissioner**~~{executive director}~~ may, by rule or order, prohibit offers by a particular class of issuers before the expiration of the ten (10) business day period required by subsection (1) of this section, or may require issuers to comply with additional conditions and requirements prior to making offers before the expiration of the period, if appropriate in furtherance of the intent of this chapter.

- (3) The **commissioner**~~{executive director}~~ may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of an exemption, if **the commissioner**~~{he}~~ finds that the order is in the public interest and that any security has been or is about to be offered or sold in violation of this section. If the **commissioner**~~{executive director}~~ finds it appropriate in the public interest or necessary for the protection of investors, the **commissioner**~~{executive director}~~ may order any issuer in violation of this section to make an offer of rescission.
- (4) Failure by any person to file a claim of exemption under this section shall not give rise to a private right of action under KRS 292.330(1), 292.340, or 292.480 which would not otherwise be available under the provisions of this chapter.

- (5) Any person who fails to file a claim of exemption under this section, unless he *or she* does so intentionally, shall not be subject to KRS 292.991.

➔Section 871. KRS 292.420 is amended to read as follows:

- (1) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.
- (2) The **commissioner**~~{executive director}~~ may require any person, who is selling or offering for sale or who is about to sell or offer for sale or who has sold or offered for sale any security within this state, to file a statement of the claim of exemption, if any, upon which such person is relying, and if any time, in the opinion of the **commissioner**~~{executive director}~~, the information contained in such statement filed is misleading, incorrect, inadequate, or fails to establish the right of exemption, **the commissioner**~~{he}~~ may require such person, agent, or investment adviser to file such information as may in his opinion be necessary to establish the claimed exemption. The refusal to furnish information as required by order of the **commissioner**~~{executive director}~~ pursuant to the provisions of this subsection, within a reasonable time to be fixed by the **commissioner**~~{executive director}~~, shall be proper ground for the entry of an order by the **commissioner**~~{executive director}~~ suspending and/or canceling the registration of the broker-dealer, agent or investment adviser.
- (3) The **commissioner**~~{executive director}~~ shall have authority at all times to consider and determine whether any proposed sale, transaction, issue, or security is entitled to an exemption or an exception from the definition accorded by this chapter, provided, however, that the **commissioner**~~{executive director}~~ in his *or her* discretion may decline to exercise such authority as to any proposed sale, transaction, issue, or security. Any interested party desiring the **commissioner**~~{executive director}~~ to exercise such authority shall submit to the **commissioner**~~{executive director}~~ a verified statement of all material facts relating to the proposed sale, transaction, issue, or security, which verified statement shall be accompanied by a request for a ruling as to the particular exemption or exception from definition, together with a filing fee of two hundred fifty dollars (\$250). After such notice to interested parties as the **commissioner**~~{executive director}~~ shall deem proper and after a hearing, if any, the **commissioner**~~{executive director}~~ may enter an order finding the proposed sale, transaction, issue, or security entitled or not entitled to the exemption or the exception from definition as claimed. An order so entered, unless an appeal be taken therefrom in the manner prescribed in this chapter, shall be binding upon the **commissioner**~~{executive director}~~, provided that the proposed sale, transaction, issue, or security when consummated or issued conforms in every relevant and material particular with the facts as set forth in the verified statement as submitted.

➔Section 872. KRS 292.430 is amended to read as follows:

- (1) Every applicant for registration as a broker-dealer, agent, investment adviser, or investment adviser representative under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common law sense shall file with the **commissioner**~~{executive director}~~, in such form as **the commissioner**~~{he}~~ by rule prescribes, an irrevocable consent appointing the **commissioner**~~{executive director}~~ or **the commissioner's**~~{his}~~ successor in office to be **the applicant's**~~{his}~~ attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against **the applicant**~~{him}~~ or **the applicant's**~~{his}~~ successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the **commissioner**~~{executive director}~~, but it is not effective unless:
- (a) The plaintiff, who may be the **commissioner**~~{executive director}~~ in a suit, action, or proceeding instituted by **the commissioner**~~{him}~~, forthwith sends notice of the service and a copy of the process by certified mail, return receipt requested, or by registered mail to the defendant or respondent at his *or her* last address on file with the **commissioner**~~{executive director}~~; and
- (b) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
- (2) Every issuer of a covered security and every covered adviser who makes a notice filing with Kentucky under this chapter shall file with the **commissioner**~~{executive director}~~, in the form as prescribed by administrative regulation, an irrevocable consent appointing the **commissioner**~~{executive director}~~ or **the commissioner's**~~{his}~~

successor in office to be his *or her* attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him *or her* or his *or her* successor, executor, or administrator that arises under this chapter or under any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed a consent in connection with a previous notice filing need not file another. Service may be made by leaving a copy of the process in the office of the *commissioner*~~[executive director]~~, but it is not effective unless:

- (a) The plaintiff, who may be the *commissioner*~~[executive director]~~ in a suit, action, or proceeding instituted by *the commissioner*~~[him]~~, sends notice of the service and a copy of the process by certified mail, return receipt requested, or by registered mail to the defendant or respondent at his *or her* last address on file with the *commissioner*~~[executive director]~~; and
 - (b) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within the time as the court allows.
- (3) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and *the person*~~[he]~~ has not filed a consent to service of process under subsection (1) or (2) of this section and personal jurisdiction over him *or her* cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his *or her* appointment of the *commissioner*~~[executive director]~~ or *the commissioner's*~~[his]~~ successor in office to be *the person's*~~[his]~~ attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against *the person*~~[him]~~ or *the person's*~~[his]~~ successor executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on *the person*~~[him]~~ personally. Service may be made by leaving a copy of the process in the office of the *commissioner*~~[executive director]~~, and it is not effective unless:
- (a) The plaintiff, who may be the *commissioner*~~[executive director]~~, in a suit, action, or proceeding instituted by *the commissioner*~~[him]~~ forthwith sends notice of the service and a copy of the process by certified mail, return receipt requested, or by registered mail to the defendant or respondent at his *or her* last known address or takes other steps which are reasonably calculated to give actual notice; and
 - (b) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

➔Section 873. KRS 292.440 is amended to read as follows:

It is unlawful for any person to make or cause to be made, in any document filed with the *commissioner*~~[executive director]~~ or the *commissioner's*~~[executive director's]~~ designee or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

➔Section 874. KRS 292.450 is amended to read as follows:

- (1) Neither the fact that an application for registration under KRS 292.330 or a registration statement under KRS 292.350, 292.360, or 292.370 has been filed, nor the fact that a person or security is effectively registered, constitutes a finding by the *commissioner*~~[executive director]~~ that any document filed under this chapter is true, complete, and not misleading.
- (2) Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the *commissioner*~~[executive director]~~ has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.
- (3) Neither the fact that a notice filing for a covered security or for a covered adviser has been filed, nor the fact that the person, security, or transaction is registered or exempt from registration, constitutes a finding by the *commissioner*~~[executive director]~~ that any document filed under this chapter is true, complete, and not misleading or that the person, security, or transaction is entitled to claim an exemption.
- (4) It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section.

➔Section 875. KRS 292.460 is amended to read as follows:

- (1) The *commissioner*~~[executive director]~~ in his *or her* discretion:

- (a) May make such public or private investigations within or outside of this state as he deems necessary to determine whether any registration should be granted, denied, or revoked, or whether any person has violated or is about to violate any provision of this chapter or any rule or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;
 - (b) May require or permit any person to file a statement in writing, under oath or otherwise as the **commissioner**~~{executive director}~~ may determine, as to all the facts and circumstances concerning the matter to be investigated; or
 - (c) May publish information concerning any violation of this chapter or any rule or order hereunder.
- (2) For the purpose of any investigation or proceeding under this chapter, the **commissioner**~~{executive director}~~ or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the **commissioner**~~{executive director}~~ deems relevant or material to the inquiry.
 - (3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon application by the **commissioner**~~{executive director}~~, may issue to that person an order requiring him to appear before the **commissioner**~~{executive director}~~, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.
 - (4) No person is excused from attending and testifying or from producing any document or record before the **commissioner**~~{executive director}~~, or in obedience to the subpoena of the **commissioner**~~{executive director}~~ or any officer designated by him, or in any proceeding instituted by the **commissioner**~~{executive director}~~, on the ground that the testimony or evidence (documentary or otherwise) required of **the person**~~{him}~~ may tend to incriminate **the person**~~{him}~~ or subject **the person**~~{him}~~ to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming **the his**~~{his}~~ privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

➔Section 876. KRS 292.470 is amended to read as follows:

Whenever it appears to the **commissioner**~~{executive director}~~ that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, **the commissioner**~~{he}~~ may in his **or her** discretion bring any or all of the following remedies:

- (1) Issue a cease and desist order, with or without a prior hearing, appealable to Franklin Circuit Court, against the person or persons engaged in the prohibited activities directing that person or persons to cease and desist from illegal activity. In order to issue an order without a prior hearing, the **commissioner**~~{executive director}~~ must find that the delay in issuing a final cease and desist order will cause harm to the public;
- (2) An action in the Franklin Circuit Court or any other court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. Upon a proper showing by the **commissioner**~~{executive director}~~, the court may enter an order of rescission, restitution, or disgorgement directed to any person who has engaged in any act constituting a violation of this chapter or any rule or order under this chapter. The **commissioner**~~{executive director}~~ may not be required to post a bond; or
- (3) Issue a final order, after notice and an opportunity for a hearing, containing findings of fact and conclusions of law, directing any person or persons found to have engaged in, or about to be engaged in, activity that constitutes a violation of this chapter or any rule or order under this chapter:
 - (a) To cease and desist from the activity;
 - (b) To perform any other reasonable mandates directed by the **commissioner**~~{executive director}~~ pursuant to an appropriate remedy fashioned by the **commissioner**~~{executive director}~~ and reasonably calculated to carry out the provisions of this chapter; or
 - (c) To pay fines assessed under KRS 292.500(14) and costs assessed under KRS 292.500(15).

➔Section 877. KRS 292.490 is amended to read as follows:

Any person aggrieved by a final order of the **commissioner**~~{executive director}~~ may obtain a review of the order by filing in accordance with KRS Chapter 13B in the Franklin Circuit Court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the **commissioner**~~{executive director}~~, and thereupon the **commissioner**~~{executive director}~~ shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. No objection to the order may be considered by the court unless it was urged before the **commissioner**~~{executive director}~~ or there were reasonable grounds for failure to do so. The findings of the **commissioner**~~{executive director}~~ as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the **commissioner**~~{executive director}~~, the court may order the additional evidence to be taken before the **commissioner**~~{executive director}~~ and to be adduced upon the hearing in such manner and upon such conditions as the court may consider proper. The **commissioner**~~{executive director}~~ may modify his **or her** findings as to the facts, by reason of the additional evidence so taken; and **the commissioner**~~{he}~~ shall file any modified or new findings, which if supported by substantial evidence shall be conclusive, and any recommendation for the modification or setting aside of the original order. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the **commissioner's**~~{executive director's}~~ order. An appeal may be taken from the judgment of the Franklin Circuit Court on any such appeal to the Court of Appeals on the same terms and conditions as an appeal is taken in civil actions.

➔Section 878. KRS 292.500 is amended to read as follows:

- (1) The administration of the provisions of this chapter shall be under the **Department**~~{Office}~~ of Financial Institutions.
- (2) It is unlawful for the **commissioner**~~{executive director}~~ or any of his **or her** officers or employees to use for personal benefit any information which is filed with or obtained by the **commissioner**~~{executive director}~~ and which is not made public. Except as provided in subsection (18) of this section, no provision of this chapter authorizes the **commissioner**~~{executive director}~~ or any of **the department's**~~{his}~~ officers or employees to disclose any confidential information except among themselves or when necessary or appropriate in an administrative hearing or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the **commissioner**~~{executive director}~~ or any of **the department's**~~{his}~~ officers or employees.
- (3) The **commissioner**~~{executive director}~~ may from time to time promulgate, amend, and repeal administrative regulations, forms, and orders as are necessary to carry out the provisions of this chapter, including administrative regulations and forms governing registration statements, applications, notice filings, and reports and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of administrative regulations and forms, the **commissioner**~~{executive director}~~ may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.
- (4) No administrative regulation, form, or order may be promulgated, amended, or repealed unless the **commissioner**~~{executive director}~~ finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provision of this chapter. In promulgating administrative regulations and forms, the **commissioner**~~{executive director}~~ may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statement, applications, notice filings, and reports whenever practicable.
- (5) The **commissioner**~~{executive director}~~ may by administrative regulation or order prescribe the form and content of financial statements required under this chapter and the circumstances under which consolidated financial statements shall be certified by certified public accountants. All financial statements shall be prepared in accordance with generally-accepted accounting standards.
- (6) All administrative regulations and forms of the **commissioner**~~{executive director}~~ shall be published.

- (7) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any administrative regulation, form, or order of the **commissioner**~~{executive director}~~, notwithstanding that the administrative regulation, form, or order may later be amended or repealed or be determined by judicial or other authority to be invalid for any reason.
- (8) A document is filed when it is received by the **commissioner**~~{executive director}~~ or when the **commissioner**~~{executive director}~~ receives confirmation that a document has been filed pursuant to KRS 292.327, 292.330, 292.360, and 292.370.
- (9) Every administrative hearing shall be conducted in accordance with KRS Chapter 13B and the provisions of this chapter, and shall be public unless the **commissioner**~~{executive director}~~ in his *or her* discretion grants a request joined in by all the respondents that the hearing be conducted privately.
- (10) The **commissioner**~~{executive director}~~ shall keep a register of all applications for registration and registration statements and notice filings which are or have ever been effective under this chapter and all denial, suspension, or revocation final orders which have ever been entered under this chapter. The register shall be open for public inspection.
- (11) The information contained in or filed with any registration statement, application, notice filings, or report may be made available to the public under administrative regulations as the **commissioner**~~{executive director}~~ may promulgate.
- (12) Upon request and at reasonable charges as *the commissioner*~~{he}~~ prescribes, the **commissioner**~~{executive director}~~ shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any administrative hearing or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.
- (13) The **commissioner**~~{executive director}~~ in his *or her* discretion may honor requests from interested persons for interpretative opinions.
- (14) The **commissioner**~~{executive director}~~ may assess civil fines against any person who violates any provision of this chapter or any rule or order under this chapter.
- (15) In addition to any fines levied under subsection (14) of this section, the **commissioner**~~{executive director}~~ may also assess the costs of any investigation, including attorney's fees incurred as a result of bringing enforcement actions under the provisions of this chapter and costs of holding any hearing as a result of an enforcement action. Costs and attorney's fees may only be assessed if there has been a final determination that a violation has occurred, and in an amount reasonably related to the costs of investigation and enforcement for those violations only.
- (16) If fines or costs assessed under this section are not paid, the **commissioner**~~{executive director}~~ may notify the Attorney General who shall promptly institute an action in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court for the recovery of the fines or costs.
- (17) The remedies provided by this section are not exclusive and may be sought and employed in any combination to enforce the provisions of this chapter. The remedies set forth in this section shall not prohibit or restrict the **commissioner**~~{executive director}~~ from participating in any way whatsoever with respect to any joint examination, investigation, enforcement action, settlement, or other legal or regulatory action with securities administrators of other jurisdictions, the Securities and Exchange Commission, any self-regulatory organization, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. Accordingly, the **commissioner**~~{executive director}~~ may, at any time and in his *or her* sole discretion, share or cause to be shared by any employee of the **department**~~{office}~~ any information gained pursuant to an examination, investigation, filing, or from any other source, with other governmental agencies, jurisdictions, or governmental or self-regulating organizations or entities, to the extent the **commissioner**~~{executive director}~~, in his *or her* sole discretion, deems that the sharing of information is or will be reasonably necessary or useful to the **department**~~{office}~~ or other agency in carrying out its regulatory responsibilities.
- (18) The following materials, documentation, and other information are deemed to have been confidentially disclosed to the **department**~~{office}~~ and to be confidential information under the Kentucky Open Records Act

and, specifically, the provisions of KRS 61.878(1)(b), to the extent described in this subsection and except as provided further in administrative regulation:

- (a) Any materials, documentation, or other information provided to or otherwise obtained by the **department**~~{office}~~ during the course of a routine compliance examination of any broker-dealer, agent, investment adviser, or investment adviser representative; and
- (b) Any materials, documentation, or other information provided to or otherwise obtained by the **department**~~{office}~~ from any other regulatory or governmental body, including but not limited to any other state securities regulator, the Securities and Exchange Commission, any self-regulatory organization, any state or federal criminal agency, and any criminal prosecutorial body, and which the other body expressly deems to be confidential.

➔Section 879. KRS 292.991 is amended to read as follows:

- (1) Any person who willfully violates any provision of this chapter except KRS 292.440, or who willfully violates KRS 292.440 knowing the statement made to be false or misleading in any material respect, shall be guilty of a Class D felony.
- (2) Any person who willfully violates any rule or order of the **commissioner**~~{executive director}~~, authorized under this chapter, shall be guilty of a Class A misdemeanor; but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge.
- (3) The **commissioner**~~{executive director}~~ may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the Attorney General or the proper prosecuting authority, who may in his *or her* discretion, with or without such a reference, institute the appropriate criminal proceedings under this chapter.
- (4) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

➔Section 880. KRS 299.010 is amended to read as follows:

- (1) The provisions of this chapter do not apply to secret or fraternal societies, lodges, or councils that are under the supervision of a grand or supreme body and secure members through the lodge system exclusively, and pay no commissions and employ no agents except in the organization and supervision of the work of local subordinate lodges or councils, nor do they apply to companies, societies or associations organized under the authority and patronage of any church or religious denomination for the exclusive purpose of insuring the property of churches or religious denominations and the personal property of the pastors and ministers thereof against loss or damage by fire, lightning or storm.
- (2) As used in this chapter, unless the context requires otherwise:
 - (a) "**Commissioner**~~{Executive director}~~" means the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance;
 - (b) "Policy" means any policy, certificate of membership, or contract of insurance;
- (3) "Company," as used in KRS 299.020 to 299.300, means any corporation, association or society transacting in this state a life or casualty insurance business, or both, upon the cooperative or assessment plan, as defined in KRS 299.020;
- (4) "Company," as used in KRS 299.310 to 299.470, means any corporation organized under KRS 299.310 and 299.320 for the purpose of transacting, and any company heretofore organized under any similar law of this state or under the general corporation laws of this state that is transacting, the business of insurance against physical loss or damage of property by such hazard or hazards as it may provide in its policies, upon the cooperative or assessment plan.

➔Section 881. KRS 299.019 is amended to read as follows:

- (1) Every company licensed under this chapter shall provide to the **commissioner**~~{executive director}~~ a list of its officers and directors, their names, addresses, principal business activities, and occupations or employment.
- (2) Every company licensed under this chapter shall file with the **commissioner**~~{executive director}~~ a copy of any management contract, third-party administrator contract, agency contract, or any other agreement, contract, or document whereby rights or duties of the company are assigned or delegated to another entity. No agreement

shall be effective until approved by the *commissioner*~~[executive director]~~. An agreement may be disapproved if, after a hearing under KRS Chapter 13B, the *commissioner*~~[executive director]~~ finds that the agreement does not comply with the following conditions:

- (a) The agreement shall be the result of an arms length transaction between the company and any other party;
- (b) The terms of the agreement shall be fair and reasonable to the parties, and the charges or fees for all services provided shall be reasonable;
- (c) The books, accounts, and records of each party to the agreement shall be maintained to clearly and accurately disclose the precise nature and details of the transaction; and
- (d) The agreement shall be made for the benefit of the policyholders of the company.

➔Section 882. KRS 299.030 is amended to read as follows:

- (1) Persons desiring to form an organization for the purpose of transacting the business of life or casualty insurance, or both, upon the assessment or cooperative plan, may associate together and effect an organization as prescribed in this section.
- (2) Any number of persons not less than thirteen (13) may associate to establish such an insurance company.
- (3) In addition to the general requirements for all corporations, the articles of incorporation shall specify the class of insurance the company proposes to transact; and on what business plan or principle; the number and amount of agreements for insurance, if any; and such other facts as may be necessary to explain and make manifest the object and purposes of the corporation. The words "insurance company" shall be a part of the title of every such corporation, and also the word "mutual."
- (4) In addition to complying with the provisions of KRS Chapter 271B, the incorporators shall file a certified copy of the articles of incorporation in the office of the *commissioner*~~[executive director]~~.

➔Section 883. KRS 299.040 is amended to read as follows:

Upon filing in the office of the *commissioner*~~[executive director]~~ the required articles of incorporation, together with a sworn statement by three (3) of the incorporators that at least two hundred (200) persons, eligible under the proposed laws of the company to membership therein, have in good faith made application in writing for membership, the articles shall be referred to and examined by the Attorney General. If the articles are found by him to be conformable to and not inconsistent with the laws of the state, he shall certify accordingly and return them, with his certificate of conformity, to the *commissioner*~~[executive director]~~. The *commissioner*~~[executive director]~~ shall cause the articles, with the certificate of the Attorney General, to be recorded in a book to be kept for the purpose, and shall deliver to the company a certified copy of the papers so filed and recorded in his *or her* office, and of the certificate of the Attorney General, together with the license of the *commissioner*~~[executive director]~~ to the company to engage in the business proposed in the articles. Upon the certified copy and license being filed in the office of the clerk of the county where the company is to be located, the incorporators and those that may thereafter become associated with them, or their successors, shall constitute a body-politic and corporate, but may not commence business until at least two hundred (200) persons have subscribed, in writing, to be insured therein in the aggregate amount of at least \$200,000, and the company has established a guaranty fund of \$100,000 for the protection of its policyholders or members, and the *commissioner*~~[executive director]~~ has certified that it has complied with the provisions of law and is authorized to transact business.

➔Section 884. KRS 299.100 is amended to read as follows:

- (1) Every company shall hold, within the county in which its principal office is located in this state, a stated annual meeting of its members or policyholders, or representatives of local boards or subordinate bodies, in the manner and subject to the regulations, restrictions and provisions that its constitution and bylaws provide.
- (2) Every company authorized to do business in this state may, at any stated annual meeting of its members or policyholders, adopt or amend its bylaws, rules and regulations. If the board of directors determines that an emergency has arisen requiring the adoption or amendment of any bylaw, rule or regulation before the next ensuing stated annual meeting, the board shall mail a copy of the bylaw, rule or regulation to the members and directors of the company, together with a notice of the time and place when the same will be considered, which notice shall be the same as required for a stated meeting. The bylaws, rules, regulations and amendments

thereto adopted from time to time at the stated annual meeting, or at any meeting made necessary by an emergency, shall be binding on all members and policyholders of the company, whether or not personally present at the meeting when the same were adopted.

- (3) The books and papers of each company shall at all times be open for examination by the **commissioner**~~{executive director}~~, and shall be open for examination by a committee of members or policyholders duly selected, authorized and empowered for that purpose by a writing signed by a majority of the members or policyholders of the company, which written authority shall be presented to and filed with the company before any examination is made by the committee.

➔Section 885. KRS 299.120 is amended to read as follows:

Every company shall, by March 1 of each year, make and file with the **commissioner**~~{executive director}~~ a report of its affairs and operations during the year ending on December 31 immediately preceding. The report shall be upon blank forms provided by the **commissioner**~~{executive director}~~, and shall be verified under oath by the duly authorized officers of the company, and the **commissioner**~~{executive director}~~ shall publish it, or its substance, in his annual report. This annual report shall contain the following information: The number of policies issued or members admitted during the year; the amount of indemnity effected thereby; the number of death losses; the number of death losses paid; the amount received from each assessment in each class for the year; the total amount paid policyholders, beneficiaries, legal representatives or heirs; the number of death claims for which assessments have been made; the number of death claims compromised or resisted, and a brief statement of the reason; whether the company charges annual dues, and if so, how much on each one thousand dollars (\$1,000) annually, or per capita, as the case may be; the total amount received and the disposition thereof; whether the company uses money received for payment of death claims to pay expenses, in whole or in part, and if so, the amount so used; the total amount of salaries paid to officers; whether the company guarantees a fixed amount to be paid regardless of the amount realized from assessments, dues, admission fees and donations, and if so, the amount guaranteed and the security for such guarantee; whether the company has a reserve fund, and if so, how the reserve fund is created and for what purpose, the amount thereof and how invested; whether the company has more than one (1) class, and if so, how many, the amount of indemnity in each class, and the number of members in each class; if organized under the laws of this state, under what law and at what time; the number of policies or memberships lapsed during the year; the number of policies or memberships in force at the beginning and end of the year in each class; the aggregate maximum, minimum and average age of membership in each class; the assets applicable to life or casualty insurance, other than reserve fund, and how invested; and the amount received from all sources for life or casualty insurance and the disposition thereof.

➔Section 886. KRS 299.190 is amended to read as follows:

When the **commissioner**~~{executive director}~~ has given the notice required by KRS 299.180, he *or she* shall proceed without delay to investigate the condition of the company, and shall have full power, in person or by deputy, to examine its books, papers and accounts, and to examine, under oath, its officers, agents, clerks and policyholders, and other persons having knowledge of its business. If it appears to the **commissioner**~~{executive director}~~ that the liabilities of the company exceed its resources, and that it cannot within a reasonable time, not more than three (3) months from the date of the original default, pay its accrued indebtedness in full, **the commissioner**~~{he}~~ shall report the facts to the Attorney General, who shall, upon the **commissioner's**~~{executive director's}~~ report, apply to the Judge of the Franklin Circuit Court, or to the Judge of the Circuit Court of the county in which the company is located, for an order closing the business of the company and appointing a receiver for the distribution of its assets among creditors. No such final order shall be made until the company has had ten (10) days' notice of the application and an opportunity to be heard. Upon hearing the matter, the court may make any order that the interests of the company and the public require.

➔Section 887. KRS 299.210 is amended to read as follows:

- (1) An assessment or cooperative life insurance company, including such companies as are organized under the provisions of KRS Chapter 303 and KRS 304.32-010 to 304.32-270, may be wholly reinsured in, and its assets to the extent required to establish adequate reserves transferred to, and its liabilities assumed by a mutual or stock insurer pursuant to an agreement of reinsurance approved by the **commissioner**~~{executive director}~~ of insurance after such hearing as the **commissioner**~~{executive director}~~ may require, and approved by two-thirds (2/3) of the members of such company who are present at a meeting of such members duly called for such purpose, and vote thereon.
- (2) Any such reinsurance agreement shall determine the amount of surplus, if any, of such cooperative or assessment company and shall make adequate provision for paying to the members of such company their

respective shares of such surplus determined in such manner as may be approved by the **commissioner**~~{executive director}~~.

- (3) If the transfer or reinsurance is approved, every policyholder of the company who files with its secretary, within ten (10) days after the meeting, written notice of his preference to be transferred to some other company than that named in the contract, shall be accorded all the rights and privileges, if any, in aid of the transfer, that would have been accorded under the terms of the contract had he been transferred to the company named therein.
- (4) No domestic company shall transfer its risks or any part thereof to, or reinsure its risks or any part thereof in, any insurance company of another state or country that is not at the time of the transfer or reinsurance authorized to do insurance business in this state.

➔Section 888. KRS 299.215 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall collect and pay into the State Treasury the following fees relative to assessment or cooperative life or casualty insurance companies:
 - (a) For filing a copy of articles of incorporation of the company, \$10; and
 - (b) For filing annual statement of the company, \$10.
- (2) No other charges than those provided in this section shall be made against assessment or cooperative life or casualty insurance companies by the **Department**~~{Office}~~ of Insurance unless agreed to by the respective companies.

➔Section 889. KRS 299.250 is amended to read as follows:

The reorganized company may not do any business as a stock company until the amount of stock determined as provided in KRS 299.240, and as authorized by law, has been subscribed and paid for, at not less than par, and the provisions of the law concerning stock companies have been complied with, and the proceeds of the capital stock to the amount of at least \$100,000 have been invested in securities such as those in which insurance companies are permitted by law to make investments, and such securities to the amount of at least \$100,000 have been deposited with the custodian of insurance securities to guarantee the payment of policies issued by the company, and until the **commissioner**~~{executive director}~~ has, upon request, valued the assets of the company and its outstanding policies and has given his certificate that the admitted assets of the company, including its capital stock, are sufficient to provide reserve upon all outstanding assessment policies, valued as provided in KRS 299.280, over and above all other bona fide debts of the company and claims against it, and that the company has complied with all of the laws regarding life insurance companies upon the stock or mutual plan, as the case may be.

➔Section 890. KRS 299.270 is amended to read as follows:

Upon the receipt of the certificate from the **commissioner**~~{executive director}~~ authorizing the reorganized company to do business upon the stock or mutual plan, the stockholders may elect from among themselves directors, in accordance with the articles of incorporation and bylaws of the company and the laws of this state, to hold office until the ensuing annual meeting and until their successors have been duly elected and qualified. The directors so elected shall have all the rights and powers proper to be exercised by the directors of life insurance companies upon the mutual or stock plan.

➔Section 891. KRS 299.300 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~, upon request and the payment to him of the usual fees, shall ascertain and certify the proportionate interest, in the assets of the cooperative or assessment company before its reorganization, of each of the policyholders of the cooperative or assessment company who refuse, within six (6) months after notice, to assent to the change into a stock or mutual company. The interest of a member so dissenting shall not be valued at more than his proportionate part of the accumulated emergency fund, to be determined by the **commissioner**~~{executive director}~~ as of the date of the reorganization.
- (2) The amount of the interest of each such dissenting policyholder shall be paid over to **the commissioner**~~{him}~~ on demand within thirty (30) days after ascertainment, and upon the payment or tender of the amount of interest so ascertained and certified the membership of the dissenting policyholder shall cease.
- (3) Out of the remainder of the assets in excess of the sum required for the compensation of dissenting policyholders, there shall be deposited with the custodian of insurance securities, under the laws providing for

the deposit of legal reserve, a sum equal to such reserve, as computed by the *commissioner*~~[executive director]~~, in addition to the deposit of \$100,000 provided for by KRS 299.250.

➔Section 892. KRS 299.310 is amended to read as follows:

- (1) Twenty-five (25) or more persons residing in any one or more adjoining municipalities, or in any county, or in not more than ten (10) adjoining counties, who collectively own property of the value of fifty thousand dollars (\$50,000) or more, may organize a company for the purpose of cooperative or assessment insurance against:
 - (a) Loss of or damage to real or personal property of every kind and interest therein, from any or all hazards or causes, and against loss consequential upon such loss or damage; and
 - (b) Legal liability for the death, injury, or disability of any human being, or for damage to property; and medical, hospital, surgical, and funeral expenses of persons injured, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance.

Such persons shall make and acknowledge a certificate setting forth their intention to form such a company, the counties or municipalities in which it intends to do business, its corporate name, and the place where its principal office is to be located. Every person insured in such a company who signs an application for insurance as required by the certificate of incorporation or by the bylaws of the company shall thereby become a member. Provided, however, that no such company shall insure against any of the hazards set forth in paragraph (b) of this subsection unless it has a net surplus of two million dollars (\$2,000,000) or more or is fully reinsured as to all such hazards by a contract or contracts filed with and approved by the *commissioner*~~[executive director]~~.

- (2) No money shall be collected by any person on behalf of the company until two (2) of the members or organizers have given joint bond to the *commissioner*~~[executive director]~~ in the sum of ten thousand dollars (\$10,000), conditioned that all money so collected will be used as directed by law, and that the affairs of the company will be conducted according to law. The bond shall be held by the *commissioner*~~[executive director]~~ for the benefit of the members of the company until the company has become legally incorporated and its affairs have been examined by an expert accountant, appointed by the *commissioner*~~[executive director]~~, and found to be in due and regular form, and immediately thereafter the bond shall be canceled.
- (3) No company shall be formed under KRS 299.310 to 299.470 for the purpose of transacting any business of insurance other than as prescribed in those sections, and no company shall insure against any loss other than the ones permitted by those sections. Any company operating under the provisions of KRS 299.310 to 299.470 as of June 1, 1960, shall be authorized to write all types of insurance allowed under subsection (1) of this section without amendment of its charter or articles of incorporation.
- (4) Insurers organized under the provisions of this section are subject to the provisions of subtitle 36 of KRS Chapter 304 to the extent applicable and not in conflict with the expressed provisions of this chapter.

➔Section 893. KRS 299.320 is amended to read as follows:

Upon filing the required articles in the office of the *commissioner*~~[executive director]~~, together with a sworn statement by three (3) of the incorporators that bona fide agreements have been entered into for the insurance of property of an amount not less than \$100,000 within the territory in which it proposes to do business, the articles shall be referred to and examined by the Attorney General. If the articles are found by *the Attorney General*~~[him]~~ to be conformable to, and not inconsistent with, the laws of this state, *the Attorney General*~~[he]~~ shall certify accordingly, and return them, with ~~a~~^{his} certificate of conformity, to the *commissioner*~~[executive director]~~. The *commissioner*~~[executive director]~~ shall cause the articles, with the certificate of the Attorney General, to be recorded in a book kept for that purpose, and shall deliver to the company a certified copy of the papers as filed and recorded in his office, and of the certificate of the Attorney General, together with the license of the *commissioner*~~[executive director]~~ to the company to engage in the business proposed in the articles. Upon the certified copy and license being filed in the office of the clerk of the county in which the principal office of the company is to be located, the incorporators and those that may thereafter become associated with them, and their successors, shall constitute a body politic and corporate, and be lawfully entitled to begin business.

➔Section 894. KRS 299.330 is amended to read as follows:

- (1) No company shall insure any property located outside the limits of the territory comprised in its certificate of incorporation, except that when a member lives on or near the boundary line and has property both within and without the prescribed boundary, his property without the boundary may be insured.

- (2) Any company, by a majority vote of its membership, or by a majority vote of its board of directors at any meeting where there is a legal quorum of directors in session, may change the territory in which it is incorporated to do business to as few or as many counties in this state as it may see fit to include in its territory. The change of territory shall be effective upon the members of the board of directors filing a proper certificate of such action with the *commissioner*~~[executive director]~~.
- (3) The board of directors may, by resolution duly passed at any regular meeting, remove the office of the company to any municipality in which it is authorized to do business. The removal shall not be made until after the expiration of five (5) days from the passage of the resolution and the filing of a copy in the office of the *commissioner*~~[executive director]~~.

➔Section 895. KRS 299.450 is amended to read as follows:

The president and secretary of each company shall, on or before March 1 of each year, make a sworn statement to the *commissioner*~~[executive director]~~ showing the condition of the company as of the preceding December 31. The statement shall contain the following information: The amount and kind of property insured; the number of policies issued from the time of organization of the company up to the time of making the statement; the number insured during the year last past; the amount of insurance accepted and the amount withdrawn, expired and canceled during the year; the whole amount of insurance in force on December 31; the amount of money received during the year; the amount of disbursements, specifying the amount paid for fees, salaries and commissions; and all other matters of interest to the company or members that the *commissioner*~~[executive director]~~ may require.

➔Section 896. KRS 299.460 is amended to read as follows:

The *commissioner*~~[executive director]~~ shall examine into the management of any company whenever he deems it prudent for the protection of policyholders in this state, but not less frequently than once in every four (4) years. He shall also examine into the management of a company upon the application of ten (10) of its members, or twenty-five percent (25%) of its board of directors, or its president or secretary. The company shall pay all expenses of the examination which shall promptly be deposited in the State Treasury "Examination Expense Revolving Fund" established in KRS 304.2-300. If the *commissioner*~~[executive director]~~ finds that the company or any director, agent, adjuster, employee, administrator, or officer has been or is violating the provisions of KRS 299.310 to 299.450, or the bylaws of the company, he shall proceed in like manner as with other insurers guilty of like violations. The *commissioner*~~[executive director]~~ may issue orders, conduct investigations, hold hearings, issue subpoenas, assess penalties, and take other reasonable and necessary actions as with other insurers.

➔Section 897. KRS 299.470 is amended to read as follows:

All the provisions of KRS 299.310 to 299.460 shall apply to companies doing business of the kind and upon the plan described in subsection (4) of KRS 299.010 and organized by special charter granted by this state, where those provisions do not conflict with some vested right granted in the special charter. Any such company may become subject to all the provisions of KRS 299.310 to 299.460 by filing a certified statement with the *commissioner*~~[executive director]~~ that a majority of its directors have voted to so subject the company.

➔Section 898. KRS 299.480 is amended to read as follows:

Three (3) or more domestic mutual or cooperative and assessment fire insurance companies may organize a reinsurance company to reinsure their risks by certifying to the *commissioner*~~[executive director]~~ their intention and filing with him certificates properly acknowledged showing the vote of the directors of the companies authorizing them to become members of the reinsurance company. The name of the reinsurance company shall be contained in the certificate to the *commissioner*~~[executive director]~~ and shall be approved by *the commissioner*~~[him]~~. Such reinsurance company shall be a distinct corporation.

➔Section 899. KRS 299.490 is amended to read as follows:

- (1) Any domestic mutual or assessment and cooperative fire insurance company may, with the consent of the directors of the reinsurance company, become a member thereof by filing with the *commissioner*~~[executive director]~~ a certificate of its intention and a certificate showing the vote of its directors authorizing it to become a member of the reinsurance company.
- (2) Any member company may, by paying its proportion of the liabilities of the reinsurance company then existing, withdraw its membership from a reinsurance company. The member company shall certify to the *commissioner*~~[executive director]~~ its intention to withdraw its membership, and give written notice to the

secretary of the reinsurance company of its intention to withdraw thirty (30) days in advance. Upon withdrawal of any member company the reinsurance company shall at once cancel all policies of insurance held by and through the company withdrawing.

➔Section 900. KRS 299.520 is amended to read as follows:

- (1) Complete copies of treaties and contracts for reinsurance, excluding policies for reinsurance, shall be filed with and approved by the *commissioner*~~{executive director}~~.
- (2) These copies of treaties of reinsurance shall be open at all times for inspection in the *Department*~~{Office}~~ of Insurance, on application of any citizen of this state asking the name of the reinsuring company, and the *Department*~~{Office}~~ of Insurance on application shall furnish the name of the reinsuring company.

➔Section 901. KRS 299.540 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ shall collect and pay into the State Treasury the following fees relative to assessment or cooperative fire insurance companies:
 - (a) For filing a copy of articles of incorporation of the company, \$10;
 - (b) For filing annual statement of the company, \$10; and
 - (c) For filing papers and keeping records on change of territory, \$5.
- (2) No other charges than those provided in this section shall be made against assessment or cooperative fire insurance companies by the *Department*~~{Office}~~ of Insurance unless agreed to by the respective companies.

➔Section 902. KRS 299.550 is amended to read as follows:

Any company operating under the provisions of KRS 299.310 et seq. may become a mutual insurer as defined in Chapter 304 of the Kentucky Revised Statutes upon the approval of such change by two-thirds (2/3) of the authorized vote of the membership of the company, such authorized vote to be determined by the provisions of KRS 299.350; and such vote to be at a regular annual meeting of the membership of the company, notice of which meeting shall have been given to the membership in writing at least thirty (30) days in advance, setting forth the fact that a vote upon such conversion shall be taken at said meeting. In the event of such conversion of a company, the effective date of the conversion shall be fixed by resolution of the membership, and all policies in force as of the effective date of conversion shall remain in force unless sooner canceled until the next regular assessment thereon or until one (1) year after the effective date of conversion, whichever is earlier. All policies written after the effective date of conversion in all respects shall be in conformity with the provisions of Chapter 304 of the Kentucky Revised Statutes. The plan of conversion must be submitted to and approved by the *commissioner*~~{executive director}~~ before it becomes effective.

➔Section 903. KRS 303.100 is amended to read as follows:

A burial association desiring to do business in this state shall file with the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance a power of attorney as is required of insurance companies, designating the *commissioner*~~{executive director}~~ as the proper person upon whom process may be served.

➔Section 904. KRS 303.122 is amended to read as follows:

- (1) Any person, firm, corporation, partnership or undertaking concern, duly and regularly licensed to engage in the undertaking business in the Commonwealth of Kentucky who may desire to perform the provisions of any agreement, policy, contract, bond, assurance or guarantee issued by any burial association or association of a similar nature authorized to do business in the Commonwealth of Kentucky shall file with the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance of the Commonwealth of Kentucky a bond in an amount that is reasonable to be fixed by the *commissioner*~~{executive director}~~ of insurance of the Commonwealth of Kentucky, which bond shall be conditioned upon the faithful performance of the agreement, policy, contract, bond, assurance or guarantee issued by any burial association or association of a similar nature authorized to do business in the Commonwealth of Kentucky to its members as approved by the *commissioner*~~{executive director}~~ of insurance of the Commonwealth of Kentucky.
- (2) The *commissioner*~~{executive director}~~ of insurance shall adopt appropriate forms for the filing of the bond provided for herein and shall, upon request, furnish said forms to any person, firm, corporation, partnership or undertaking concern, duly and regularly licensed to engage in the undertaking business in the Commonwealth of Kentucky, who may desire to qualify under the terms of this section.

➔Section 905. KRS 303.130 is amended to read as follows:

Each burial association shall deposit with the custodian of insurance securities securities to the amount of not less than \$100,000, to be held for the benefit of its policyholders. These securities shall be of the kind in which domestic life insurance companies are allowed by law to invest their capital. Associations shall have, at all times, on approval of the **commissioner**~~[executive director]~~, the right to exchange any part of the securities for other of like amount or character.

➔Section 906. KRS 303.140 is amended to read as follows:

- (1) All burial associations shall, by March 1 of each year, make and file with the **commissioner**~~[executive director]~~ a report of its affairs and operations during the year ending December 31 immediately preceding. This report shall be upon blank forms furnished by the **commissioner**~~[executive director]~~ and shall be verified under oath by the authorized officers of the associations. It shall show the number of outstanding policies, the number of matured policies, and all other information connected with their business as the **commissioner**~~[executive director]~~ requires. This report, or the substance thereof, shall be published in the annual report of the **commissioner**~~[executive director]~~.
- (2) The **commissioner**~~[executive director]~~ may make any examination of the books or affairs of associations as he may make of insurance companies in this state.

➔Section 907. KRS 303.150 is amended to read as follows:

- (1) If, upon examination of a burial association by the **commissioner**~~[executive director]~~ or any person designated by him to make the examination, it appears that the liabilities of the association exceed its resources, and it cannot in a reasonable time, not more than three (3) months from the date of the original default, pay its accrued indebtedness in full, he shall report the facts to the Attorney General. The Attorney General shall, upon the **commissioner's**~~[executive director's]~~ report, apply to the Judge of the Franklin Circuit Court or to the Judge of the Circuit Court of the county wherein the association is located for an order closing the business of the association, and appointing a receiver for the distribution of its assets among creditors. No final order shall be made until the association has had ten (10) days' notice of the application and an opportunity to be heard. Upon hearing the matter, the court may make any order which the interest of the association and the public may require.
- (2) When any burial association discontinues business, or when for any cause a dissolution is decreed, or when for sixty (60) days any judgment remains unsatisfied, the Circuit Judge in any county in which the association has transacted business may appoint a receiver to distribute its assets among its policyholders for any persons having claims against the association. The assets shall be applied first, on accrued or natural claims or policies; second, on claims of any other kind or character; third, in payment to policyholders of all dues paid in by them; and, if a balance remains after payment of the above named claims, then that sum shall be returned to the burial association.

➔Section 908. KRS 304.1-050 is amended to read as follows:

- (1) "**Commissioner**~~[Executive director]~~" means the **commissioner** ~~[executive director]~~ of the **Department**~~[Office]~~ of Insurance of this state.
- (2) "**Department**~~[Office]~~" means the **Department**~~[Office]~~ of Insurance of this state, unless context otherwise requires.

➔Section 909. KRS 304.1-100 is amended to read as follows:

- (1) An "authorized" insurer is one duly authorized by a subsisting certificate of authority issued by the **commissioner**~~[executive director]~~ to transact insurance in this state.
- (2) An "unauthorized" insurer is one not so authorized.

➔Section 910. KRS 304.1-110 is amended to read as follows:

- (1) A "certificate of authority" is one issued by the **commissioner**~~[executive director]~~ evidencing the authority of an insurer to transact insurance in this state.
- (2) A "license" is authority granted by the **commissioner**~~[executive director]~~ pursuant to this code authorizing the licensee to engage in a business or operation of insurance in this state other than as an insurer, and the certificate by which such authority is evidenced.

➔Section 911. KRS 304.1-170 is amended to read as follows:

Every form of insurance document and every rate or other filing lawfully in use on or lawfully filed by June 18, 1970, may continue to be so used or be effective, until the *commissioner*~~[executive director]~~ otherwise prescribes pursuant to this code; except that neither this code nor the *commissioner*~~[executive director]~~ shall prohibit the use of any such document before expiration of one (1) year from and after June 18, 1970.

➔Section 912. KRS 304.1-180 is amended to read as follows:

No action taken by the *commissioner*~~[executive director]~~ nor proceeding commenced, nor right accrued, nor violation of law existing under any act repealed by this chapter, is affected by the repeal, but all procedure hereafter taken in reference thereto shall conform to this code as far as possible.

➔Section 913. KRS 304.2-010 is amended to read as follows:

There is continued within the Public Protection Cabinet a department to be known as the Department of Insurance~~[There is continued within the Environmental and Public Protection Cabinet, Department of Public Protection, an office known as the Office of Insurance].~~

➔Section 914. KRS 304.2-020 is amended to read as follows:

- (1) The *commissioner*~~[executive director]~~ is the head of the *Department*~~[Office]~~ of Insurance.
- (2) The *commissioner*~~[executive director]~~ shall be appointed by the Governor with the consent of the Senate, for a term not to exceed four (4) years on the basis of his *or her* merit and fitness to perform the duties of the office as provided in KRS 12.040. If the Senate is not in session when a term expires or a vacancy occurs, the Governor shall make the appointment to take effect at once, subject to the approval of the Senate when convened. Nothing contained in this subsection shall prohibit the *commissioner*~~[executive director]~~ of the *Department*~~[Office]~~ of Insurance from being reappointed.
- (3) The following divisions are established within the *department*~~[Office]~~ of Insurance and shall be headed by directors appointed by the secretary of the ~~[Environmental and]~~ Public Protection Cabinet with the approval of the Governor in accordance with KRS 12.050:
 - (a) Property and Casualty Division;
 - (b) *Health and Life* Division~~[of Life Insurance]~~;
 - (c) Division of Financial Standards and Examination;
 - (d) ~~[Division of State Risk and Insurance Services;~~
 - (e) ~~]Division of Agent Licensing;~~
 - (e)~~(f)~~ Division of Insurance Fraud Investigation;
 - (f)~~(g)~~ ~~[Division of]~~Consumer Protection *Division*~~[and Education]~~;
 - (h) ~~Division of Health Insurance Policy and Managed Care]~~; and
 - (g)~~(i)~~ Division of Kentucky Access.

➔Section 915. KRS 304.2-030 is amended to read as follows:

- (1) Within thirty (30) days from the time of notice of his *or her* appointment and before entering upon his *or her* duties, the *commissioner*~~[executive director]~~ shall take the oath of office as required by KRS 62.010.
- (2) Within the same period the *commissioner*~~[executive director]~~ shall execute and deliver a surety bond, in favor of the Commonwealth of Kentucky, in the penal sum fixed by the Governor, but not less than fifty thousand dollars (\$50,000) as required by KRS 62.160.

➔Section 916. KRS 304.2-040 is amended to read as follows:

- (1) The *Department*~~[Office]~~ of Insurance shall have an official seal, in the form and design as so in use and on file in the office of the Secretary of State immediately prior to June 18, 1970.
- (2) Every certificate or license issued by the *commissioner*~~[executive director]~~ shall bear the seal of the *department*~~[office]~~.

➔Section 917. KRS 304.2-050 is amended to read as follows:

Every certificate, assignment or conveyance executed by the *commissioner*~~[executive director]~~, relating to the business of insurance or an insurer, in pursuance of authority conferred by law, and sealed with the seal, shall be received as evidence, and may be recorded in the same manner and with the same effect as a deed regularly acknowledged or proved before an officer authorized by law to take the proof or acknowledgment of deeds.

➔Section 918. KRS 304.2-060 is amended to read as follows:

The *commissioner*~~[executive director]~~ may appoint ~~[his own]~~deputies with the prior written approval of the Governor as provided in KRS 12.050.

➔Section 919. KRS 304.2-063 is amended to read as follows:

There is created within the~~[office a]~~ Consumer Protection~~[and Education]~~ Division *the position*~~[, which shall include an office]~~ of ombudsman.

➔Section 920. KRS 304.2-065 is amended to read as follows:

- (1) There is created within the *Department*~~[Office]~~ of Insurance the position of early warning analyst.
- (2) The *commissioner*~~[executive director]~~ shall appoint a qualified person to serve as early warning analyst.
- (3) The early warning analyst shall detect domiciled companies and companies doing a significant amount of business in the Commonwealth that are in a hazardous or potentially hazardous financial condition.
- (4) The early warning analyst shall be part of the Financial Standards and Examination Division.
- (5) The early warning analyst shall:
 - (a) Take advantage of the information available through the Insurance Regulatory Information System and use the information to monitor insurers;
 - (b) Seek information from other states' detection programs;
 - (c) Work with other *Department*~~[Office]~~ of Insurance employees representing key regulatory areas of the *department*~~[office]~~;
 - (d) Coordinate and develop the use of an indicator list to determine if an insurer is in a hazardous condition. The indicator list shall include but is not limited to the following indicators:
 1. An insurer fails to file a timely financial statement as established in KRS Chapter 304;
 2. An insurer files financial information which is false or misleading;
 3. An insurer overstates its surplus by twenty-five percent (25%) or more;
 4. An insurer fails to grant authorization to amend its financial statement when requested;
 5. An insurer's financial ratios are outside of the usual range established by the National Association of Insurance Commissioners in the Insurance Regulatory Information System;
 6. A projection by the *department*~~[office]~~ of an insurer's current financial condition indicates that the sum of its paid-in capital, paid-in surplus, and contributed surplus will be reduced within the next twelve (12) months;
 7. An insurer's aggregate net retained risk, direct or assumed, under any one (1) insurance policy or certificate of insurance under a group policy is more than ten percent (10%) of the insurer's surplus, except where otherwise permitted by law;
 8. An insurer's reserves for losses and loss adjustment expenses are discounted more than ten percent (10%) of the surplus;
 9. An affiliate or subsidiary of an insurer is unable to pay its obligations as the obligations become due and payable;
 10. A life, accident, and health insurer has premium writings that result in the surplus being less than five percent (5%) of the aggregate general account reserves for the life insurance in force plus twenty-five percent (25%) of the new annualized accident and health premium writing;

11. An insurer has reinsurance reserve credits, recoverable or receivable, that are disputed by the reinsurer, or are due and payable and remain unpaid, and the reinsurance credits, recoverables, and receivables are more than ten percent (10%) of an insurer's surplus;
 12. An insurer consistently issues subordinate premium or surplus debentures to finance its operations;
 13. An insurer fails to adequately maintain books and records in a manner that permits examiners to determine the financial condition of the insurer;
 14. An insurer has reinsurance agreements affecting twenty percent (20%) or more of the insurer's gross written premiums, direct or assumed, and the assuming insurers are not licensed to do insurance business in the Commonwealth of Kentucky;
 15. An insurer's management does not have the experience, competence, or trustworthiness to operate the insurer in a safe and sound manner;
 16. An insurer's management engages in unlawful transactions;
 17. An insurer fails to have an appraisal made on real estate upon which the insurer has made a mortgage loan;
 18. An insurer fails to comply with the terms of an agreement with an affiliate;
 19. An insurer has a pattern of refusing to settle valid claims within a reasonable time after due proof of the loss has been received;
 20. An insurer fails to follow a policy on rating and underwriting standards appropriate to the risk;
 21. An insurer violates KRS Chapter 304;
 22. A final administrative or judicial order, initiated by an insurance regulatory agency of another state, is issued against an insurer; and
 23. An insurer is in any condition that the *commissioner*~~[executive director]~~ finds is a hazard to policyholders, creditors, or the general public;
- (e) Recommend regulatory action and provide status reports to the *commissioner*~~[executive director]~~; and
- (f) Appear before the Interim Joint Committee on Banking and Insurance or the Standing Committees on Banking and Insurance annually to report on the status of domestic insurance companies and insurance companies doing a substantial amount of business in the Commonwealth of Kentucky.

➔Section 921. KRS 304.2-070 is amended to read as follows:

- (1) The *commissioner*~~[executive director]~~ may from time to time contract for and procure, on a fee or independent contract basis, such additional actuarial, examination, rating, and other technical and professional services as he *or she* may require for the discharge of his *or her* duties, subject to any other applicable laws of this state.
- (2) None of the individuals rendering such services shall be in the classified services of the state.

➔Section 922. KRS 304.2-080 is amended to read as follows:

- (1) The *commissioner*~~[executive director]~~ or any deputy, examiner, actuary, assistant or employee of the *department*~~[office]~~, shall not be connected with the management of, or be financially interested, directly or indirectly, in any insurer, insurance agency or broker, or insurance transaction except as policyholder or claimant under a policy; except, that as to matters wherein a conflict of interest does not exist on the part of any such individual, the *commissioner*~~[executive director]~~ may employ or retain from time to time insurance actuaries, examiners, accountants, attorneys, or other technicians who are independently practicing their profession even though from time to time similarly employed or retained by insurers or others.
- (2) No person shall directly or indirectly give or pay to the *commissioner*~~[executive director]~~ or any deputy, examiner, actuary, assistant, employee or technician retained by the *department*~~[office]~~; and the *commissioner*~~[executive director]~~, or any deputy, examiner, actuary, assistant, employee or technician retained by the *department*~~[office]~~, shall not directly or indirectly receive or accept any fee, compensation, loan, gift or other thing of value in addition to the compensation and expense allowance provided by law, or by contract with the *commissioner*~~[executive director]~~, for any service rendered or to be rendered, as such

commissioner~~{executive director}~~, deputy, examiner, actuary, assistant, employee or technician, or in connection therewith.

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

➔Section 923. KRS 304.2-090 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ may delegate to any deputy, assistant, counsel, actuary, examiner or employee of the *department*~~{office}~~, the exercise or discharge in the *commissioner's*~~{executive director's}~~ name of any power, duty or function, whether ministerial, discretionary or of whatever character, vested in or imposed upon the *commissioner*~~{executive director}~~ under this code.
- (2) The official act of any such person so acting in the *commissioner's*~~{executive director's}~~ name and by his *or her* authority shall be deemed to be an official act of the *commissioner*~~{executive director}~~.

➔Section 924. KRS 304.2-100 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ shall personally supervise the operations of the *department*~~{office}~~.
- (2) The *commissioner*~~{executive director}~~ shall examine and inquire into violations of this code, shall enforce the provisions of this code with impartiality and shall execute the duties imposed upon him *or her* by this code.
- (3) The *commissioner*~~{executive director}~~ shall have the powers and authority expressly conferred upon him *or her* by or reasonably implied from the provisions of this code.
- (4) The *commissioner*~~{executive director}~~ may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as *the commissioner*~~{he}~~ may deem proper upon reasonable and probable cause to determine whether any person has violated any provisions of this code or to secure information useful in the lawful administration of any such provision. The cost of such additional examinations and investigations shall be borne by the state.
- (5) The *commissioner*~~{executive director}~~ may establish and maintain such branch offices in this state as may be reasonably required for the efficient administration of this code.
- (6) The *commissioner*~~{executive director}~~ shall have such additional powers and duties as may be provided by other laws of this state.

➔Section 925. KRS 304.2-105 is amended to read as follows:

Notwithstanding any other provision of law, to the extent authorized by the *commissioner*~~{executive director}~~ by administrative regulation, a licensed agent, producer, broker, or insurer has the power to engage in any insurance activity that financial institutions chartered by or otherwise subject to the jurisdiction of the federal government are authorized to engage in according to federal law or regulation or by a court of competent jurisdiction.

➔Section 926. KRS 304.2-110 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of this code. No such rule or regulation shall extend, modify, or conflict with any law of this state or the reasonable implications thereof.
- (2) No penalty shall apply to any act done or omitted in good faith in conformity with any such rule or regulation, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

➔Section 927. KRS 304.2-120 is amended to read as follows:

- (1) In general, orders and notices of the *commissioner*~~{executive director}~~ shall be issued in accordance with this chapter. Notices, recommended orders, and final orders issued as a result of an administrative hearing shall be issued in accordance with KRS Chapter 13B.
- (2) Orders and notices of the *commissioner*~~{executive director}~~ shall be effective only when in writing signed by the *commissioner*~~{executive director}~~ or by the *commissioner's*~~{executive director's}~~ authority.
- (3) Every order of the *commissioner*~~{executive director}~~ shall state its effective date and shall concisely state:

- (a) Its intent or purpose;
 - (b) The grounds on which it is based;
 - (c) The provisions of this code under which action is taken or proposed to be taken; and
 - (d) All other matters required by law.
- (4) All persons holding licenses or certificates of authority from the **commissioner**~~{executive director}~~ shall maintain current residence, business, home office, and administrative addresses, as applicable, on file with the **commissioner**~~{executive director}~~. Licensees shall inform the **commissioner**~~{executive director}~~ in writing in a format acceptable to the **commissioner**~~{executive director}~~ of any change in addresses or legal name within thirty (30) days of the change. As a condition to holding a license or certificate of authority from the **commissioner**~~{executive director}~~, persons holding licenses or certificate of authority are deemed to have consented to service of notices and orders of the **commissioner**~~{executive director}~~ at their addresses on file with the **commissioner**~~{executive director}~~ and any notice or order of the **commissioner**~~{executive director}~~ mailed or delivered to the address on file with the **commissioner**~~{executive director}~~ constitutes valid service of notice or order.

➔Section 928. KRS 304.2-130 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may invoke the aid of the courts through injunction or other proper process, mandatory or otherwise, to enjoin any existing or threatened violation of any provision of this code, or to enforce any proper order made by him **or her** or action taken by him **or her**.
- (2) If the **commissioner**~~{executive director}~~ has reason to believe that any person has violated any provision of this code, or other law applicable to insurance operations, for which criminal prosecution is provided and in his **or her** opinion would be in order, **the commissioner**~~{he}~~ shall give the information relative thereto to the appropriate Commonwealth attorney or to the Attorney General. The Commonwealth attorney or Attorney General shall promptly institute such action or proceedings against such person as in his **or her** opinion the information may require or justify.
- (3) Whenever the **commissioner**~~{executive director}~~ may deem it necessary, he **or she** may employ counsel, or call upon the Attorney General of this state for legal counsel and such assistance as may be necessary.
- (4) The Attorney General upon request of the **commissioner**~~{executive director}~~ is authorized to proceed in the courts of any other state or in any federal court or agency to enforce an order or decision in any court proceeding or in any administrative proceeding before the **commissioner**~~{executive director}~~.

➔Section 929. KRS 304.2-140 is amended to read as follows:

Any person who willfully violates any rule, regulation, subpoena, or order of the **commissioner**~~{executive director}~~ or any provision of this code shall be subject to suspension or revocation of certificate of authority or license, or administrative fine or both.

➔Section 930. KRS 304.2-150 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall carefully preserve in the **department**~~{office}~~ and in permanent form, a correct account of all his **or her** transactions and of all fees and moneys received by him **or her** by virtue of his **or her** office, together with all financial statements, examination reports, correspondence, filings, and documents duly received by the **department**~~{office}~~. The **commissioner**~~{executive director}~~ shall hand the same over to his **or her** successor in office.
- (2) The **commissioner**~~{executive director}~~ shall keep a suitable record of all insurer certificates of authority and of all licenses issued under this code, together with all applicable suspensions and revocations and of the causes thereof.
- (3) Unless otherwise provided by law, records of the **department**~~{office}~~ shall be open to the extent provided by the Kentucky Open Records Act, KRS 61.872 to 61.884:
 - (a) The following records shall be open:
 - 1. Rate and form filings and information filed in support thereof;
 - 2. Other records as provided by law; and

3. All information filed by the **department**~~{office}~~ with the National Association of Insurance Commissioners, which that association makes available;
- (b) The following records shall be closed:
 1. All information received in confidence from insurance supervisory officials of other states or countries, or the National Association of Insurance Commissioners, including, but not limited to, information from the insurance regulatory information system. However, records described in this paragraph may be used by the **commissioner**~~{executive director}~~ in enforcement prosecutions and proceedings for disciplinary action, and may be disclosed to other law enforcement authorities; and
 2. Other records as provided by law; and
- (c) When inspection of **department**~~{office}~~ records is denied, any person challenging the denial shall follow the procedures set forth in the Kentucky Open Records Act, KRS 61.872 to 61.884.
- (4) After five (5) years, the **commissioner**~~{executive director}~~ may destroy unneeded or obsolete records and filings in the **department**~~{office}~~.
- (5) The **department**~~{office}~~ shall not charge a fee inconsistent with fees charged by other state agencies for copies of records requested by the public pursuant to this section.

➔Section 931. KRS 304.2-160 is amended to read as follows:

Each written and signed complaint received by the **Department**~~{Office}~~ of Insurance shall be recorded by the **department**~~{office}~~, including the subsequent disposition thereof, and maintained for a period of not less than five (5) years. The records of such complaints shall be indexed whenever applicable both by the name of the insurer and by the name of the licensee, including agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, life settlement broker or provider, or consultant involved. The **commissioner**~~{executive director}~~ shall consider such complaints before issuing or renewing any certificate of authority or license.

➔Section 932. KRS 304.2-165 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall review, and investigate where applicable, all written complaints involving entities or individuals engaged in the business of insurance in Kentucky.
- (2) The **commissioner**~~{executive director}~~ shall send a copy of the complaint to the entity or individual and the entity or individual shall send a written or electronic message response to the **commissioner**~~{executive director}~~ within fifteen (15) calendar days from the date of the **commissioner's**~~{executive director's}~~ letter.
- (3) Upon review of a complaint, the **commissioner**~~{executive director}~~ shall make a finding to the entity or individual and the complainant.
- (4) This section shall not limit the power of the **commissioner**~~{executive director}~~ to exercise any other authority under this code as to an insurance dispute.

➔Section 933. KRS 304.2-170 is amended to read as follows:

- (1) Upon the request of any person and payment of the applicable fee, the **commissioner**~~{executive director}~~ shall furnish a certified copy of any record or document in the **department**~~{office}~~ which is then subject to public inspection, as provided in subsection (3) of KRS 304.2-150.
- (2) Reproductions of records or documents on file in the **department**~~{office}~~, when duly certified by the **commissioner**~~{executive director}~~, shall be received in evidence in all proceedings and courts equally and in like manner as if they were the originals, and shall have the same effect and force as such originals, as in other cases provided by law or rule of court.

➔Section 934. KRS 304.2-190 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may have the directory of authorized insurers, of licensed insurance representatives, license examination material, insurance laws and related laws and regulations under his **or her** administration published in pamphlet form from time to time, and may fix a price for each copy not to exceed one hundred twenty-five percent (125%) of cost.

- (2) The *commissioner*~~[executive director]~~ shall account for and deposit all moneys so received in the manner provided under KRS 304.4-020.

➔Section 935. KRS 304.2-195 is amended to read as follows:

- (1) The *commissioner*~~[executive director]~~ may enter into interstate compacts for issuing certificates of authority to insurers if the *commissioner*~~[executive director]~~ determines that:
- (a) Each state participating in the compact has requirements for issuing certificates of authority that provide protections substantially similar to or greater than the requirements of this subtitle; or
 - (b) The interstate compact contains requirements for issuing certificates of authority that provide protections substantially similar to or greater than the requirements of this subtitle.
- (2) In lieu of the documents required in KRS 304.3-150 to be filed with an application for certificate of authority, the *commissioner*~~[executive director]~~ may accept documentation in accordance with the terms of the interstate compact.
- (3) The *commissioner*~~[executive director]~~ may issue certificates of authority to insurers in accordance with the terms of the interstate compact.

➔Section 936. KRS 304.2-200 is amended to read as follows:

- (1) The *commissioner*~~[executive director]~~ may furnish on request of the insurance supervisory official of any state, province or country any information which it is *the commissioner's*~~his~~ duty by law to ascertain respecting authorized insurers.
- (2) The *commissioner*~~[executive director]~~ may be a member of the National Association of Insurance Commissioners or any successor organization, and may participate in and support other cooperative activities of public officers having supervision of the business of insurance.

➔Section 937. KRS 304.2-205 is amended to read as follows:

- (1) The provisions of this section apply to all domestic, foreign, and alien insurers fraternal benefit societies, health maintenance organizations, and nonprofit hospital, medical-surgical, dental, and health service corporations authorized to transact business pursuant to this chapter.
- (2) (a) Each domestic, foreign, and alien insurer and fraternal benefit society, health maintenance organization, and nonprofit hospital, medical-surgical, dental, and health service corporation authorized to transact business pursuant to this chapter shall annually on or before March 1 of each year file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with additional filings as prescribed by the *commissioner*~~[executive director]~~, for the preceding year. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the *commissioner*~~[executive director]~~ and shall include the signed jurat page and the life and health actuarial certification. Any amendments or additions to the annual statement filing subsequently filed with the *commissioner*~~[executive director]~~ shall also be filed with the National Association of Insurance Commissioners;
- (b) Foreign insurers, health maintenance organizations, and fraternal benefit societies that are domiciled in states which have laws substantially similar to paragraph (a) of this subsection shall be deemed in compliance with this section; and
- (c) Nothing contained in this section shall be deemed to require anyone filing documents with the National Association of Insurance Commissioners to pay any filing fee for a filing.
- (3) Members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, National Association of Insurance Commissioners employees, and all others charged with the responsibility of collecting, reviewing, analyzing, or disseminating the information developed from the filing of the annual statement convention blanks shall not be subject to civil liability for defamation or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected from the filings required by this section while acting in good faith.

➔Section 938. KRS 304.2-210 is amended to read as follows:

- (1) As used in KRS 304.2-210 to 304.2-300, unless the context requires otherwise, "examination workpaper" means a written or recorded document, note, memorandum, critique, comment, recommendation, or other information copied, established, created, or retained by the **commissioner**~~{executive director}~~ or his designee for the purpose of conducting an examination or drafting an examination report.
- (2) For the purpose of determining financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations, and compliance with law, the **commissioner**~~{executive director}~~ shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as reasonably necessary. He shall so examine each domestic insurer not less frequently than every three (3) years. Examination of a reciprocal insurer may include examination of its attorney-in-fact as to its transactions relating to the insurer. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States, except as the **commissioner**~~{executive director}~~ otherwise requires.
- (3) In scheduling and determining the nature, scope, and frequency of the examinations, the **commissioner**~~{executive director}~~ shall consider the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the Examiner's Handbook adopted by the National Association of Insurance Commissioners.
- (4) For purposes of completing an examination of an insurer, the **commissioner**~~{executive director}~~ may examine or investigate any person or the business of any person, insofar as the examination or investigation is, in the sole discretion of the **commissioner**~~{executive director}~~, necessary and material to the examination of the insurer.
- (5) The **commissioner**~~{executive director}~~ shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this state.
- (6) In lieu of making his own examination, the **commissioner**~~{executive director}~~ may, in his discretion, accept a full report of the most recently completed examination of a foreign, or alien, insurer, certified to by the insurance supervisory official of another state. Reports shall only be accepted if:
 - (a) The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or
 - (b) The examination is performed under the supervision of an accredited insurance department or with the participation of one (1) or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.
- (7) As far as practical, the examination of a foreign or alien insurer shall be made in cooperation with the insurance supervisory officers of other states in which the insurer transacts business, and for the purpose thereof, the **commissioner**~~{executive director}~~ may participate in joint examinations of insurers or be represented in an examination by an examiner of another state.

➔Section 939. KRS 304.2-220 is amended to read as follows:

For the purpose of ascertaining compliance with law, or relationships and transactions between any person and any insurer or proposed insurer, the **commissioner**~~{executive director}~~ may as often as reasonably necessary examine the accounts, records, documents, and transactions pertaining to or affecting the insurance affairs or proposed insurance affairs and transactions of:

- (1) Any insurance holding company; or person holding the shares of voting stock or policyholder proxies of an insurer as voting trustee or otherwise, for the purpose of controlling the management thereof;
- (2) Any insurance agent, surplus lines broker, adjuster, consultant, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, or any person holding himself *or herself* out as any of the foregoing;
- (3) Any person having a contract under which he *or she* enjoys by terms or in fact the exclusive or dominant right to manage or control the insurer, as voting trustee, or otherwise; and

- (4) Any person in this state engaged in, or proposing to be engaged in this state in, or holding himself *or herself* out in this state as so engaging or proposing, or in this state assisting in the promotion, formation or financing of an insurer or insurance holding corporation, or corporation or other group to finance an insurer or the production of its business.

➔Section 940. KRS 304.2-230 is amended to read as follows:

- (1) Whenever the **commissioner**~~[executive director]~~ determines to examine the affairs of any person, he shall designate one or more examiners and instruct them as to the scope of the examination. The examiner shall, upon demand, exhibit his official credentials to the person under examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The **commissioner**~~[executive director]~~ may also employ other guidelines or procedures as the **commissioner**~~[executive director]~~ deems appropriate.
- (2) (a) An examiner may not be appointed by the **commissioner**~~[executive director]~~ if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination. This subsection shall not be construed to automatically preclude an examiner from being:
1. A policyholder or claimant under an insurance policy;
 2. A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
 3. An investment owner in shares of regulated diversified investment companies; or
 4. A settler or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.
- (b) Notwithstanding the requirements of paragraph (a) of this subsection, the **commissioner**~~[executive director]~~ may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions even though these persons may from time to time be similarly employed or retained by persons subject to examination.
- (3) Any person performing an examination of an insurer on behalf of, and as called by, the **commissioner**~~[executive director]~~ shall have official immunity and shall be immune from suit and liability, both personally and in their official capacities, for any claim for damage to, or loss of property, or personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the examiner or any assistant or contractor arising out of, or by reason of, their duties or employment. Nothing in this subsection shall be construed to hold the examiner or any assistant or contractor immune from suit and liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the examiner, any assistant, or contractor.
- (4) The **commissioner**~~[executive director]~~ shall conduct such examination in an expeditious, fair and impartial manner.
- (5) Upon any such examination the **commissioner**~~[executive director]~~, or the examiner if specifically so authorized in writing by the **commissioner**~~[executive director]~~, shall have power to issue subpoenas, administer oaths, and to examine under oath any individual as to any matter relevant to the affairs under examination or relevant to the examination.
- (6) Every person being examined, its officers, attorneys, employees, agents and representatives shall make freely available to the **commissioner**~~[executive director]~~ or his examiners the accounts, records, documents, files, information, assets and matters of such person in his possession or control relating to the subject of the examination and shall facilitate the examination.
- (7) Neither the **commissioner**~~[executive director]~~ nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices or place of such person except with the written consent of such person in advance of such removal or pursuant to an order of court duly obtained. This provision shall not be deemed to affect the making and removal of copies or abstracts of any such record, account, document or file.

- (8) Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority pursuant to this section is guilty of a violation of this code.
- (9) The **commissioner**~~{executive director}~~ may terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to an examination shall be prima facie evidence in any legal or regulatory action. The **commissioner**~~{executive director}~~ may use and, if appropriate, may make public any final or preliminary examination report, any examiner's workpapers or other documents, or any other information discovered or developed during the course of the examination in the furtherance of any legal or regulatory action that the **commissioner**~~{executive director}~~ may, in his sole discretion, deem appropriate. Nothing in this subsection shall be binding upon the court in making determinations about relevancy and admissibility in any civil action pertaining to any such documents.

➔Section 941. KRS 304.2-240 is amended to read as follows:

- (1) If the **commissioner**~~{executive director}~~ deems it necessary to value any asset involved in such an examination, he *or she* may make written request of the person being examined to appoint one or more appraisers who by reason of education, experience or special training and disinterest, are competent to appraise the asset. Selection of any such appraiser shall be subject to the written approval of the **commissioner**~~{executive director}~~. If no such appointment is made within twenty (20) days after the request therefor was delivered to such person, the **commissioner**~~{executive director}~~ may appoint the appraiser or appraisers.
- (2) Any such appraisal shall be expeditiously made, and a copy thereof furnished to the **commissioner**~~{executive director}~~ and to the person being examined.
- (3) The reasonable expense of the appraisal shall be borne by the person being examined.

➔Section 942. KRS 304.2-250 is amended to read as follows:

- (1) Upon completion of an examination, the examiner in charge shall make a true report thereof which shall comprise only facts appearing upon the books, records or other documents of the person examined, or as ascertained from the sworn testimony of its officers or agents or other individuals examined concerning its affairs, and such conclusions and recommendations as may reasonably be warranted from such facts.
- (2) The report of examination of an insurer shall be prima facie evidence in any action or proceeding for the receivership, conservation or liquidation of the insurer brought in the name of the state against the insurer, its officers or agents upon the facts stated therein, and whether or not the report has then been filed in the **department**~~{office}~~ as provided in KRS 304.2-260.
- (3) Except as provided in KRS 304.2-260 and 304.2-270, documents, materials, or other information, including examination workpapers, in the possession or control of the **commissioner**~~{executive director}~~ that are created, produced, or obtained by or disclosed to the **commissioner**~~{executive director}~~ or any other person in the course of an examination made under this subtitle, or in the course of an examination made under KRS 304.2-210 to 304.2-300, or in the course of analysis by the **commissioner**~~{executive director}~~ of the financial condition, or market conduct of an insurer shall be confidential by law and privileged but may be used, received, and shared in accordance with KRS 304.2-210.

➔Section 943. KRS 304.2-260 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall deliver a copy of the examination report to the person examined, together with a notice affording the person twenty (20) days or additional reasonable period as the **commissioner**~~{executive director}~~ for good cause may allow within which to review the report and recommend changes therein.
- (2) If so requested by the person examined, within the period allowed under subsection (1) of this section, or if deemed advisable by the **commissioner**~~{executive director}~~ without a request, the **commissioner**~~{executive director}~~ shall hold a hearing relative to the report and shall not file the report in the **department**~~{office}~~ for public inspection until after the hearing and his order thereon, except that the **commissioner**~~{executive director}~~ may furnish a copy of the report to the Governor or Attorney General of the state pending final decision thereon.

- (3) If no hearing has been requested or held, the **commissioner**~~{executive director}~~ shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order within sixty (60) days of the end of the period allowed under subsection (1) of this section. The order of the **commissioner**~~{executive director}~~ shall:
- (a) Adopt the examination report as filed or with modifications or corrections. If the examination report reveals that the person is operating in violation of or has violated any law, administrative regulation, or prior order of the **commissioner**~~{executive director}~~, the **commissioner**~~{executive director}~~ may order the person to take action to cure the violations and impose penalties as the **commissioner**~~{executive director}~~ considers necessary and appropriate; or
 - (b) Reject the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling as provided in KRS 304.2-250; or
 - (c) Call for a hearing for purposes of obtaining additional documentation, data, information, and testimony.
- (4) Upon entry of the **commissioner's**~~{executive director's}~~ order, the examination report, with modifications, if any, thereof as the **commissioner**~~{executive director}~~ deems proper, shall be filed in the **department**~~{office}~~ for public inspection, except that the **commissioner**~~{executive director}~~ may withhold from public inspection any examination report for so long as he deems the withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest and except that the **commissioner**~~{executive director}~~ shall withhold from public inspection any examination report of a domestic insurer as provided in KRS 304.2-270.
- (5) An examination workpaper shall be deemed confidential information and shall not be available for public inspection, except that the **commissioner**~~{executive director}~~ may in the **commissioner's**~~{director's}~~ discretion disclose an examination workpaper, the content of a preliminary examination report, examination results, or any other matter resulting to an examination report to the department of insurance of any other state or country, or to the National Association of Insurance Commissioners, or to law enforcement officials of this or any other state, or to an agency of this state or any other state or the federal government at any time, if the agency or office receiving the report or matters relating to the report agrees in writing to hold the information confidential and in a manner consistent with this section.
- (6) The **commissioner**~~{executive director}~~ shall forward to the person examined a copy of the examination report as filed for public inspection, together with the order of the **commissioner**~~{executive director}~~.
- (7) If the report concerns the examination of a domestic insurer, a copy of the report, when filed for public inspection, or if withheld from public inspection in accordance with KRS 304.2-270 or subsection (4) of this section, together with the order of the **commissioner**~~{executive director}~~, shall be presented by the insurer's chief executive officer to the insurer's board of directors or similar governing body at a meeting thereof which shall be held within ninety (90) days next following receipt of the report and order. A copy of the report and order shall also be furnished by the secretary of the insurer, if incorporated, or by the attorney-in-fact if a reciprocal insurer, or Lloyd's plan insurer, to each member of the insurer's board of directors or board of governors, if a reciprocal insurer, or Lloyd's plan insurer, and the certificate of the secretary or attorney-in-fact, which shall be filed promptly with the **department**~~{office}~~, that a copy of the examination report and order, has been so furnished shall be deemed to constitute knowledge of the contents of the report and order by each member.
- (8) The report when so filed in the **department**~~{office}~~ shall be admissible in evidence in any action or proceeding brought by the **commissioner**~~{executive director}~~ against the person examined, or against its officers, employees, or agents. In any action or proceeding brought by the **commissioner**~~{executive director}~~, the **commissioner**~~{executive director}~~ or his examiners may, however, at any time testify and offer proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the **department**~~{office}~~.
- (9) If the **commissioner**~~{executive director}~~ determines that regulatory action is appropriate as a result of an examination, he or she may initiate any proceedings or actions provided by law.

➔Section 944. KRS 304.2-270 is amended to read as follows:

The report of examination of a domestic insurer, although filed in the **department**~~{office}~~ as provided in KRS 304.2-260, shall nevertheless not be for public inspection except as to those portions of the report showing the insurer's

current financial condition. The examination workpapers shall be deemed confidential information and shall not be available for public inspection, except that the *commissioner*~~{executive director}~~ may in his discretion disclose the content of an examination report, preliminary examination report, examination results, or any other matter relating to an examination report, to the *department*~~{office}~~ of insurance of any other state or country, or to law enforcement officials of this or any other state, or to an agency of this or any other state or the federal government at any time, if the agency or office receiving the report or matters relating to the report agrees in writing to hold it confidential and in a manner consistent with this section and KRS 304.2-260.

➔Section 945. KRS 304.2-280 is amended to read as follows:

For the conduct of or assistance in examinations under this chapter the *commissioner*~~{executive director}~~ shall appoint as examiners only individuals who by reason of education, experience, or special training are competent to perform the duties and fulfill the responsibilities of an insurance examiner. In the selection of examiners the *commissioner*~~{executive director}~~ shall give due consideration to standards and qualifications therefor recommended by the National Association of Insurance Commissioners or any successor organization thereto.

➔Section 946. KRS 304.2-290 is amended to read as follows:

- (1) The expense of examination shall be borne by the person examined. Such expense shall include only the reasonable and proper lodgings, meals and travel expenses of the *commissioner*~~{executive director}~~ and *the commissioner's*~~{his}~~ examiners and assistants, including expert assistance, reasonable compensation as to such examiners and assistants and incidental expense as necessarily incurred in the examination. As to expense and compensation involved in any such examination the *commissioner*~~{executive director}~~ may give due consideration to scales and limitations recommended by the National Association of Insurance Commissioners and outlined in the examination manual sponsored by that association.
- (2) Such person examined shall promptly pay to the *commissioner*~~{executive director}~~ the expenses of the examination upon presentation by *the commissioner*~~{him}~~ of a reasonably detailed written statement thereof.

➔Section 947. KRS 304.2-300 is amended to read as follows:

- (1) There is created in the State Treasury the "Examination Expense Revolving Fund" for the use of the *department*~~{office}~~. The *commissioner*~~{executive director}~~ shall promptly deposit all funds received under a statute requiring examination expenses to be paid by the party examined and deposited with the State Treasurer to the credit of the fund.
- (2) Moneys for travel, per diem, compensation and other necessary and authorized expenses incurred by an examiner or other *department*~~{office}~~ representative in the examination of any person required to pay, and making payment of, the expense of examination pursuant to KRS 304.2-290 shall be paid out of the examination expense revolving fund, upon approval of the *commissioner*~~{executive director}~~.
- (3) Moneys for travel and other necessary expenses assessed pursuant to KRS 304.8-190 shall be paid out of the examination expense revolving fund upon approval of the *commissioner*~~{executive director}~~.
- (4) If any amount in the revolving fund remains unexpended at the end of any fiscal year, that amount shall not lapse, but shall remain credited to the account and may be used during the succeeding year or years.

➔Section 948. KRS 304.2-310 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ may hold a hearing, without request by others, for any purpose within the scope of this code.
- (2) The *commissioner*~~{executive director}~~ shall hold a hearing:
 - (a) If required by any other provision of this code; or
 - (b) Upon written application for a hearing by a person aggrieved by any act, threatened act, or failure of the *commissioner*~~{executive director}~~ to act, or by any report, administrative regulation, or order of the *commissioner*~~{executive director}~~ (other than an order for the holding of a hearing, or a final order entered after a hearing, of which hearing the person had notice). Any application for a hearing shall be filed in the *department*~~{office}~~ within sixty (60) days after the person knew or reasonably should have known, of the act, threatened act, failure, report, administrative regulation, or order, unless a different period is provided for by other laws applicable to the particular matter, in which case the other law shall govern.

- (3) Any application for a hearing shall briefly state the respects in which the applicant is so aggrieved, together with the grounds to be relied upon as a basis for the relief to be sought at the hearing.
- (4) If the **commissioner**~~[executive director]~~ finds that the application is made in good faith, that the applicant would be so aggrieved if his *or her* grounds are established, **the commissioner**~~[he]~~ shall hold the hearing in accordance with KRS Chapter 13B.
- (5) Pending the hearing and the issuance of the final order resulting from the hearing, the **commissioner**~~[executive director]~~ shall suspend or postpone the effective date of **the**~~[his]~~ previous action.

➔Section 949. KRS 304.2-320 is amended to read as follows:

- (1) Notice of hearings shall be given in accordance with the provision of this chapter and KRS Chapter 13B. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the **commissioner**~~[executive director]~~ shall give notice to all persons whose pecuniary interest, to the **commissioner's**~~[executive director's]~~ knowledge or belief, are to be directly and immediately affected by the hearing.
- (2) If any hearing is to be held for consideration of matters which, under subsection (1) of this section, would otherwise require separate notice to more than thirty (30) persons, in lieu of other notice the **commissioner**~~[executive director]~~ may give notice of the hearing by publication pursuant to KRS Chapter 424; but the **commissioner**~~[executive director]~~ shall mail this notice to all persons who had requested the same in writing in advance and have paid to the **commissioner**~~[executive director]~~ the reasonable amount fixed by him *or her* to cover the cost thereof.

➔Section 950. KRS 304.2-340 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ or **an**~~[his]~~ authorized designee conducting a hearing, examination, or investigation by his *or her* authority shall have power to subpoena witnesses, compel their attendance, administer oaths, examine any person under oath relative to the subject of the hearing, examination, or investigation, and to compel any person to subscribe to his *or her* testimony after it has been correctly reduced to writing, and, in connection therewith, to require the production of any books, papers, records, correspondence, or other documents which **the commissioner**~~[he]~~ deems relevant to the inquiry.
- (2) A subpoena issued pursuant to this section shall have the same force and effect as if issued from a court of record.
- (3) A subpoena issued pursuant to this section shall be served in the same manner as if issued from a court of record, except a subpoena may be served upon any person holding a license or a certificate of authority from the **commissioner**~~[executive director]~~ or upon the employee of the person or entity in the same manner as other orders and notices are served, as provided in KRS 304.2-120.
- (4) If any individual or licensee refuses to comply with a subpoena or to testify as to any matter concerning which **the individual or licensee**~~[he]~~ may be lawfully interrogated:
 - (a) The Circuit Court of the county wherein the examination, investigation, or hearing is being conducted or of the county wherein the individual or licensee resides, on the **commissioner's**~~[executive director's]~~ application may, after summary hearing, issue an order requiring the individual or licensee to comply with the subpoena and to testify; and failure to obey an order may be punished by the court as a contempt thereof; and
 - (b) The **commissioner**~~[executive director]~~ may suspend or revoke the certificate of authority or license of any licensee or impose an administrative fine, or both, for failure of the licensee or the employee of any licensee to comply.
- (5) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a Circuit Court, but no officer, director, agent or employee of an insurer or person being examined or investigated shall be entitled to witness or mileage fees.
- (6) Any individual willfully testifying falsely under oath as to any material to any examination, investigation, or hearing shall upon conviction thereof be guilty of perjury.

➔Section 951. KRS 304.2-350 is amended to read as follows:

- (1) If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the *commissioner*~~[executive director]~~, his *or her* deputy or examiner, or in any proceeding or action before any court upon a charge of violation of this code, on the ground that the testimony or evidence required of *the person*~~[him]~~ may tend to incriminate *the person*~~[him]~~ or subject *the person*~~[him]~~ to a penalty or forfeiture, and shall notwithstanding be directed to give testimony or produce evidence, *the person*~~[he]~~ must, if so directed by the *commissioner*~~[executive director]~~ and the Attorney General, nonetheless comply with the direction; but *the person*~~[he]~~ shall not thereafter be prosecuted or subjected to any criminal penalty or forfeiture for or on account of any transaction, matter, or thing concerning which *the person*~~[he]~~ may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against *the person*~~[him]~~ upon any criminal action, investigation, or proceeding; except, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by *the person*~~[him]~~ in giving testimony, and the testimony or evidence so given or produced shall be admissible against *the person*~~[him]~~ upon any criminal action, investigation, or proceeding concerning perjury.
- (2) Any individual may execute, acknowledge, and file in the *department*~~[office]~~ a statement expressly waiving immunity or privilege in respect to any transaction, matter, or thing specified in a statement, and thereupon the testimony of the individual or the evidence in relation to the transaction, matter, or thing may be received or produced before any judge, court, tribunal, grand jury, or otherwise, and if so received or produced the individual shall not be entitled to any immunity or privileges on account of any testimony he *or she* may so give or evidence so produced.

➔Section 952. KRS 304.2-360 is amended to read as follows:

- (1) In the conduct of hearings under this code and making a final order thereon, the *commissioner*~~[executive director]~~ shall act in a quasijudicial capacity and in accordance with the provisions of this chapter and KRS Chapter 13B.
- (2) With respect to hearings held concerning merger, consolidation, bulk reinsurance, conversion, affiliation, or change of control of a domestic insurer as provided in Subtitle 24, or in Subtitle 37 of this chapter, where notice of the hearing was given to all stockholders and policyholders or to all stockholders of an insurer involved, the *commissioner*~~[executive director]~~ is required to give a copy of the order on hearing to the corporation and insurer parties, to intervening parties, to a reasonable number of stockholders or policyholders as representative of the class, and to other parties only upon written request of such parties.
- (3) A final order may require that restitution be made to any person aggrieved by a violation of any provisions of this chapter, any statute administered by the *commissioner*~~[executive director]~~, or any regulation of the *commissioner*~~[executive director]~~.
- (4) An order prepared by the *commissioner's*~~[executive director's]~~ designee and approved in writing by the *commissioner*~~[executive director]~~ shall be considered the *commissioner's*~~[executive director's]~~ order.

➔Section 953. KRS 304.2-370 is amended to read as follows:

- (1) An appeal from the *commissioner*~~[executive director]~~ shall be taken only from a final order on hearing and in accordance with KRS Chapter 13B.
- (2) The appeal shall be granted as a matter of right, and shall be taken to the Franklin Circuit Court.

➔Section 954. KRS 304.2-400 is amended to read as follows:

- (1) There is created in the State Treasury a trust fund designated the "Insurance Regulatory Trust Fund" to which shall be credited all payments received under KRS 304.4-010.
- (2) The moneys so received and deposited in the insurance regulatory trust fund shall be appropriated for use only by the *department*~~[office]~~ to defray the expenses of the *department*~~[office]~~ in discharge of its administrative and regulatory powers and duties as prescribed by law subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state moneys. The *department*~~[office]~~ shall be responsible for the proper expenditure of these moneys as provided by law.

➔Section 955. KRS 304.2-410 is amended to read as follows:

- (1) It is the responsibility of the *department*~~{office}~~, which is charged with the administration of the insurance regulatory trust fund, to make such moneys available for investment as fully as is consistent with the cash requirements of the fund and to authorize investment of such moneys by the agency or agencies of the Commonwealth of Kentucky authorized to make investments and reinvestments for and on behalf of any agency of the Commonwealth of Kentucky.
- (2) Monthly, and more often as circumstances require, the *department*~~{office}~~ shall notify the investing authority of the amount available for investment, and the moneys shall be invested by the investing authority according to the laws relating to state investments. Such notification shall include the name and number of the fund for which the investments are to be made and the life of the investment if the principal sum is to be required for meeting obligations.

➔Section 956. KRS 304.2-430 is amended to read as follows:

Nothing in KRS 304.2-400 to 304.2-420 shall prevent continuing the practice of paying any of the direct or indirect expenses incurred by the *department*~~{office}~~, including, but not limited to, those involving salaries, retirement, and Social Security of officers, employees, or representatives of the *department*~~{office}~~, or any other expenses by appropriations from the general fund. However, the general fund shall be reimbursed for any such payments made on or after July 15, 1986, as well as any money transferred to the insurance regulatory trust fund in connection with the initial funding of the insurance regulatory trust fund, and shall be repaid by transfer from the insurance regulatory trust fund to the general fund no later than the end of the next biennium.

➔Section 957. KRS 304.2-440 is amended to read as follows:

- (1) As used in this section, "insurer" means assessment or cooperative insurers, insurers, fraternal benefit societies, nonprofit hospital, medical-surgical, dental, and health service corporations, health maintenance organizations, and prepaid dental plan organizations.
- (2) If the *commissioner*~~{executive director}~~ finds that there are insufficient funds for operations of the *department*~~{office}~~, *the commissioner*~~{he}~~ may make an assessment on all insurers not to exceed .000235 of net direct written premium from Kentucky as reported in insurers' annual statements for the immediately preceding calendar year. In making each assessment, the *commissioner*~~{executive director}~~ may establish a minimum assessment. Assessments made pursuant to this section shall be in addition to all other taxes, assessments, and fees.
- (3) Overdue payment of any assessments shall bear interest at the tax interest rate as set forth in KRS 131.010(6) from the date due until paid. Any unpaid assessment may be recovered in an action brought thereon in the name of the *department*~~{office}~~ in the Franklin Circuit Court or in any other court of appropriate jurisdiction. Such interest penalty is separate from other penalties applicable to violations of KRS Chapter 299 and this chapter and such an action is separate from any other means of collecting an assessment under KRS Chapter 299 or this chapter.
- (4) All funds derived from assessments made pursuant to this section shall be deposited in the insurance regulatory trust fund. However, funds derived from assessments made pursuant to this section shall not lapse to the general fund, but shall at all times be available to defray expenses of the *department*~~{office}~~ in discharge of its administrative and regulatory powers.

➔Section 958. KRS 304.3-070 is amended to read as follows:

- (1) To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with this code and with its charter powers, and must be an incorporated stock or mutual insurer, or a combined stock and mutual life insurer, or a reciprocal insurer, or Lloyd's plan insurer, of the same general type as may be formed as a domestic insurer under this code, except that:
 - (a) No foreign insurer shall be authorized to transact insurance in this state which does not maintain reserves as required by Subtitle 6 as applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States; or which transacts business anywhere in the United States on the assessment plan, or stipulated premium plan, or any similar plan.
 - (b) No insurer shall be authorized to transact a kind of insurance in this state unless duly authorized or qualified to transact such insurance in the state or country of its domicile.
 - (c) No insurer shall be authorized to transact in this state any kind of insurance which is not within the definition as set forth in Subtitle 5.

- (d) No such authority shall be granted or continued as to any insurer while in arrears to the state for fees, licenses, taxes, assessments, fines or penalties accrued on business previously transacted in this state.
 - (e) A combined stock and mutual life insurer must maintain separate accounting for income, expenses, assets, liabilities and surplus funds allocated between the "mutual" branch and the "stock" branch, in a manner as provided by a regulation to be promulgated by the *commissioner*~~[executive director]~~. The "mutual" branch shall not invest any moneys in equity securities of the "stock" branch, nor shall it loan any moneys to the "stock" branch. The "stock" branch shall not loan any moneys to the "mutual" branch.
 - (f) A life insurer in forming the "stock" branch or the "mutual" branch of a combined stock and mutual life insurer, must possess the capital funds required pursuant to KRS 304.3-120 for the stock branch, and must possess the surplus funds required under KRS 304.24-100 for the mutual branch. The *commissioner*~~[executive director of insurance]~~ shall not grant a certificate of authority to any life insurer to conduct its business as a combination stock and mutual life insurer, unless the aforesaid capitalization requirements are fulfilled.
- (2) In determining the solvency of or impairment to any foreign or alien insurer which is requesting the issuance or continuance of any certificate of authority to do business in this state, the *commissioner*~~[executive director]~~ may admit as assets only those items which would qualify as admitted assets for a domestic insurer similarly situated.

➔Section 959. KRS 304.3-080 is amended to read as follows:

- (1) No certificate of authority or license to transact any kind of insurance business in this state shall be issued, renewed or continued in effect to any domestic, foreign, or alien insurance company or other insurance entity which is owned, or financially controlled in whole or in part by any state of the United States, or by a foreign government or by any political subdivision of either, or which is an agency of such state, government or political subdivision, unless such company or entity was so owned, controlled or constituted prior to January 1, 1957, and was authorized to do business in this state on or prior to January 1, 1957.
- (2) The *commissioner*~~[executive director]~~ shall not grant or continue authority to transact insurance in this state to any insurer or proposed insurer after a hearing held thereon, if it appears that:
 - (a) Any director, officer or other individual materially part of the management is found by *the commissioner*~~[him]~~ after investigation or upon reliable information to be incompetent, or dishonest, or untrustworthy, or of unfavorable business repute; or
 - (b) The managers are so lacking in insurance company managerial experience in operations of the kind proposed in this state as to make such operation, currently or prospectively, hazardous to or contrary to the best interests of the insurance-buying or investing public of this state; or
 - (c) *The commissioner*~~[He]~~ has good reason to believe it is affiliated directly or indirectly through ownership, control, management, reinsurance transactions or other business relations with any person or persons of unfavorable business repute; or
 - (d) Its business operations are or have been marked, to the injury of insurers, stockholders, policyholders, creditors or the public, by illegality, or by manipulation of assets, or of accounts, or of reinsurance, or by bad faith.

➔Section 960. KRS 304.3-090 is amended to read as follows:

No foreign insurer shall be authorized to transact insurance in Kentucky, which has not been issuing its own policies as an authorized insurer for at least three (3) years in its state or country of domicile, unless the insurer is otherwise qualified for a certificate of authority under this code and is:

- (1) The wholly owned subsidiary as defined in KRS 304.37-010(6) of an insurer which is already an authorized insurer in Kentucky; or
- (2) The successor in interest through statutory merger or statutory consolidation, or through bulk reinsurance of substantially all of the insurance risks in this state, of an authorized insurer; or

- (3) An insurer organized solely for the purpose of insuring against earthquake, flood, nuclear radiation, war or other special hazards to property or liability for which, in the opinion of the **commissioner**~~[executive director]~~, adequate provision is not made by insurers already authorized in this state.

➔Section 961. KRS 304.3-100 is amended to read as follows:

- (1) No insurer shall be formed or authorized to transact insurance in this state which has or uses a name which is the same as or deceptively similar to that of another insurer already so authorized, without the written consent of such other insurer.
- (2) No life insurer shall be so authorized which has or uses a name deceptively similar to that of another insurer authorized to transact insurance in this state within the preceding ten (10) years if life insurance policies originally issued by such other insurer are still outstanding in this state, without the written consent of such insurer.
- (3) No insurer shall be formed or authorized to transact insurance in this state which has or uses a name the same as or deceptively similar to the name of any foreign insurer not so authorized if such foreign insurer has within the next preceding twelve (12) months signified its intention to secure an incorporation in this state under such name, or to do business as a foreign insurer in this state under such name, by filing notice of such intention with the **commissioner**~~[executive director]~~, unless the written consent to the use of such name or deceptively similar name has been given by such foreign insurer.
- (4) No foreign insurer seeking admission to this state shall be authorized to transact insurance in this state which has or uses a name the same as or deceptively similar to that of a domestic corporation which has been incorporated as an insurer but has not yet secured a certificate of authority, until the expiration of three (3) years from the date of incorporation of such domestic corporation.
- (5) No insurer shall be so authorized which has or uses a name which tends to deceive or mislead as to the type of organization of the insurer.
- (6) In case of conflict of names between two (2) insurers, or a conflict otherwise prohibited under this section, the **commissioner**~~[executive director]~~ may, after notice to the other insurer, permit (or may require as a condition to the issuance of an original certificate of authority to an applicant insurer) the insurer to use in this state such supplementation or modification of its name or such business name as may reasonably be necessary to avoid the conflict.
- (7) Except as provided in subsection (6) of this section, an insurer shall conduct its business in the name under which the certificate of authority was issued.

➔Section 962. KRS 304.3-110 is amended to read as follows:

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

- (1) A life insurer may grant annuities and may be authorized to transact in addition only health insurance; except, that the **commissioner**~~[executive director]~~ may, if the insurer otherwise qualifies therefor, continue so to authorize any life insurer which immediately prior to June 18, 1970, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and health and annuities. Only an insurer with a certificate of authority authorized to sell life insurance may grant and issue annuity contracts.
- (2) A reciprocal or Lloyd's insurer shall not transact life insurance.
- (3) A title insurer shall be a stock insurer, and shall not transact any other kind of insurance.
- (4) A mortgage guaranty insurer shall be a stock insurer, and shall not transact any other kind of insurance.

➔Section 963. KRS 304.3-120 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, to qualify for authority to transact insurance (as defined in Subtitle 5), an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or unimpaired basic surplus (if a foreign mutual, reciprocal, or Lloyd's insurer), and when first so authorized shall possess initial free surplus, all in amounts not less than as determined from the following table:

Foreign Mutual,
Reciprocal, and

Stock Insurers		Lloyd's Insurers	
Minimum		Minimum	
Required	Initial	Required	Initial
Capital	Free	Basic	Free
Stock	Surplus	Surplus	Surplus
\$1,000,000	\$2,000,000	\$1,000,000	\$2,000,000

- (2) An insurer holding a valid certificate of authority to transact insurance in this state immediately prior to July 15, 1982, may, if otherwise qualified therefor, continue to be so authorized while possessing paid-in capital stock (if a stock insurer) or surplus (if a mutual, reciprocal, or Lloyd's insurer) as required for such authority immediately prior to July 15, 1982. The ~~commissioner~~~~executive director~~ shall not authorize such an insurer to transact any other kinds of insurance unless it then complies with the requirements as to capital and surplus. Notwithstanding the other provisions hereof, the exception provided in this subsection (2) shall cease to apply to any such insurer from and after the date upon which it has accumulated surplus in an amount equal to two hundred percent (200%) of the initial free surplus (if a stock or foreign mutual, reciprocal, or Lloyd's insurer) or the surplus (if a domestic mutual insurer) required under other provisions of this code to qualify for authority to transact the kind or kinds of insurance being transacted by it.
- (3) Each insurer shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000). Insurers holding a valid certificate of authority to transact insurance in this state immediately prior to July 13, 1984, may, if otherwise qualified therefor, continue to be so authorized while possessing additional surplus as required for such authority immediately prior to July 13, 1984. The ~~commissioner~~~~executive director~~ shall not authorize such an insurer to transact any other kinds of insurance unless it complies with this subsection. The exception provided in this subsection shall cease to apply to any insurer from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection.
- (4) As to surplus required for authority to transact one (1) or more kinds of insurance and thereafter to be maintained, domestic mutual legal reserve insurers hereafter formed shall be governed by Subtitle 24 of this chapter.

➔Section 964. KRS 304.3-125 is amended to read as follows:

The ~~commissioner~~~~executive director~~ is hereby granted authority to adopt administrative regulations, up to the standards prescribed by the National Association of Insurance Commissioners, covering requirements for additional capital and surplus based on the kind, type, volume, and nature of insurance business transacted, if and when any regulations are promulgated and adopted by the National Association of Insurance Commissioners as its model regulation on the subject and as a requirement for departmental certification by the association.

➔Section 965. KRS 304.3-140 is amended to read as follows:

- (1) The ~~commissioner~~~~executive director~~ shall not authorize an insurer to transact insurance in this state, other than an alien insurer or a title insurer, unless it makes and thereafter continuously maintains on deposit in this state, through the ~~commissioner~~~~executive director~~, cash or securities eligible for such deposit under the laws of this state, of a fair market value not less than its minimum required capital stock (if a stock insurer) or minimum required basic surplus (if a mutual, reciprocal, or Lloyd's plan insurer), for the protection of the insurer's policyholders or its policyholders and creditors.
- (2) The ~~commissioner~~~~executive director~~ shall not so authorize a title insurer unless it so deposits and maintains such cash or securities of a fair market value not less than its minimum required capital stock as a guaranty fund which shall be held as security for the faithful performance by the insurer of all its undertakings and liabilities under its title policies or other guarantees of title to property.
- (3) The ~~commissioner~~~~executive director~~ shall not authorize an alien insurer unless it so makes and thereafter continuously maintains such a deposit, representing funds in excess of all the insurer's liabilities under insurance contracts in force in the United States of a fair market value of not less than that required under subsection (1) of this section, as to a like foreign insurer. The deposit shall be held in trust for the protection of the insurer's policyholders, or its policyholders and creditors, in the United States.

- (4) In lieu of such a deposit made or maintained in this state, the **commissioner**~~[executive director]~~ may, in his *or her* discretion, accept the certificate in proper form of the public officer having general supervision of insurers in any other state to the effect that a deposit of like quality and amount, or part thereof, by such insurer is being maintained for like purposes in public custody or control pursuant to the laws of such state.
- (5) All such deposits in this state are subject to the applicable provisions of Subtitle 8.

➔Section 966. KRS 304.3-150 is amended to read as follows:

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

- (1) If a corporation, a copy of its charter, together with all amendments thereto, or as restated and amended under the laws of its state or country of incorporation, currently certified by the public official with whom the originals are on file in a state or country.
- (2) A copy of its bylaws, certified by the insurer's secretary.
- (3) If a reciprocal insurer, a copy of the power of attorney of its attorney-in-fact, and copy of its subscribers agreement, if any, both certified by the attorney-in-fact; and if a domestic reciprocal insurer, the declaration provided for in KRS 304.27-060.
- (4) If a Lloyd's plan insurer, the names and addresses of all of the underwriters proposing to engage in the business, along with the number of underwriters which shall not be less than twenty-five (25), and that each underwriter is worth in his *or her* own right not less than twenty thousand dollars (\$20,000) over and above all his *or her* liabilities, along with a statement showing a list of all cash and invested assets owned by the associated underwriters and their value, certified and sworn to by their duly authorized attorney-in-fact.
- (5) A complete copy of its financial statement as of not earlier than the December 31 next preceding in form as customarily used in the United States by like insurers, sworn to by at least two (2) executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state or country of domicile.
- (6) A copy of the report of last examination of the insurer prior to the filing of the application, certified by the public insurance supervisory official of the insurer's state or country of domicile.
- (7) If a foreign or alien insurer, the name and address of the person to whom the Secretary of State shall forward lawful process served upon him *or her*. If a domestic reciprocal insurer, the name and address of the attorney designated pursuant to paragraph (e) of subsection (2) of KRS 304.27-060 shall be deemed to be the person to whom the Secretary of State shall forward lawful process served upon him *or her*. Any judgment against a domestic reciprocal so served shall be binding upon each of the insurer's subscribers as their respective contingent liabilities.
- (8) If a foreign or alien insurer, a certificate of the public insurance supervisory official of its state or country of domicile showing that it is authorized or qualified for authority to transact in a state or country the kinds of insurance proposed to be transacted in this state.
- (9) If an alien insurer, a certificate as to deposit, if to be tendered pursuant to subsection (4) of KRS 304.3-140, and a copy of the trust deed, if any, pertaining to a deposit, certified by the trustee.
- (10) If a foreign insurer, a certificate as to deposit, if to be tendered pursuant to subsection (4) of KRS 304.3-140.
- (11) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records.
- (12) Designation by the insurer of its officers or representatives authorized to appoint and remove its agents in this state.
- (13) If to transact surety insurance, the names and addresses of all its attorneys in fact within this state together with the scope of authority of each attorney-in-fact.

➔Section 967. KRS 304.3-160 is amended to read as follows:

- (1) If upon completion of its application the **commissioner**~~[executive director]~~ finds that the insurer has met the requirements therefor under this code, including KRS 304.3-080, the **commissioner**~~[executive director]~~ may, if he *or she* deems it advisable, issue to the insurer a certificate of authority; otherwise, the **commissioner**~~[executive director]~~ shall issue ~~an~~^{his} order refusing such certificate.
- (2) The certificate of authority, if issued, shall state the insurer's name, the address of its principal office, the state or country of its organization, and the kinds of insurance the insurer is authorized to transact in this state. At the insurer's request, the **commissioner**~~[executive director]~~ may issue a certificate of authority limited to particular types of insurance or coverages within a kind of insurance as defined in Subtitle 5.
- (3) Although issued and delivered to the insurer, the certificate of authority at all times shall be the property of the State of Kentucky. Upon any expiration, suspension, or termination thereof the insurer shall promptly deliver the certificate to the **commissioner**~~[executive director]~~.

➔Section 968. KRS 304.3-170 is amended to read as follows:

Upon written application therefor by the insurer and due cause shown, the **commissioner**~~[executive director]~~ may amend the certificate of authority of an insurer as required by change of name or to show any change in the kinds of insurance the insurer may thereafter transact and is qualified to transact in this state. The insurer shall accompany such request with the fee for amendment as specified in Subtitle 4.

➔Section 969. KRS 304.3-180 is amended to read as follows:

- (1) A certificate of authority shall continue in force as long as the insurer is entitled thereto under this code, and until suspended or revoked by the **commissioner**~~[executive director]~~ or terminated at the insurer's request; subject, however, to continuance of the certificate by the insurer each year by:
 - (a) Payment of the continuation fee provided in Subtitle 4 by March 1, or, if paid by mail, postmarked no later than March 1;
 - (b) Due filing by the insurer of its annual statement for the next preceding calendar year as required by KRS 304.3-240;
 - (c) Payment by the insurer of premium taxes with respect to the preceding calendar year; and
 - (d) Due filing by domestic companies of quarterly statements as approved by the National Association of Insurance Commissioners.
- (2) If not so continued by the insurer, its certificate of authority shall expire at midnight on the June 30 next following the failure of the insurer to continue it in force, unless earlier revoked for failure to pay taxes as provided in KRS 304.4-040. The **commissioner**~~[executive director]~~ shall promptly notify the insurer of the occurrence of any failure resulting in impending expiration of its certificate of authority.
- (3) The **commissioner**~~[executive director]~~ may, in his *or her* discretion, upon the insurer's request made within three (3) months after expiration, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration. Otherwise the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.
- (4) An insurer shall not use the same accountant or partner of an accounting firm responsible for preparing the audited financial statement for more than seven (7) consecutive years.

➔Section 970. KRS 304.3-190 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall refuse to continue or shall suspend or revoke an insurer's certificate of authority:
 - (a) If the action is required by any provision of this code; or
 - (b) If a foreign or alien insurer and it no longer meets the requirements for a certificate of authority, as required for domestic insurers, on account of deficiency of capital or surplus or otherwise; or
 - (c) If a domestic insurer and it has failed to cure an impairment of capital, if a stock insurer, or minimum required surplus, if other than a stock insurer, within the time allowed therefor by the

commissioner~~[executive director]~~ under this code or is otherwise no longer qualified for the certificate of authority; or

- (d) If the insurer's certificate of authority to transact insurance therein is suspended or revoked by its state or country of domicile.
- (2) Except in case of insolvency or impairment of required capital or surplus, or suspension or revocation by another state or country as referred to in paragraph (d) of subsection (1) of this section, the **commissioner**~~[executive director]~~ shall give the insurer at least twenty (20) days notice in advance of any refusal, suspension, or revocation under this section, and of the particulars of the reasons therefor. If the insurer requests a hearing thereon within the twenty (20) days, a hearing shall be conducted in accordance with KRS Chapter 13B, and the request shall automatically stay the **commissioner's**~~[executive director's]~~ proposed action until his *or her* final order is made on the hearing.

➔Section 971. KRS 304.3-200 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may, in his *or her* discretion, refuse to continue or may suspend or revoke an insurer's certificate of authority if he *or she* finds after a hearing thereon, or upon waiver of hearing by the insurer, that the insurer has:
- (a) Willfully violated or willfully failed to comply with any lawful order of the **commissioner**~~[executive director]~~; or
 - (b) Willfully violated or willfully failed to comply with any lawful regulation of the **commissioner**~~[executive director]~~; or
 - (c) Willfully violated any provision of this code other than those for violation of which suspension or revocation is mandatory; or
 - (d) Failed to pay taxes on its premiums as required by law; or
 - (e) Has committed any unfair claims settlement practice as defined in Subtitle 12 or regulations promulgated thereunder.

In lieu of or in addition to such suspension or revocation, the **commissioner**~~[executive director]~~ may, in his *or her* discretion, reprimand the insurer, which shall be made a part of the insurer's record, or may levy upon the insurer, and the insurer shall pay forthwith, an administrative fine as specified in KRS 304.99-020.

- (2) The **commissioner**~~[executive director]~~ shall suspend or revoke an insurer's certificate of authority on any of the following grounds, if he *or she* finds after a hearing thereon that the insurer:
- (a) Is in unsound condition, or is being fraudulently conducted, or is in such condition or using such methods and practices in the conduct of its business as to render its further transaction of insurance in this state currently or prospectively hazardous or injurious to policyholders or to the public.
 - (b) With such frequency as to indicate its general business practice in this state:
 1. Has without just cause failed to pay, or delayed payment of, claims arising under its policies, whether the claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person; or
 2. Without just cause compels insureds or claimants to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims.
 - (c) Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination relative to its affairs, or to produce its accounts, records and files for examination by the **commissioner**~~[executive director]~~ when required, or refuse to perform any legal obligation relative to the examination.
 - (d) Has failed to pay any final judgment rendered against it in this state upon any policy, bond, recognizance or undertaking as issued or guaranteed by it, within thirty (30) days after the judgment became final or within thirty (30) days after dismissal of an appeal before final determination, whichever date is the later.

- (e) Has actual knowledge by the chief executive officer or person in charge of Kentucky operations that an agent employed by the insurer has engaged or is engaging in conduct in violation of this code and the insurer has failed to report such conduct to the *department*~~{office}~~.
- (f) No insurer, its agents, servants, or employees shall incur any liability in connection with or as a result of any disclosure made to the *commissioner*~~{executive director}~~ of insurance pursuant to the provisions of this section.

- (3) The *commissioner*~~{executive director}~~ may, in his *or her* discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation or other delinquency proceedings have been commenced in any state by the public insurance supervisory officer of such state.

➔Section 972. KRS 304.3-210 is amended to read as follows:

- (1) All suspensions or revocations of, or refusal to continue, an insurer's certificate of authority shall be by the *commissioner's*~~{executive director's}~~ order given to the insurer.
- (2) Upon issuance of the order, the *commissioner*~~{executive director}~~ shall forthwith give notice thereof to the insurer's agents in this state of record in the *department*~~{office}~~, and shall likewise suspend or revoke the authority of such agents to represent the insurer.
- (3) In his *or her* discretion, the *commissioner*~~{executive director}~~ may likewise publish notice of such suspension, revocation or refusal in one (1) or more newspapers of general circulation in the state.

➔Section 973. KRS 304.3-220 is amended to read as follows:

- (1) Suspension of an insurer's certificate of authority shall be for such period as the *commissioner*~~{executive director}~~ specifies in the order of suspension, but not to exceed one (1) year. During the suspension the *commissioner*~~{executive director}~~ may rescind or shorten the suspension by his *or her* further order.
- (2) During the suspension period the insurer shall not solicit or write any new business in this state, but shall file its annual statement, pay fees, licenses, and taxes as required, and may service its business already in force in this state, as if the certificate of authority had continued in full force.
- (3) Upon expiration of the suspension period, if within such period the certificate of authority has not terminated, the insurer's certificate of authority shall be automatically reinstated unless the *commissioner*~~{executive director}~~ finds that the causes of the suspension have not terminated, or that the insurer is otherwise not in compliance with the requirements of this code, and of which the *commissioner*~~{executive director}~~ shall give the insurer notice not less than thirty (30) days in advance of the expiration of the suspension period. If not so automatically reinstated the certificate of authority shall be deemed to have terminated as of the end of the suspension period.
- (4) Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this state to represent the insurer shall likewise be reinstated. The *commissioner*~~{executive director}~~ shall promptly notify the insurer and its agents in this state of record in the *department*~~{office}~~, of such reinstatement. If pursuant to subsection (3) of KRS 304.3-210, the *commissioner*~~{executive director}~~ has published notice of such suspension he *or she* shall in like manner publish notice of the reinstatement.

➔Section 974. KRS 304.3-240 is amended to read as follows:

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

- (2) The statement forms shall be in general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by the *commissioner*~~[executive director]~~.
- (3) The annual statement of an alien insurer shall relate only to its assets, transactions, and affairs in the United States unless the *commissioner*~~[executive director]~~ requires otherwise. The statement shall be verified by the insurer's United States manager or by its officers duly authorized.
- (4) The *commissioner*~~[executive director]~~ may suspend or revoke the authority of any insurer failing to file its annual and quarterly statement when due or failing so to file during any extension of time therefor which the *commissioner*~~[executive director]~~, for good cause, may grant.
- (5) Notwithstanding the provisions of this section or any other law of this Commonwealth, an authorized insurer may, subject to the requirements of regulations adopted by the *commissioner*~~[executive director]~~, publish financial statements or information based on financial statements prepared on a basis which is in accordance with requirements of a competent authority and which differs from the basis of the statements which have been filed with the *commissioner*~~[executive director]~~ in compliance with this section. Such differing financial statements or information based on the financial statements shall not be made the basis for the application of any provision of this chapter not relating solely to the publication of financial information unless the provision specifically so requires.

➔Section 975. KRS 304.3-242 is amended to read as follows:

- (1) As used in this section, a "qualified loss reserve specialist" means a person who is not a director, principal, or direct or indirect owner of an insurer and is a member in good standing of the Casualty Actuarial Society, and the American Academy of Actuaries, and who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries, or has other experience acceptable to the *commissioner*~~[executive director]~~ to assure a professional opinion on the adequacy of loss and loss adjustment expense reserves.
- (2) The board of directors of every insurer authorized to transact property or casualty insurance and required to file an annual statement with the *commissioner*~~[executive director]~~ pursuant to KRS 304.3-240 shall engage a qualified loss reserve specialist to certify the adequacy of the insurer's loss and loss adjustment expense reserves. The report shall be filed with the annual statement required by KRS 304.3-240.
- (3) The statement of opinion required by this section shall consist of at least the following information:
 - (a) Identification of the qualified loss reserve specialist;
 - (b) Identification of the subjects on which the opinion is to be expressed and a description of the scope of the qualified loss reserve specialist's work;
 - (c) An expression of the qualified loss reserve specialist's opinion with respect to the subjects required to be described in paragraph (b) of this subsection; and
 - (d) Additional information which the qualified loss reserve specialist considers necessary to state a qualification of opinion or to explain any aspect of the annual statement which is not already sufficiently explained in the annual statement.
- (4) It shall not be necessary to file the report required by this section in the following instances:
 - (a) An insurer that has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year, or that has less than one thousand (1,000) policyholders or certificate holders at the end of a calendar year. An insurer which intends to utilize this exemption shall submit a letter of intent to the insurance regulatory official in its domiciliary state no later than December 1 of the calendar year for which the exemption is to be claimed;
 - (b) An insurer which is under rehabilitation, liquidation, or any other delinquency proceeding ordered pursuant to a statutory provision, unless ordered to make the report by the insurance regulatory official in its domiciliary state;
 - (c) An insurer writing property insurance only if the exemption is agreed to by the insurance regulatory official in the insurer's domiciliary state; or
 - (d) Filing the report would constitute financial hardship, which is presumed to exist if the projected reasonable cost of the report would exceed the lesser of:

1. One percent (1%) of the insurer's capital and surplus reflected in the insurer's annual statement for the calendar year for which the exemption is sought; or
2. Three percent (3%) of the insurer's net direct plus assumed premiums written during the calendar year for which the exemption is sought as reflected in the insurer's annual statement filed with the insurance regulator official in its domiciliary state.

➔Section 976. KRS 304.3-270 is amended to read as follows:

- (1) The purpose of this section is to aid in the protection of insurers formed under the laws of Kentucky and transacting insurance in other states or countries against discriminatory or onerous requirements under the laws of such states or countries or the administration thereof.
- (2) When by or pursuant to the laws of any other state or foreign country or province any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon Kentucky insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties, or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the **commissioner**~~executive director~~ upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in Kentucky. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Kentucky insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this section.
- (3) This section shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property, nor as to special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the **commissioner**~~executive director~~ in determining the propriety and extent of retaliatory action under this section.
- (4) For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, or a province thereof, shall be that state designated by the insurer in writing filed with the **commissioner**~~executive director~~ at time of admission to this state or within six (6) months after the effective date of this code, whichever date is the later, and may be any one (1) of the following states:
 - (a) That in which the insurer was first authorized to transact insurance;
 - (b) That in which is located the insurer's principal office;
 - (c) That in which is held the largest deposit of trusted assets of the insurer for the protection of its policyholders in the United States.

If the insurer makes no such designation its domicile shall be deemed to be that state in which is located its principal office.

- (5) For the purpose of this section assessments by insurance guaranty associations or similar organizations in any other state shall not be considered or used in determining retaliatory taxation to be imposed by the **commissioner**~~executive director~~ upon insurers doing business in this state that are incorporated or organized under the laws of such other state, or upon their agents.

➔Section 977. KRS 304.3-320 is amended to read as follows:

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

- (2) In establishing the amount of the deposit required by subsection (1) of this section for a particular insurer, the **commissioner**~~executive director~~ shall consider the following factors:
- (a) The amount of Kentucky writings;
 - (b) The amount of policy reserves and claim reserves pertaining to Kentucky risks;
 - (c) The kind of insurance written in Kentucky;
 - (d) The current financial and operating test results of the insurer provided by the National Association of Insurance Commissioners under its insurance regulatory information system; and
 - (e) Any other relevant financial data.

➔Section 978. KRS 304.3-400 is amended to read as follows:

As used in KRS 304.3-400 to 304.3-430, unless the context requires otherwise:

- (1) "Accredited state" means a state in which the insurance regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners.
- (2) "Control" or "controlled" has the meaning set forth in KRS 304.37-010(8).
- (3) "Controlled insurer" means an authorized insurer which is controlled, directly or indirectly, by a producer.
- (4) "Controlling producer" means a producer who directly or indirectly, controls an insurer.
- (5) "Authorized insurer" or "insurer" means an insurer holding a certificate of authority from the **commissioner**~~executive director~~ to transact property or casualty insurance business in Kentucky. The following, among others, are not authorized insurers for the purposes of KRS 304.3-400 to 304.3-430:
 - (a) All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, (P.L. 99-499, 100 Stat. 1613, and the Liability Risk Retention Act, 15 U.S.C. secs. 3901 et seq.) and Subtitle 45 of this chapter;
 - (b) All residual market mechanisms and joint underwriting authorities or associations; and
 - (c) All captive insurers, that is, insurers owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates.
- (6) "Producer" means a person, firm, association, or corporation, when, for any compensation, commission, or other thing of value, the person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

➔Section 979. KRS 304.3-410 is amended to read as follows:

- (1) The applicability of this section is as follows:
 - (a) The provisions of this section shall only apply if in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent (5%) of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the immediate preceding year.
 - (b) Notwithstanding paragraph (a) of this subsection, the provisions of this section shall not apply if:
 - 1. The controlling producer:
 - a. Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with the insurance; and
 - b. Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and

2. The controlled insurer, except for insurance business written through a residual market mechanism, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.
- (2) A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party, and the contract has been approved by the board of directors of the insurer and contains the following minimum provisions:
- (a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for termination;
 - (b) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer;
 - (c) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments collected shall be remitted no later than ninety (90) days after the effective date of any policy placed with the controlled insurer under this contract;
 - (d) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one (1) or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance code, as applicable. Funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction;
 - (e) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;
 - (f) The contract shall not be assigned in whole or in part by the controlling producer;
 - (g) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, and with manuals stating the rates to be charged and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;
 - (h) The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than the controlling producers. For purposes of this paragraph and paragraph (g) of this subsection, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business. This paragraph does not authorize controlling producers to charge fees which the controlling producer is not otherwise permitted to charge under the provisions of the insurance code;
 - (i) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (1) year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection (3) of this section;
 - (j) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

- (k) The controlling producer may negotiate, but shall not bind, reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements, if the contract with the controlled insurer contains underwriting guidelines, for both reinsurance assumed and ceded, which include a list of reinsurers with automatic agreements that are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.
- (3) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with the management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the **commissioner**~~{executive director}~~ to review the adequacy of the insurer's loss reserves.
- (4) Reporting requirements are as follows:
 - (a) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the **commissioner**~~{executive director}~~ an opinion of an independent casualty actuary, or other independent loss reserve specialist acceptable to the **commissioner**~~{executive director}~~, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of the end of the year, including incurred but not reported losses, on business placed by the producer; and
 - (b) The controlled insurer shall annually report to the **commissioner**~~{executive director}~~ the amount of commissions paid to the producer, the percentage that amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

➔Section 980. KRS 304.3-420 is amended to read as follows:

- (1) If the **commissioner**~~{executive director}~~ believes that the controlling producer or any other person has not materially complied with KRS 304.3-400 to 304.3-430, or any administrative regulation or order promulgated under KRS 304.3-400 to 304.3-430, the **commissioner**~~{executive director}~~ may:
 - (a) Order the controlling producer to cease placing business with the controlled insurer; or
 - (b) If it was found that because of the material noncompliance that the controlled insurer or any policyholder has suffered any loss or damage, the **commissioner**~~{executive director}~~ may maintain a civil action, intervene in an action brought by or on behalf of the insurer or a policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder, or seek other appropriate relief.
- (2) Appeals from orders issued under subsection (1) of this section shall be taken as provided in Subtitle 2 of this chapter.
- (3) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Subtitle 33 of this chapter, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with KRS 304.3-400 to 304.3-430, or any administrative regulation or order promulgated under KRS 304.3-400 to 304.3-430, and the insurer suffered any loss or damage, the receiver may maintain a civil action for recovery of the damages or seek other appropriate sanctions for the benefit of the insurer.
- (4) Nothing contained in this section shall affect the right of the **commissioner**~~{executive director}~~ to exercise any other authority granted to him *or her* by law.
- (5) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

➔Section 981. KRS 304.3-500 is amended to read as follows:

As used in KRS 304.3-500 to 304.3-570, unless the context requires otherwise:

- (1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries;
- (2) "Insurer" means any person duly authorized as an insurer by the **commissioner**~~{executive director}~~;
- (3) "Controlling agent" means any person who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the insurer whether known as a

controlling agent or other name, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one (1) quarter or year, and who also adjusts or pays claims in excess of an amount determined by the **commissioner**~~executive director~~, or negotiates reinsurance on behalf of the insurer. The following persons shall not be considered controlling agents:

- (a) An employee of the insurer;
- (b) A United States manager of the United States branch of an alien insurer;
- (c) An underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to Subtitle 37 of this chapter, and whose compensation is not based on the volume of premiums written; and
- (d) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer, Lloyd's plan insurer, or interinsurance exchange under powers of attorney.

(4) "Underwrite" means the authority to accept or reject risks on behalf of the insurer.

➔Section 982. KRS 304.3-510 is amended to read as follows:

- (1) A person shall not be, act as, or hold himself *or herself* out as a controlling agent with respect to risks located in Kentucky for an insurer authorized in Kentucky unless the person is licensed as agent by Kentucky.
- (2) A person shall not be, act as, or hold himself *or herself* out as a controlling agent representing an insurer domiciled in Kentucky with respect to risks located outside Kentucky unless the person is licensed as an agent by Kentucky.
- (3) The **commissioner**~~executive director~~ may require a controlling agent to provide evidence of financial responsibility in the form and amount acceptable to the **commissioner**~~executive director~~ for the protection of the insurer, policyholders, and claimants.

➔Section 983. KRS 304.3-520 is amended to read as follows:

A person acting in the capacity of controlling agent shall not place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, where both parties share responsibility for a particular function, specifies the division of these responsibilities, and which contains the following minimum provisions:

- (1) The insurer may terminate the contract for cause upon written notice to the controlling agent. The insurer may suspend the underwriting authority of the controlling agent during the pendency of any dispute regarding the termination;
- (2) The controlling agent shall render account to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;
- (3) All funds collected for the account of the insurer shall be held by the controlling agent in a fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. The controlling agent may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses;
- (4) Separate records of business written by the controlling agent shall be maintained. The insurer shall have access to and the right to copy all accounts and records related to its business in a form usable by the insurer, and the **commissioner**~~executive director~~ shall have access to all books, bank accounts, and records of the controlling agent in a form usable to the **commissioner**~~executive director~~. These records shall be retained according to KRS 304.2-220 and the **commissioner's**~~executive director's~~ administrative regulations;
- (5) The contract shall not be assigned in whole or in part by the controlling agent;
- (6) Appropriate underwriting guidelines, including:
 - (a) The maximum annual premium volume;
 - (b) The basis of the rates to be charged;

- (c) The types of risks which may be written;
 - (d) Maximum limits of liability;
 - (e) Applicable exclusions;
 - (f) Territorial limitations;
 - (g) Policy cancellation provisions, including a statement that the insurer shall have the right to cancel or nonrenew any policy of insurance subject to applicable laws concerning the cancellation and nonrenewal of insurance policies; and
 - (h) The maximum policy period.
- (7) If the contract permits the controlling agent to settle claims on behalf of the insurer;
- (a) All claims shall be reported to the insurer in a timely manner;
 - (b) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:
 1. Has the potential to exceed an amount determined by the *commissioner*~~{executive director}~~ or exceeds the limit set by the insurer, whichever is less;
 2. Involves a coverage dispute;
 3. May exceed the controlling agent's claims settlement authority;
 4. Is open for more than six (6) months; or
 5. Is closed by payment of an amount set by the *commissioner*~~{executive director}~~ or an amount set by the insurer, whichever is less;
 - (c) All claim files shall be the joint property of the insurer and the controlling agent. However, upon an order of liquidation of the insurer the claim files shall become the sole property of the insurer or its estate. The controlling agent shall have reasonable access to and the right to copy the files; and
 - (d) Any settlement authority granted to the controlling agent may be terminated for cause upon the insurer's written notice to the controlling agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.
- (8) Where electronic claims files are in existence, the contract shall address the timely transmission of the data;
- (9) If the contract provides for a sharing of interim profits by the controlling agent, and the controlling agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits shall not be paid to the controlling agent until one (1) year after they are earned for property insurance business and five (5) years after they are earned on casualty business, and not until the profits have been verified pursuant to KRS 304.3-530;
- (10) The controlling agent shall not:
- (a) Bind reinsurance or retrocessions on behalf of the insurer, except that the controlling agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines, including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect the coverages and amounts or percentages that may be reinsured, and commission schedules;
 - (b) Commit the insurer to participate in insurance or reinsurance syndicates;
 - (c) Appoint any person producing business without assuring that the person is lawfully licensed to transact the type of insurance for which *the person*~~{he}~~ is appointed;
 - (d) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholder surplus as of December 31 of the last completed calendar year;
 - (e) Collect any payment for a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer;

- (f) Permit its subproducer to serve on the insurer's board of directors;
- (g) Jointly employ an individual who is employed with the insurer; or
- (h) Appoint a subcontrolling agent.

➔Section 984. KRS 304.3-530 is amended to read as follows:

- (1) The insurer shall have on file an independent financial examination, in a form acceptable to the **commissioner**~~{executive director}~~, of each controlling agent with which it has done business.
- (2) If a controlling agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the controlling agent. This is in addition to any other required loss reserve certification.
- (3) The insurer shall at least semiannually conduct an on-site review of underwriting and claims processing operations of the controlling agent.
- (4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the controlling agent.
- (5) Within thirty (30) days of entering into or termination of a contract with a controlling agent, the insurer shall provide written notification of the appointment or termination to the **commissioner**~~{executive director}~~. Notices of appointment of a controlling agent shall include a statement of the duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is authorized to act, and any other information the **commissioner**~~{executive director}~~ may request.
- (6) An insurer shall review its books and records each quarter to determine if any person producing business has become a controlling agent as defined in KRS 304.3-500(3). If the insurer determines that a person producing business has become a controlling agent, the insurer shall promptly notify the person producing business and the **commissioner**~~{executive director}~~ of this determination and the insurer and the person producing business must fully comply with the provisions of KRS 304.3-500 to 304.3-570 within thirty (30) days.
- (7) An insurer shall not appoint to its board of directors an officer, director, employee, subproducer, or controlling shareholder of any of its controlling agents. This subsection shall not apply to relationships governed by Subtitle 37 of this chapter or any provisions of this subtitle pertaining to business transacted with a producer controlled property or casualty insurer.

➔Section 985. KRS 304.3-540 is amended to read as follows:

The acts of controlling agents are considered to be the acts of the insurer on whose behalf the controlling agents are acting. A controlling agent may be examined by the **commissioner**~~{executive director}~~ as if it were the insurer.

➔Section 986. KRS 304.3-550 is amended to read as follows:

- (1) If the **commissioner**~~{executive director}~~ finds that any person has violated any provision of KRS 304.3-500 to 304.3-570 or KRS 304.9-440, the **commissioner**~~{executive director}~~ may order:
 - (a) For each separate violation, a civil penalty in the amounts set forth in KRS 304.99-020;
 - (b) Conditions upon, or revocation, or suspension of a license;
 - (c) The controlling agent to reimburse the insurer, the rehabilitator, or the liquidator of the insurer for any losses incurred by the insurer caused by a violation of KRS 304.3-500 to 304.3-570 or KRS 304.9-440 committed by the controlling agent; or
 - (d) Any combination of paragraphs (a), (b), or (c) of this subsection.
- (2) Appeals from orders issued under subsection (1) of this section shall be taken as provided in Subtitle 2 of this chapter.
- (3) Nothing contained in this section shall affect the right of the **commissioner**~~{executive director}~~ to impose any other penalties or corrective action provided for under laws administered by the **commissioner**~~{executive director}~~.
- (4) Nothing contained in KRS 304.3-500 to 304.3-570 is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

➔Section 987. KRS 304.3-560 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may promulgate administrative regulations for the implementation and administration of the provisions of KRS 304.3-500 to 304.3-570.
- (2) An insurer shall not continue to utilize the services of a controlling agent on and after the effective date of KRS 304.3-500 to 304.3-570 unless utilization is in compliance with KRS 304.3-500 to 304.3-570.

➔Section 988. KRS 304.4-010 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall by regulation prescribe the fees charged by the **commissioner**~~[executive director]~~ and the services for which fees shall be charged, including the following fees:
 - (a) For copies of any document on file with the **commissioner**~~[executive director]~~, per page, thirty cents (\$0.30); and
 - (b) For copies of annual statements, per page, one dollar (\$1).
- (2) All fees shall be collected in advance.
- (3) Notwithstanding subsection (2) of this section, an insurer submitting applications, appointments, or filings through the electronic system adopted by the **department**~~[office]~~ shall remit the applicable fees to the **department**~~[office]~~ within fifteen (15) calendar days of the electronic submission.

➔Section 989. KRS 304.4-020 is amended to read as follows:

The **commissioner**~~[executive director]~~ shall promptly pay into the State Treasury all fees, licenses, and charges collected ~~[by him]~~ under the provisions of KRS 304.4-010.

➔Section 990. KRS 304.4-040 is amended to read as follows:

The **commissioner**~~[executive director]~~ may revoke the certificate of authority of any insurer which fails to pay when due any taxes, fees, licenses, and other charges owing to this state. The **commissioner**~~[executive director]~~ may likewise revoke the license of any agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, life settlement broker or provider, or consultant, as to whom any tax or fee required under this code has not been paid when due.

➔Section 991. KRS 304.5-070 is amended to read as follows:

- (1) "Casualty insurance" includes:
 - (a) Vehicle insurance. Insurance against loss of or damage to any land vehicles or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle, aircraft, or animal; together with insurance against accidental injury to individuals, irrespective of legal liability of the insured, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if the insurance is issued as an incidental part of insurance on the vehicle, aircraft, or draft or riding animal;
 - (b) Liability insurance. Insurance against legal liability for the death, injury, or disability of any human being, or for damage to property; and provision of medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;
 - (c) Workers' compensation and employer's liability. Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;
 - (d) Burglary and theft. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment, or from any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to

- moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;
- (e) Personal property floater. Insurance upon personal effects against loss or damage from any cause;
 - (f) Glass. Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;
 - (g) Boiler and machinery. Insurance against any liability and loss or damage to property or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus, and the inspection of and issuance of certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;
 - (h) Leakage and fire extinguishing equipment. Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;
 - (i) Credit. Insurance, other than mortgage guaranty insurance, against loss or damage resulting from failure of debtors to pay their obligations to the insured;
 - (j) Malpractice. Insurance against legal liability of the insured, and against loss, damage, or expense incidental to a claim of such liability, and including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;
 - (k) Elevator. Insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire, and the inspection of and issuance of certificates of inspection upon, elevators;
 - (l) Congenital defects. Insurance against congenital defects in human beings;
 - (m) Livestock. Insurance against loss of or damage to livestock from any cause;
 - (n) Entertainments. Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals;
 - (o) Failure of certain institutions to record documents. Insurance indemnifying against loss from failure or omission to record as public records, liens of any kind upon personal property, given, held, delivered, or possessed as security or collateral for loans, advances, debts, or obligations of all kinds;
 - (p) Automobile guaranty. Insurance of the mechanical condition or freedom from defective or worn parts of motor vehicles, other than as provided by manufacturer's warranty. Provided, however, the making of a contract covering only defects in material and workmanship in exchange for a separately stated charge where it is merely incidental to the business of selling or leasing motor vehicles, shall not be deemed insurance, provided, that the maker of the contract has an insurance policy with an authorized motor vehicle insurer as defined in KRS 304.1-100 to assure the performance of the duties of the maker created by each on all of the contracts made by the maker. In the event that the maker of the contract is unable to perform the duties imposed thereby, the purchaser of the contract shall then be considered a policyholder of the insurer. The policy shall include a loss payee endorsement that provides coverage to any lending institution as its interest may appear. In addition, the contract shall conspicuously state the name and address of the licensed underwriting insurer and contain a statement that the holder shall be entitled to make a direct claim against that insurer upon the failure of the maker to pay any claim within sixty (60) days after proof of loss has been filed with the maker. The requirements that the maker of the contract have an insurance policy with an authorized motor vehicle insurer as defined in KRS 304.1-100 shall not apply where the maker is a manufacturer, distributor, or importer of motor vehicles. As used in this paragraph, the term "maker" shall include a warranty service company which issues automobile guaranties through a motor vehicle dealer, in which the motor vehicle dealer is not an obligor under the contract. The ~~commissioner~~~~executive director~~ is authorized to promulgate regulations to interpret this paragraph; and

- (q) Miscellaneous. Insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this subtitle, if the insurance is not disapproved by the **commissioner**~~{executive director}~~ as being contrary to law or public policy. A service contract to repair, replace, or maintain consumer products shall not be insurance, if the maker of the service contract registers with the **commissioner**~~{executive director}~~ and provides:
1. Evidence of a sufficient net worth, as determined by the **commissioner**~~{executive director}~~, to assure the performance of the duties of the maker created by all of the contracts made by the maker; or
 2. Evidence of an insurance policy or performance bond with an authorized insurer as defined in KRS 304.1-100, to assure the performance of the duties of the maker created by all of the service contracts made by the maker.

As set forth in subparagraph 2. of this paragraph, if the maker of the service contract is unable to perform the duties imposed thereby, the purchaser of the service contract shall then be considered a policyholder of the insurer. The service contract shall conspicuously state the name and address of the licensed underwriting insurer and contain a statement that the holder shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker. The requirements of this paragraph shall not apply where the maker is a manufacturer of consumer products. If the maker of the service contract registers with the **commissioner**~~{executive director}~~ and subsequently determines that the information submitted pursuant to subparagraph 1. of this paragraph no longer reflects a sufficient net worth as determined by the **commissioner**~~{executive director}~~, to assure the performance of the duties of the maker created by all of the contracts made by the maker, the maker shall notify the **commissioner**~~{executive director}~~ of the change in circumstances. Each registration filing with the **commissioner**~~{executive director}~~ shall be filed within thirty (30) calendar days in advance of the selling of service contracts to repair, replace, or maintain consumer goods. The **commissioner**~~{executive director}~~ is authorized to promulgate administrative regulations pursuant to KRS Chapter 13A to effectuate this paragraph.

- (2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under paragraphs (a) (vehicle), (b) (liability), (d) (burglary), (g) (boiler machinery), (j) (malpractice), and (k) (elevator) of subsection (1) of this section shall for all purposes be deemed to be the same kind of insurance to which it is so incidental, and shall not be subject to provisions of this code applicable to life and health insurances.

➔Section 992. KRS 304.5-120 is amended to read as follows:

- (1) No insurer shall retain any risk on any one (1) subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent (10%) of its surplus to policyholders.
- (2) A "subject" of insurance for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake and other catastrophic hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of any other hazard insured against.
- (3) Reinsurance ceded, as authorized by KRS 304.5-140, shall be deducted in determining risk retained. As to surety risks, deduction shall be made of the amount assumed by any authorized co-surety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.
- (4) As to alien insurers, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.
- (5) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, shall be deemed to include any voluntary reserves which are not required pursuant to law, and shall be determined from the last sworn statement of the insurer on file with the **commissioner**~~{executive director}~~, or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.
- (6) This section shall not apply to life or health insurance, annuities, title insurance, insurance of wet marine and transportation risks, workers' compensation insurance, employers' liability coverages, nor to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.
- (7) Limits of risk as to newly formed domestic mutual insurers shall be as provided in KRS 304.24-100.

(8) Limits of risk as to mortgage guaranty insurers shall be as provided in KRS 304.23-030.

➔Section 993. KRS 304.5-140 is amended to read as follows:

- (1) (a) For the purposes of subsection (3)(c) of this section, a "qualified United States financial institution" means an institution that:
1. Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;
 2. Is regulated, supervised, and examined by the United States federal or state authorities having regulatory authority over banks and trust companies; and
 3. Has been determined by the **commissioner**~~executive director~~, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the **commissioner**~~executive director~~.
- (b) A "qualified United States financial institution" means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:
1. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and
 2. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.
- (2) Credit for reinsurance shall be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraphs (a), (b), (c), (d), or (e) of this subsection. If meeting the requirements of paragraphs (c) or (d) of this subsection, the requirements of paragraph (f) of this subsection shall also be met.
- (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is authorized to transact insurance or reinsurance in Kentucky.
- (b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in Kentucky. An accredited reinsurer is one which:
1. Files with the **commissioner**~~executive director~~ evidence of its submission to Kentucky's jurisdiction;
 2. Submits to Kentucky's authority to examine its books and records;
 3. Is licensed to transact insurance or reinsurance in at least one (1) state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state;
 4. Files annually with the **commissioner**~~executive director~~ a copy of its annual statement filed with the insurance regulatory official of its state of domicile and a copy of its most recent audited financial statement, and either:
 - a. Maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the **commissioner**~~executive director~~ within ninety (90) days of its submission; or
 - b. Maintains a surplus as regards policyholders in an amount less than twenty million dollars (\$20,000,000) and whose accreditation has been approved by the **commissioner**~~executive director~~.
 5. Credit shall not be allowed a ceding insurer under this paragraph if the assuming insurer's accreditation has been revoked by the **commissioner**~~executive director~~ after notice and hearing.
- (c) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in or, in the case of a United States branch of an alien assuming insurer, is entered through a

state which employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien insurer:

1. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars (\$20,000,000); and
2. Submits to the authority of the *commissioner*~~{executive director}~~ to examine its books and records.

However, subparagraph 1. of this paragraph shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

- (d)
1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution for the payment of valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the *commissioner*~~{executive director}~~ information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by authorized insurers to enable the *commissioner*~~{executive director}~~ to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust fund shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars (\$20,000,000). In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States; and, in addition, the group shall maintain a trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group, the incorporated members of which group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the *commissioner*~~{executive director}~~ an annual certification of the solvency of each underwriter by the group's domiciliary insurance regulatory official and its independent public accountants.
 2. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subparagraph 1. of this paragraph, and which is under the supervision of the Department of Trade and Industry of the United Kingdom and submits to the *commissioner's*~~{executive director's}~~ authority to examine its books and records and bears the expense of the estimation, and which has aggregate policyholders' surplus of ten billion dollars (\$10,000,000,000), the trust shall be in an amount equal to the group's several liabilities attributable to business written in the United States plus the group shall maintain a joint trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group, and each member of the group shall make available to the *commissioner*~~{executive director}~~ an annual certification of the member's solvency by the member's domiciliary insurance regulatory official and its independent public accountant.
 3. The trust shall be established in a form approved by the *commissioner*~~{executive director}~~. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the *commissioner*~~{executive director}~~. The trust shall remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.
 4. No later than February 28 of each year, the trustees of the trust shall report to the *commissioner*~~{executive director}~~ in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.
- (e) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraphs (a), (b), (c), or (d) of this subsection, but only with respect to the insurance

of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction or reinsurance ceded to a residual market mechanism reinsurance association, or the members thereof, created pursuant to law or which has been voluntarily created as such by its members with the approval of the *commissioner*~~[executive director]~~.

- (f) If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in Kentucky, the credit permitted by paragraphs (c) and (d) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:
1. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court in the event of an appeal; and
 2. To designate the Secretary of State or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

- (3) A reduction from liability for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsection (2) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and the reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:
- (a) Cash;
 - (b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;
 - (c) Clean, irrevocable, unconditional letters of credit issued or confirmed by a qualified United States financial institution no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance, or confirmation, shall, notwithstanding the issuing, or confirming, institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or
 - (d) Any other form of security acceptable to the *commissioner*~~[executive director]~~.
- (4) Cession of bulk reinsurance by a domestic insurer is subject to KRS 304.24-420.
- (5) (a) Credit shall be allowed as an asset or as a deduction from liability, to any ceding insurer for reinsurance ceded to an assuming insurer qualified therefor under subsections (2), (3), or (4) of this section, except that no such credit shall be allowed unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:
1. Where the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or
 2. Where the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.
- (b) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer

on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defenses which it deems available to the ceding insurer or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two (2) or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

- (6) Upon request of the **commissioner**~~{executive director}~~ an insurer shall promptly inform the **commissioner**~~{executive director}~~ in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.
- (7) Subsections (1) to (3) of this section shall apply to all cessions after July 14, 1992, under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six (6) months after July 14, 1992.

➔Section 994. KRS 304.5-150 is amended to read as follows:

Complete copies of reinsurance treaties and contracts shall, at his request, be filed with and approved by the **commissioner**~~{executive director}~~.

➔Section 995. KRS 304.6-010 is amended to read as follows:

- (1) In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:
- (a) Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company.
 - (b) Investments, securities, properties and loans acquired or held in accordance with this code and in connection therewith the following items:
 1. Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.
 2. Declared and unpaid dividends on stocks and shares, unless such amount has otherwise been allowed as an asset.
 3. Interest due or accrued upon a collateral loan in an amount not to exceed one (1) year's interest thereon.
 4. Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the **commissioner**~~{executive director}~~ a collectible asset.
 5. Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal. Collectible interest one hundred eighty (180) days past due on a mortgage loan in default is a nonadmitted asset.
 6. Rent due or accrued on real property if such rent is not in arrears for more than three (3) months, and rent more than three (3) months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.
 - (c) Premium notes, policy loans, and other policy assets and liens on policies of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the policy reserves or cash surrender value.
 - (d) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer, corresponding to the basis on which reserves are held.
 - (e) Premiums in the course of collection, other than for life insurance, not more than three (3) months past due, less commissions payable thereon. To the extent that there is no related unearned premium, any uncollected premium balances which are over ninety (90) days due shall be nonadmitted. The

- uncollected agent's receivable on a policy basis which is over ninety (90) days due shall be nonadmitted regardless of any unearned premium.
- (f) Installment premiums other than life insurance premiums to the extent of the policy reserve carried on the policy to which premiums apply. If an installment premium is past due, the amount over ninety (90) days due plus all future installments that have been recorded on that policy shall be nonadmitted.
 - (g) Bills receivable for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the policy reserve carried thereon. Bills receivable shall be nonadmitted if either of the following conditions are present:
 - 1. If an installment premium is over ninety (90) days due, the entire bill's receivable balance from that policy shall be nonadmitted; or
 - 2. If the bill's receivable balance due exceeds the policy's unearned premium, the amount in excess of the unearned premium is nonadmitted.
 - (h) The full amount of reinsurance recoverable on paid losses and loss adjustment expense by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under KRS 304.5-140.
 - (i) Funds held or deposited with reinsured companies, whether premiums withheld as security for unearned premium and outstanding loss reserves or advances for loss payments, are admitted assets provided they do not exceed the liabilities they secure and provided the reinsured is solvent. Any funds in excess of the liabilities, and any funds held by an insolvent reinsured, shall be nonadmitted.
 - (j) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the **commissioner**~~executive director~~ available for the payment of losses and claims and at values to be determined by the **commissioner**~~executive director~~.
 - (k) As to a title insurer, its title plant and equipment reasonably necessary for conduct of its abstract or title insurance business, at not to exceed the cost thereof.
 - (l) Electronic data processing equipment and operating software are admitted assets to the extent they conform to the requirements of SSAP No. 4. Electronic data processing equipment and software shall be depreciated for a period not to exceed three (3) years using methods detailed in SSAP No. 19. The aggregate value of admitted electronic data processing equipment and operating system software (net of accumulated depreciation) shall be limited to three percent (3%) of the reporting entity's capital and surplus on the statutory balance sheet for its most recently filed statement with its domiciliary state commissioner, adjusted to exclude electronic data processing equipment and operating system software, net deferred tax assets, and net positive goodwill.
 - (m) A collateral loan or unconditional obligation for the payment of money secured by the pledge of an investment to the extent it conforms to the requirements of SSAP No. 4. The outstanding principal balance on the loan and any related accrued interest shall be recorded as an admitted asset subject to the following limitations:
 - 1. A collateral loan determined to be impaired shall be an admitted asset equal to the fair market value of the collateral less estimated costs to obtain and sell the collateral. The difference between the net fair value of the collateral and the amount of the collateral loan shall be written off in accordance with SSAP No. 5.
 - 2. A collateral loan secured by an asset that does not qualify as an investment shall be nonadmitted.
 - 3. A collateral loan that exceeds the fair market value of the collateral shall be an admitted asset equal to the fair market value of the collateral. The excess shall be classified as a nonadmitted asset.
 - (n) Deferred tax assets as defined in SSAP No. 10.
 - (o) Receivable for securities as defined in SSAP No. 21.
 - (p) Guaranteed investment contracts as defined in SSAP No. 21.

- (q) Cash value of life insurance where the reporting entity is owner and beneficiary as defined in SSAP No. 21.
 - (r) Other amounts receivable under reinsurance contracts as defined in SSAP No. 21.
 - (s) State guarantee association promissory notes.
 - (t) All assets as may be allowed pursuant to the accounting practices and procedures manual.
 - (u) Other assets, not inconsistent with the provisions of this section, deemed by the **commissioner**~~{executive director}~~ to be available for the payment of losses and claims, at values to be determined by the **commissioner**~~{executive director}~~.
- (2) Admitted assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to such insurer as prescribed by the **commissioner**~~{executive director}~~, or otherwise in his *or her* discretion. The **commissioner**~~{executive director}~~ may make official regulations prescribing the application of the provisions of this section.

➔Section 996. KRS 304.6-030 is amended to read as follows:

- (1) Any member, officer, director, employee, or attorney in fact of any company, association, or exchange licensed to do an insurance business in this state, who on behalf of such company, association, or exchange, borrows, rents, hires, leases, or otherwise engages the use of stocks, bonds, debentures, notes, investment certificates, securities, or other obligations or evidences of indebtedness owned or issued by any other corporation, company, association, or individual, or of any government, political subdivision, or agency thereof, with intent to injure or defraud any other company, body politic, or corporation, or person, or to deceive the **commissioner**~~{executive director}~~ or other person legally authorized to examine the affairs of any such company, association, or exchange, is guilty of a Class D felony.
- (2) Any individual that aids and abets such insurance company, association, or exchange in borrowing, renting, hiring, leasing, or engaging the use of such stocks, bonds, debentures, notes, investment certificates, securities, or other obligations or evidences of indebtedness, is guilty of a Class D felony.
- (3) If any insurance company, association, or exchange is found in possession of stocks, bonds, debentures, notes, investment certificates, securities, or other obligations or evidences of indebtedness acquired in violation of subsection (1) of this section, or if any of its officers, directors, members, or attorneys in fact have been convicted under subsection (1) of this section, the company, association, or exchange may be subject to suspension of its certificate of authority by the **commissioner**~~{executive director}~~. Nothing in this section shall be construed to prevent the **commissioner**~~{executive director}~~ from commencing delinquency proceedings under this code.

➔Section 997. KRS 304.6-040 is amended to read as follows:

In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

- (1) The amount of its capital stock outstanding, if any, less the amount of shares held by the insurer as treasury stock as provided in subsection (3) of KRS 304.6-020.
- (2) The amount, estimated consistent with the provisions of Subtitle 6, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof.
- (3) With reference to life insurance policies and annuity contracts, and disability and accidental death benefits in or supplemental thereto:
 - (a) The amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to KRS 304.6-130 to 304.6-180, inclusive.
 - (b) Reserves for disability benefits, for both active and disabled lives required by paragraph (e) of subsection (2) of KRS 304.6-140.
 - (c) Reserves for accidental death benefits, required by paragraph (f) of subsection (2) of KRS 304.6-140.

(d) Any additional reserves which may be required by the **commissioner**~~[executive director]~~ consistent with applicable customary and general practice in insurance accounting as set forth in regulations promulgated by the **commissioner**~~[executive director]~~ but no such additional reserve shall be required of any company solely for contingent liabilities which may arise under any agreement, filed with and approved by the **commissioner**~~[executive director]~~, for the assumption of liability by the company growing out of the acts of its exclusive agents within the course and scope of their representation.

- (4) Reserves for health insurance required by KRS 304.6-070.
- (5) With reference to insurance other than specified in subsections (3) and (4) of this section, and other than title insurance, the amount of the policy reserves computed in accordance with Subtitle 6.
- (6) Taxes, expenses and other obligations due or accrued at the date of the statement.
- (7) Deferred tax liabilities as defined in SSAP No. 10.

➔Section 998. KRS 304.6-060 is amended to read as follows:

As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned; and the **commissioner**~~[executive director]~~ shall require the insurer to carry a reserve equal to one hundred percent (100%) of premiums on trip risks written during the month ended as of the date of statement.

➔Section 999. KRS 304.6-070 is amended to read as follows:

For all health insurance policies the insurer shall maintain an active life reserve and an actuarially determined claim reserve for unaccrued benefits which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the **commissioner**~~[executive director]~~ and in no event less in the aggregate than the pro rata gross unearned premiums for such policies.

➔Section 1000. KRS 304.6-090 is amended to read as follows:

For the protection of the policyholders against loss during periods of extreme economic contraction, each mortgage guaranty insurer shall maintain a liability referred to as a statutory contingency reserve. The statutory contingency reserve shall be a separate fund, in addition to the mortgage guaranty insurer's unearned premium reserve. The insurer shall annually contribute fifty percent (50%) of the earned premiums from mortgage guaranty insurance contracts to this liability, which shall be maintained for ten (10) years regardless of the coverage period for which premiums were paid. Subject to the approval of the **commissioner**~~[executive director]~~, the contingency reserve may be released in any year in which actual incurred losses exceed thirty-five percent (35%) of the corresponding earned premiums. Any reductions shall be made on a first-in, first-out basis. Changes in the reserve shall be recorded directly to unassigned funds.

➔Section 1001. KRS 304.6-100 is amended to read as follows:

- (1) As to casualty insurance transacted by it, each insurer shall maintain at all times reserves in an amount estimated in the aggregate to provide for payment of all losses and claims incurred, whether reported or unreported, which are unpaid and for which the insurer may be liable, and to provide for the expenses of adjustment or settlement of losses and claims. The reserves shall be computed in accordance with regulations from time to time made by the **commissioner**~~[executive director]~~, after due notice and hearing, upon reasonable consideration of the ascertained experience and the character of such kind of business for the purpose of adequately protecting the insured and the solvency of the insurer.
- (2) Whenever the loss and loss expense experience of the insurer show that reserves, calculated in accordance with such regulations, are inadequate, the **commissioner**~~[executive director]~~ may require the insurer to maintain additional reserves.
- (3) The **commissioner**~~[executive director]~~ may, by regulation, prescribe the manner and form of reporting pertinent information concerning the reserves provided for in this section.

➔Section 1002. KRS 304.6-130 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer transacting business in this state, except that in the case of an alien insurer, such valuation shall be limited to its United States business; and may certify the amount of any such reserves,

specifying the mortality table or tables, rate or rates of interest and methods, net leveled premium method or other, used in the calculation of such reserves. In calculating such reserves, *the commissioner*~~[he]~~ may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required of any foreign or alien insurer, *the commissioner*~~[he]~~ may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the *commissioner*~~[executive director]~~ when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by law of that state or jurisdiction. Where any such valuation is made by the *commissioner*~~[executive director]~~, *the commissioner*~~[he]~~ may use the actuary of the *department*~~[office]~~ or employ an actuary for the purpose, and the reasonable compensation and expenses of the actuary, at a rate approved by the *commissioner*~~[executive director]~~, upon demand by the *commissioner*~~[executive director]~~ supported by an itemized statement of such compensation and expenses, shall be paid by the insurer. When a domestic insurer furnishes the *commissioner*~~[executive director]~~ with a valuation of its outstanding policies as computed by its own actuary or by an actuary deemed satisfactory for the purpose by the *commissioner*~~[executive director]~~, the valuation shall be verified by the actuary of the *department*~~[office]~~ without cost to the insurer.

- (2) Any such insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the *commissioner*~~[executive director]~~, adopt any lower standard of valuation, but not lower than the minimum herein provided.

➔Section 1003. KRS 304.6-140 is amended to read as follows:

- (1) This subsection applies only to policies and contracts issued prior to January 1, 1948, or such earlier date after June 13, 1944, as shall have been elected by an insurer as the date on and after which it would comply with the standard nonforfeiture law. Except as otherwise provided in paragraph (b) of subsection (2) of this section, the minimum standard for the valuation of all such policies and contracts shall be that provided by the laws in effect immediately prior to such date, except that the minimum standard for the valuation of annuities and pure endowments purchased under group annuity and pure endowment contracts issued prior to such effective date shall be that provided by the laws in effect immediately prior to such date but replacing the interest rates specified in such laws by an interest rate of five percent (5%) per annum. Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.
- (2) This subsection applies only to policies and contracts issued on and after January 1, 1948, or such earlier date after June 13, 1944, as shall have been elected by an insurer as the date on and after which it would comply with the standard nonforfeiture law, except as otherwise provided in paragraph (b) of this subsection for group annuity and pure endowment contracts issued prior to such date.
- (a) Except as otherwise provided in paragraph (b) of this subsection and in KRS 304.6-145, the minimum standard for the valuation of all such policies and contracts shall be the commissioners reserve valuation methods defined in KRS 304.6-150, 304.6-155, and 304.6-180, five and one-half percent (5.5%) interest for single premium life insurance policies, five percent (5%) interest for group annuity and pure endowment contracts, four percent (4%) interest for all other such policies and contracts issued prior to June 17, 1978, four and one-half percent (4-1/2%) interest for such policies and contracts, other than annuity and pure endowment contracts, issued on or after June 17, 1978, and the following tables:
1. Standard ordinary mortality table. For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, -- the commissioners 1941 standard ordinary mortality table; provided, however, that the commissioners 1958 standard ordinary mortality table shall be the table for such minimum standard for such policies issued on and after January 1, 1966, or such earlier date after June 16, 1960, as shall have been elected by an insurer as the date on and after which it would use such table as the basis for minimum cash surrender values and nonforfeiture benefits under the standard nonforfeiture law and prior to the effective date of KRS 304.15-342; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in KRS 304.6-130 to 304.6-180, inclusive, may be calculated according to an age not more than six (6) years younger than the actual age of the insured; and for such policies issued on or after the effective date of KRS 304.15-342 the commissioners 1980 standard

- ordinary mortality table, or at the election of the company for any one (1) or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors, or any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the **commissioner**~~{executive director}~~ for use in determining the minimum standard of valuation for such policies.
2. Standard industrial mortality table. For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, -- the 1941 standard industrial mortality table; provided, however, that the commissioners 1961 standard industrial mortality table shall be the table for such minimum standard for such policies issued on and after January 1, 1968, or such earlier date after June 14, 1962, as shall have been elected by the insurer as the date on and after which it would use such table as the basis for minimum cash surrender values and nonforfeiture benefits under the standard nonforfeiture law or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the **commissioner**~~{executive director}~~ for use in determining the minimum standard of valuation for such policies.
 3. Individual annuity mortality table or annuity mortality table. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies -- the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the **commissioner**~~{executive director}~~.
 4. Group annuity mortality table. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies -- the group annuity mortality table for 1951, any modification of such table approved by the **commissioner**~~{executive director}~~, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.
 5. Disability table. For total and permanent disability benefits in or supplementary to ordinary policies or contracts on active and disabled lives -- for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the **commissioner**~~{executive director}~~ for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961 and prior to January 1, 1966, either such tables or, at the option of the insurer, the class (3) disability table (1926), and for policies issued prior to January 1, 1961, the class (3) disability table (1926). In addition, any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.
 6. Accidental death mortality table. For accidental death benefits in or supplementary to policies -- for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the **commissioner**~~{executive director}~~ for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961 and prior to January 1, 1966, either such table or, at the option of the insurer, the inter-company double indemnity mortality table; and for policies issued prior to January 1, 1961, the inter-company double indemnity mortality table. Any such table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.
 7. Group life and other tables. For group life insurance, life insurance issued on the substandard basis and other special benefits -- such tables as may be approved by the **commissioner**~~{executive director}~~.
- (b) Except as provided in KRS 304.6-145, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued prior to January 1, 1979, excluding any disability and accidental death benefits in such contracts, shall be the commissioners reserve valuation methods defined in KRS

304.6-150 and 304.6-155, six percent (6%) interest for single premium immediate annuity contracts and four percent (4%) interest for all other contracts, and the 1971 individual annuity mortality table, or any modification of this table approved by the *commissioner*~~[executive director]~~.

1. The minimum standard for the valuation of all annuities and pure endowments purchased prior to January 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the commissioners reserve valuation methods defined in KRS 304.6-150 and 304.6-155, six percent (6%) interest, and the 1971 group annuity mortality table, or any modification of this table approved by the *commissioner*~~[executive director]~~.
2. The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after January 1, 1979, excluding any disability and accidental death benefits in such contracts, shall be the commissioners reserve valuation methods defined in KRS 304.6-150 and 304.6-155, seven and one-half percent (7-1/2%) interest for single premium immediate annuity contracts, five and one-half percent (5-1/2%) interest for single premium deferred annuity and pure endowment contracts and four and one-half percent (4-1/2%) interest for all other individual annuity and pure endowment contracts, and the 1971 individual annuity mortality table, or any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the *commissioner*~~[executive director]~~ for use in determining the minimum standards of valuation for such contracts, or any modification of these tables approved by the *commissioner*~~[executive director]~~.
3. The minimum standard for the valuation of all annuities and pure endowments purchased on or after January 1, 1979 under group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the commissioners reserve valuation methods defined in KRS 304.6-150 and 304.6-155, seven and one-half percent (7-1/2%) interest, and the 1971 group annuity mortality table, or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the *commissioner*~~[executive director]~~ for use in determining the minimum standards of valuation for such contracts, or any modification of these tables approved by the *commissioner*~~[executive director]~~.
4. The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after July 1, 1976, and prior to January 1, 1979, and of all annuities and pure endowments purchased on or after July 1, 1976, and prior to January 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the standard specified in this paragraph, or, at the option of the insurer with respect to any such contracts or purchases, the standard specified in paragraph (a) of this subsection.

➔Section 1004. KRS 304.6-145 is amended to read as follows:

- (1) The interest rates used in determining the minimum standard for the valuation of:
 - (a) All life insurance policies issued in a particular calendar year, on or after the effective date of KRS 304.15-342;
 - (b) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1983;
 - (c) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1983 under group annuity and pure endowment contracts; and
 - (d) The net increase, if any, in a particular calendar year after January 1, 1983, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in this section.
- (2) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one percent (1/4 of 1%):
 - (a) For life insurance,

$$I = .03 + W (R1 - .03) + W/2 (R2 - .09);$$

- (b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I = .03 + W (R - .03)$$

where R1 is the lesser of R and .09,

R2 is the greater of R and .09,

R is the reference interest rate defined in this section,

and W is the weighting factor defined in this section,

- (c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in paragraph (b) above, the formula for life insurance stated in paragraph (a) above shall apply to annuities and guaranteed interest contracts, with guarantee durations in excess of ten (10) years and the formula for single premium immediate annuities stated in paragraph (b) above shall apply to annuities and guaranteed interest contracts with guarantee duration of ten (10) years or less;
- (d) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in paragraph (b) above shall apply;
- (e) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in paragraph (b) above shall apply.

However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent (1/2 of 1%), the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when KRS 304.15-342 becomes effective.

- (3) The weighting factors referred to in the formulas stated above are given in the following tables:

- (a) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

- (b) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

- (c) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in (b) above, shall be as specified in tables 1., 2., and 3. below, according to the rules and definitions in 4., 5., and 6. below:

1. For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

2. For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in 1. above increased by:

	Plan Type		
	A	B	C
	.15	.25	.05

3. For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one (1) year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve (12) months beyond the valuation date, the factors shown in 1. or derived in 2. increased by:

	Plan Type		
	A	B	C
	.05	.05	.05

4. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty (20) years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

5. Plan type as used in the above tables is defined as follows:

Plan Type A: At any time policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer, or without such adjustment but in installments over five (5) years or more, or as an immediate life annuity, or no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer, or without such adjustment but in installments over five (5) years or more, or no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five (5) years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five (5) years either without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer, or subject

only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

6. An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.
- (4) The reference interest rate referred to in subsection (2) of this section shall be defined as follows:
 - (a) For all life insurance, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.
 - (b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.
 - (c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in paragraph (b) above, with guarantee duration in excess of ten (10) years, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.
 - (d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in paragraph (b) above, with guarantee duration of ten (10) years or less, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.
 - (e) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.
 - (f) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in paragraph (b) above, the average over a period of twelve (12) months, ending on June 30 of the calendar year of the change in the fund, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.
 - (5) In the event that Moody's Corporate Bond Yield Average - Monthly Average Corporates is no longer published by Moody's Investors Service, Inc., or in the event that the National Association of Insurance Commissioners determines that Moody's Corporate Bond Yield Average - Monthly Average Corporates as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by regulation promulgated by the *commissioner* ~~executive director~~, may be substituted.

➔Section 1005. KRS 304.6-170 is amended to read as follows:

- (1) Reserves for any category of policies, contracts, or benefits as established by the *commissioner* ~~executive director~~, which are subject to subsection (2) of KRS 304.6-140, may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for such category than those calculated

according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

- (2) Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the **commissioner**~~{executive director}~~, adopt any lower standard of valuation, but not lower than the minimum herein provided; provided, however, that for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion requested by KRS 304.6-171 shall not be deemed to be the adoption of a higher standard of valuation.

➔Section 1006. KRS 304.6-171 is amended to read as follows:

- (1) This section shall become operative at the end of the first full calendar year following the year of enactment.
- (2) Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the **commissioner**~~{executive director}~~ by administrative regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The **commissioner**~~{executive director}~~ by administrative regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.
- (3) (a) Every life insurance company, except as exempted by or pursuant to administrative regulation, shall also annually include in the opinion required by subsection (2) of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the **commissioner**~~{executive director}~~ by administrative regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.
- (b) The **commissioner**~~{executive director}~~ may provide by administrative regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.
- (4) Each opinion required by subsection (2) of this section shall be governed by the following provisions:
- (a) A memorandum, in form and substance acceptable to the **commissioner**~~{executive director}~~ as specified by administrative regulation, shall be prepared to support each actuarial opinion.
- (b) If the insurance company fails to provide a supporting memorandum at the request of the **commissioner**~~{executive director}~~ within a period specified by administrative regulation or the **commissioner**~~{executive director}~~ determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the administrative regulations or is otherwise unacceptable to the **commissioner**~~{executive director}~~, the **commissioner**~~{executive director}~~ may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum as is required by the **commissioner**~~{executive director}~~.
- (5) Every opinion shall be governed by the following provisions:
- (a) The opinion shall be submitted with the annual statement reflecting the valuation of reserve liabilities for each year ending on or after December 31, 1996.
- (b) The opinion shall apply to business in force including individual and group health insurance plans, in form and substance acceptable to the **commissioner**~~{executive director}~~ as specified by administrative regulation.
- (c) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the **commissioner**~~{executive director}~~ may by administrative regulation prescribe.
- (d) In the case of an opinion required to be submitted by a foreign or alien company, the **commissioner**~~{executive director}~~ may accept the opinion filed by that company with the insurance

supervisory official of another state if the *commissioner*~~{executive director}~~ determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

- (e) For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in administrative regulations.
- (f) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the *commissioner*~~{executive director}~~, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.
- (g) Disciplinary action by the *commissioner*~~{executive director}~~ against the company or the qualified actuary shall be defined in administrative regulations by the *commissioner*~~{executive director}~~.
- (h) Any memorandum in support of the opinion, and any other material provided by the company to the *commissioner*~~{executive director}~~ in connection therewith, shall be kept confidential by the *commissioner*~~{executive director}~~ and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by administrative regulations promulgated hereunder. The memorandum or other material may otherwise be released by the *commissioner*~~{executive director}~~ with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the *commissioner*~~{executive director}~~ for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing, or is cited before any governmental agency other than a state insurance department or office, or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

➔Section 1007. KRS 304.6-190 is amended to read as follows:

- (1) A mortgage loan shall not be made or acquired by a domestic insurer unless an appraisal has been made by a competent appraiser for the purpose of the investment which meets the following requirements:
 - (a) The appraisal shall be made prior to the date that the insurer commits to make the investment;
 - (b) The appraisal shall be written and shall state an opinion of value as of a specific date, supported by presentation and analysis of relevant market material;
 - (c) The appraisal shall provide the current fair market value of the real estate, that is the value of the real estate in an arms-length sale as of the date of the appraisal; and
 - (d) The appraisal shall be reviewed and signed by a principal of the firm. The principal shall be a specific individual having appraisal experience with the property type, and shall be accountable for the conclusions contained in the report.
- (2) Appraisers conducting appraisals pursuant to this section shall not be compensated, directly or indirectly, on the basis of the outcome of the appraisal performed and shall have direct reporting access to the chief investment officer of the insurer.
- (3) The *department*~~{office}~~ may contract with qualified appraisers to conduct appraisals if an insurer fails to have appraisals done pursuant to this section. All costs for the services of an appraiser pursuant to this subsection shall be borne by the insurer.
- (4) All appraisals shall be placed in the appropriate real estate mortgage loan file, and shall be subject to evaluation by the *department*~~{office}~~.
- (5) The *department*~~{office}~~ shall randomly select a number of appraisals from each domestic insurer with a mortgage loan portfolio and evaluate the quality of the appraisal. The evaluation shall be done annually and the number of appraisals reviewed shall be determined by the *department*~~{office}~~.

➔Section 1008. KRS 304.7-012 is amended to read as follows:

As used in this subtitle:

- (1) "Acceptable collateral" means:

- (a) As to securities lending transactions, and for the purpose of calculating counterparty exposure amount, cash, cash equivalents, letter of credit, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States, any agency of the United States, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, and as to lending foreign securities, sovereign debt rated 1 by the SVO;
 - (b) As to repurchase transactions, cash, cash equivalents, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States, any agency of the United States, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation; and
 - (c) As to reverse repurchase transactions, cash and cash equivalents.
- (2) "Acceptable private mortgage insurance" means insurance written by a private insurer protecting a mortgage lender against loss occasioned by a mortgage loan default and issued by a licensed mortgage insurance company, with an SVO 1 designation or a rating issued by a nationally recognized statistical rating organization equivalent to an SVO 1 designation, that covers losses to an eighty percent (80%) loan-to-value ratio.
 - (3) "Accident and health insurance" means protection that provides payment of benefits for covered sickness or accidental injury, excluding credit insurance, disability insurance, accidental death and dismemberment insurance, and long-term care insurance.
 - (4) "Accident and health insurer" means a licensed life or health insurer or health service corporation whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively.
 - (5) "Admitted assets" means assets permitted to be reported as admitted assets in accordance with Subtitle 6 of KRS Chapter 304 on the statutory financial statement of the insurer most recently required to be filed with the *commissioner*~~[executive director]~~, but excluding assets of separate accounts.
 - (6) "Affiliate" means, as to any person, another person that, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with the person.
 - (7) "Asset-backed security" means a security or other instrument, excluding a mutual fund, evidencing an interest in, or the right to receive payments from, or payable from distributions on, an asset, a pool of assets, or specifically divisible cash flows that are legally transferred to a trust or another special purpose bankruptcy-remote business entity, on the following conditions:
 - (a) The trust or other business entity is established solely for the purpose of acquiring specific types of assets or rights to cash flows, issuing securities and other instruments representing an interest in or right to receive cash flows from those assets or rights, and engaging in activities required to service the assets or rights and any credit enhancement or support features held by the trust, or other business entity; and
 - (b) The assets of the trust or other business entity consist solely of interest bearing obligations or other contractual obligations representing the right to receive payment from the cash flows from the assets or rights. However, the existence of credit enhancement, such as letters of credit or guarantees, or support features such as swap agreements, shall not cause a security or other instrument to be ineligible as an asset-backed security.
 - (8) "Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not-for-profit.
 - (9) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price, level, or the performance or value of one (1) or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price.
 - (10) "Capital and surplus" means the sum of the capital and surplus of the insurer required to be shown on the statutory financial statement of the insurer most recently required to be filed with the *commissioner*~~[executive director]~~.
 - (11) "Cash equivalents" means short-term, highly rated, and highly liquid investments or securities readily convertible to known amounts of cash without penalty and so near maturity that they present insignificant risk

of change in value. Cash equivalents include government money market mutual funds and class one money market mutual funds. For purposes of this definition:

- (a) "Short-term" means investments with a remaining term to maturity of ninety (90) days or less; and
 - (b) "Highly rated" means an investment rated P-1 by Moody's Investors Service, Inc., or A-1 by Standard and Poor's division of The McGraw-Hill Companies, Inc. or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO.
- (12) "Class one bond mutual fund" means a mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the Securities Valuation Office, or any successor publication.
- (13) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the Securities Valuation Office, or any successor publication.
- (14) "Code" means KRS Chapter 304 and all administrative regulations promulgated as authorized.
- (15) "Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payment as the seller of a different option, cap, or floor.
- (16) "Commercial mortgage loan" means a loan secured by a mortgage, other than a residential mortgage loan.
- (17) "Construction loan" means a loan of less than three (3) years in term, made for financing the cost of construction of a building or other improvement to real estate, that is secured by the real estate.
- (18) "Control" means the possession, directly or indirectly, of the power to direct, or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The *commissioner*~~[executive director]~~ may determine, after furnishing all interested persons notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- (19) "Counterparty exposure amount" means:
- (a) The net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse ("over-the-counter derivative instrument"). The amount of credit risk equals:
 - 1. The market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or
 - 2. Zero (0) if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.
 - (b) If over-the-counter derivative instruments are entered into under a written master agreement that provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States or if not within the United States, within a foreign jurisdiction listed in the Purposes and Procedures of the Securities Valuation Office as eligible for netting, the net amount of credit risk shall be the greater of zero (0) or the net sum of:
 - 1. The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and
 - 2. The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

- (c) For open transactions, market value shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one (1) or both parties.
- (20) "Covered" means that an insurer owns or can immediately acquire, through the exercise of options, warrants, or conversion rights already owned, the underlying interest in order to fulfill or secure its obligations under a call option, cap, or floor it has written, or has set aside under a custodial or escrow agreement, cash, or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written, in an income generation transaction.
- (21) "Credit tenant loan" means a mortgage loan that is made primarily in reliance on the credit standing of a major tenant, structured with an assignment of the rental payments to the lender with real estate pledged as collateral in the form of a first lien.
- (22) (a) "Derivative instrument" means an agreement, option, instrument, a series, or combination thereof:
1. To make or take delivery of, or assume or relinquish, a specified amount of one (1) or more underlying interests, or to make a cash settlement in lieu thereof; or
 2. That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one (1) or more underlying interests.
- (b) Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures, any other agreements, options, or instruments substantially similar thereto, or any series or combination thereof, and any agreements, options, or instruments permitted under administrative regulations promulgated under KRS 304.7-367. Derivative instruments shall not include an investment authorized by KRS 304.7-365, 304.7-367, 304.7-401, 304.7-403, 304.7-405, 304.7-407, 304.7-409, 304.7-411, 304.7-413, 304.7-415, 304.7-417, 304.7-421, 304.7-459, 304.7-461, 304.7-463, 304.7-465, 304.7-467, and 304.7-469.
- (23) "Derivative transaction" means a transaction involving the use of one (1) or more derivative instruments.
- (24) "Direct" or "directly", when used in connection with an obligation, means that the designated obligor is primarily liable on the instrument representing the obligation.
- (25) "Dollar roll transaction" means two (2) simultaneous transactions with different settlement dates no more than ninety-six (96) days apart, so that in the transaction with the earlier settlement date, an insurer sells to a business entity, and in the other transaction the insurer is obligated to purchase from the same business entity, substantially similar securities of the following types:
- (a) Asset-backed securities issued, assumed, or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or their respective successors; and
 - (b) Other asset-back securities referred to in Section 106 of Title I of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. sec. 77r-1), as amended.
- (26) "Domestic jurisdiction" means the United States, Canada, any state, any province of Canada, or any political subdivision of any of the foregoing.
- (27) "Equity interest" means any of the following that are not rated credit instruments:
- (a) Common stock;
 - (b) Preferred stock;
 - (c) Trust certificate;
 - (d) Equity investment in an investment company other than a money market mutual fund or a class one bond mutual fund;
 - (e) Investment in a common trust fund of a bank regulated by a federal or state agency;
 - (f) An ownership interest in mineral, oil, or gas, the rights to which have been separated from the underlying fee interest in the real estate where the mineral, oil, or gas are located;
 - (g) Instruments that are mandatorily, or at the option of the issuer, convertible to equity;

- (h) Limited partnership interests and those general partnership interests authorized under KRS 304.7-363(4);
 - (i) Member interests in limited liability companies;
 - (j) Warrants or other rights to acquire equity interests that are created by the person that owns or would issue the equity to be acquired; or
 - (k) Instruments that would be rated credit instruments except for the provisions of subsection (70)(b) of this section.
- (28) "Equivalent securities" means:
- (a) In a securities lending transaction, securities that are identical to the loaned securities in all features including the amount of the loaned securities, except as to certificate number if held in physical form, but if any different security shall be exchanged for a loaned security by recapitalization, merger, consolidation, or other corporate action, the different security shall be deemed to be the loaned security;
 - (b) In a repurchase transaction, securities that are identical to the purchased securities in all features including the amount of the purchased securities, except as to the certificate number if held in physical form; or
 - (c) In a reverse repurchase transaction, securities that are identical to the sold securities in all features including the amount of the sold securities, except as to the certificate number if held in physical form.
- (29) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one (1) or more underlying interests.
- (30) "Foreign currency" means a currency other than that of a domestic jurisdiction.
- (31) (a) "Foreign investment" means an investment in a foreign jurisdiction, or an investment in a person, real estate, or asset domiciled in a foreign jurisdiction, that is substantially of the same type as those eligible for investment under this subtitle, other than KRS 304.7-417 and 304.7-469. An investment shall not be deemed to be foreign if the issuing person, qualified primary credit source, or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction, unless:
- 1. The issuing person is a shell business entity; and
 - 2. The investment is not assumed, accepted, guaranteed, insured, or otherwise backed by a domestic jurisdiction or a person that is not a shell business entity, domiciled in a domestic jurisdiction.
- (b) For purposes of this definition:
- 1. "Shell business entity" means a business entity having no economic substance, except as a vehicle for owning interests in assets issued, owned, or previously owned by a person domiciled in a foreign jurisdiction;
 - 2. "Qualified guarantor" means a guarantor against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction; and
 - 3. "Qualified primary credit source" means the credit source to which an insurer looks for payment as in an investment and against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.
- (32) "Foreign jurisdiction" means a jurisdiction other than a domestic jurisdiction.
- (33) "Forward" means an agreement other than a future, to make, take delivery of, or effect a cash settlement based on the actuarial or expected price, level, performance, or value of one (1) or more underlying interests.
- (34) "Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make, take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of one (1) or more underlying interest.

- (35) "Government money market mutual fund" means a money market mutual fund that at all times:
- (a) Invests only in obligations issued, guaranteed, or insured by the federal government of the United States or collateralized repurchase agreements composed of these obligations; and
 - (b) Qualifies for investment without a reserve under the Purposes and Procedures of the Securities Valuation Office or any successor publication.
- (36) "Government sponsored enterprise" means a:
- (a) Governmental agency; or
 - (b) Corporation, limited liability company, association, partnership, joint stock company, joint venture, trust, or other entity or instrumentality organized under the laws of any domestic jurisdiction to accomplish a public policy or other governmental purpose.
- (37) "Guaranteed or insured", when used in connection with an obligation acquired under this subtitle, means that the guarantor or insurer has agreed to:
- (a) Perform or insure the obligation of the obligor or purchase the obligation; or
 - (b) Be unconditionally obligated until the obligation is repaid to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity, or sufficient liquidity to enable the obligor to pay the obligation in full.
- (38) "Hedging transaction" means a derivative transaction that is entered into and maintained to reduce:
- (a) The risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring; or
 - (b) The currency exchange rate risk or the degree of exposure as to assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring.
- (39) "High grade investment" means a rated credit instrument rated 1 or 2 by the SVO.
- (40) "Income" means, as to a security, interest, accrual of discount, dividends, or other distributions, such as rights, tax or assessment, or assessment credits, warrants, and distributions in kind.
- (41) "Income generation transaction" means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return.
- (42) "Initial margin" means that amount of cash, securities, or other consideration initially required to be deposited to establish a futures position.
- (43) "Insurance future" means a future relating to an index or pool that is based on insurance-related items.
- (44) "Insurance futures option" means an option on an insurance future.
- (45) "Investment company" means an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended, and a person described in Section 3(c) of that Act.
- (46) "Investment company series" means an investment portfolio of an investment company that is organized as a series company and to which assets of the investment company have been specifically allocated.
- (47) "Investment practices" means transactions of the types described in KRS 304.7-415, 304.7-419, 304.7-467, and 304.7-471.
- (48) "Investment subsidiary" means a subsidiary of an insurer engaged or organized to engage exclusively in the ownership and management of assets authorized as investment for the insurer if each subsidiary agrees to limit its investment in any asset so that its investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations or avoid any other provisions of this subtitle applicable to the insurer. As used in this subsection, the total investment of the insurer shall include:
- (a) Direct investment by the insurer in an asset; and
 - (b) The insurer's proportionate share of an investment in an asset by an investment subsidiary of the insurer, that shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership interest in the subsidiary.

- (49) "Investment strategy" means the techniques and methods used by an insurer to meet its investment objectives, such as active bond portfolio management, passive bond portfolio management, interest rate anticipation, growth investing, and value investing.
- (50) "Letter of credit" means a clean, irrevocable, and unconditional letter of credit issued or confirmed by, and payable and presentable at, a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the Purposes and Procedures of the Securities Valuation Office or any successor publication. To constitute acceptable collateral for the purposes of KRS 304.7-415 and 304.7-467, a letter of credit shall have an expiration date beyond the term of the subject transaction.
- (51) "Limited liability company" means a business organization, excluding partnerships and ordinary business corporations, organized or operating under the laws of the United States or any state thereof that limits the personal liability of investors to the equity investment of the investor in the business entity.
- (52) "Lower grade investment" means a rated credit instrument rated 4, 5, or 6 by the SVO.
- (53) "Market value" means:
- (a) As to cash and letters of credit, the amounts thereof; and
 - (b) As to security as of any date, the price for the security on that date obtained from a generally recognized source or the most recent quotation from such a source or, to the extent no generally recognized source exists, the price for the security as determined in good faith by the parties to a transaction, plus accrued but unpaid income thereon to the extent not included in the price as of that date.
- (54) "Medium grade investment" means a rated credit instrument rated 3 by the SVO.
- (55) "Money market mutual fund" means a mutual fund that meets the conditions of 17 Code of Federal Regulations Par. 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended or renumbered.
- (56) "Mortgage loan" means an obligation secured by a mortgage, deed of trust, trust deed, or other consensual lien on real estate.
- (57) "Multilateral development bank" means an international development organization of which the United States is a member.
- (58) "Mutual fund" means an investment company or, in the case of an investment company that is organized as a series company, an investment company series, that, in either case, is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended.
- (59) "NAIC" means the National Association of Insurance Commissioners.
- (60) "Obligation" means a bond, note, debenture, or a trust certificate including an equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases, and other evidence of indebtedness for the payment of money or participations, certificates, or other evidences of an interest in any of the foregoing, whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.
- (61) "Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend, terminate, or effect a cash settlement based on the actual or expected price level, performance or value of one (1) or more underlying interests.
- (62) "Person" means an individual, a business entity, a multilateral development bank, or a government or quasi-governmental body, such as a political subdivision or a government sponsored enterprise.
- (63) "Potential exposure" means the amount determined in accordance with the NAIC Annual Statement Instructions.
- (64) "Preferred stock" means preferred, preference, or guaranteed stock of a business entity authorized to issue the stock, that has a preference in liquidation over the common stock of the business entity.
- (65) "Qualified bank" means:

- (a) A national bank, state bank, or trust company that at all times is no less than adequately capitalized as determined by standards adopted by the United States banking regulators and that is either regulated by state banking laws, or is a member of the Federal Reserve Bank of New York; or
 - (b) A bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as a bank or trust company by that country's government or an agency thereof and that at all times is no less than adequately capitalized as determined by the standards adopted by international banking authorities.
- (66) "Qualified business entity" means a business entity that is:
- (a) An issuer of obligations or preferred stock that are rated 1 or 2 by SVO or an issuer of obligations, preferred stock, or derivative instruments that are rated the equivalent of 1 or 2 by the SVO or by a nationally recognized statistical rating organization recognized by the SVO; or
 - (b) A primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York.
- (67) "Qualified clearinghouse" means a clearinghouse for, and subject to the rules of, a qualified exchange or a qualified foreign exchange, that provides clearing service, including acting as a counterparty to each of the parties to a transaction such that the parties no longer have credit risks as to each other.
- (68) "Qualified exchange" means:
- (a) A securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. sec. 78 et seq.), as amended;
 - (b) A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission or any successor thereof;
 - (c) Private Offerings, Resales, and Trading through Automated Linkages (PORTAL);
 - (d) A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended; or
 - (e) A qualified foreign exchange.
- (69) "Qualified foreign exchange" means a foreign exchange, board of trade, or contract market located outside the United States, its territories, or possessions:
- (a) That has received regulatory comparability relief under Commodity Futures Trading Commission (CFTC) Rule 30.10, as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30;
 - (b) That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under CFTC Rule 30.10, as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30, as to futures transactions in the jurisdiction where the exchange, board of trade, or contract market is located; or
 - (c) Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's Office of General Counsel, provided that an exchange, board of trade, or contract market that qualifies as a qualified foreign exchange only under this subsection shall only be a qualified foreign exchange as to foreign stock index futures contracts that are the subject of no-action relief.
- (70) (a) "Rated credit instrument" means a contractual right to receive cash or another rated credit instrument from another entity that:
1. Is rated or required to be rated by the SVO;
 2. In the case of an instrument with a maturity of three hundred ninety-seven (397) days or less, is issued, guaranteed, or insured by an entity that is rated by, or another obligation of the entity is rated by, the SVO or by a nationally recognized statistical rating organization recognized by the SVO;
 3. In the case of an instrument with a maturity of ninety (90) days or less is issued by a qualified bank;
 4. Is a share of a class one bond mutual fund; or

5. Is a share of a money market mutual fund.
- (b) However, "rated credit instrument" does not mean:
1. An instrument that is mandatorily, or at the option of the issuer, convertible to an equity interest; or
 2. A security that has a par value and whose terms provide that the issuer's net obligation to repay all or part of the security's par value is determined by reference to the performance of an equity, a commodity, a foreign currency, or an index of equities, commodities, foreign currencies, or combinations thereof.
- (71) "Real estate" means:
- (a)
1. Real property;
 2. Interests in real property, such as leaseholds, minerals, oil, and gas that have not been separated from the underlying fee interest;
 3. Improvements and fixtures located on or in real property; and
 4. The seller's equity in a contract providing for a deed of real estate.
- (b) As to a mortgage on a leasehold estate, real estate shall include the leasehold estate only if it has an unexpired term, including renewal options exercisable at the option of the lessee, extending beyond the scheduled maturity date of the obligation that is secured by a mortgage on the leasehold estate by a period equal to at least twenty percent (20%) of the original term of the obligation or ten (10) years, whichever is greater.
- (72) "Replication transaction" means a derivative transaction that is intended to replicate the performance of one (1) or more assets that an insurer is authorized to acquire under this subtitle. A derivative transaction that is entered into as a hedging transaction shall not be considered a replication transaction.
- (73) "Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.
- (74) "Required liabilities" means total liabilities required to be reported on the statutory financial statement of the insurer most recently required to be filed with the *commissioner*~~[executive director]~~.
- (75) "Residential mortgage loan" means a loan primarily secured by a mortgage on real estate improved with a one (1) to four (4) family residence.
- (76) "Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.
- (77) "Secured location" means the contiguous real estate owned by one (1) person.
- (78) "Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or upon demand.
- (79) "Series company" means an investment company that is organized as a series company, as defined in Rule 18f-2(a) adopted under the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended.
- (80) "Sinking fund stock" means preferred stock that:
- (a) Is subject to a mandatory sinking fund or similar arrangement that will provide for the redemption or open market purchase of the entire issue over a period not longer than forty (40) years from the date of acquisition; and
- (b) Provides for mandatory sinking fund installments or open market purchases commencing not more than ten and one-half (10 1/2) years from the date of issue, with the sinking fund installments providing for the purchase or redemption, on a cumulative basis commencing ten (10) years from the date of issue, of

at least two and one-half percent (2.5%) per year of the original number of shares of that issue of preferred stock.

(81) "Special rated credit instrument" means a rated credit instrument that is:

- (a) An instrument that is structured so that, if it is held until retired by or on behalf of the issuer, its rate of return, based on its purchase cost and any cash flow stream possible under the structure of the transaction, may become negative due to reasons other than the credit risk associated with the issuer of the instrument; however, a rated credit instrument shall not be a special rated credit instrument under this subsection if it is:
1. A share in a class one bond mutual fund;
 2. An instrument, other than an asset-backed security, with payments of par value fixed as to amount and timing, or callable but in any event payable only at par or greater, and interest or dividend cash flows that are based on either a fixed or variable rate determined by reference to a specified rate or index;
 3. An instrument, other than an asset-backed security, that has a par value and is purchased at a price not greater than one hundred ten percent (110%) of par;
 4. An instrument, including an asset-backed security, whose rate of return would become negative only as a result of a prepayment due to casualty, condemnation, or economic obsolescence of collateral or change of law;
 5. An asset-backed security that relies on collateral that meets the requirements of subparagraph 2. of this paragraph, the par value of which collateral:
 - a. Is not permitted to be paid sooner than one-half (1/2) of the remaining term to maturity from the date of acquisition;
 - b. Is permitted to be paid prior to maturity only at a premium sufficient to provide a yield to maturity for the investment, considering the amount prepaid and reinvestment rates at the time of early repayment, at least equal to the yield to maturity of the initial investment; or
 - c. Is permitted to be paid prior to maturity at a premium at least equal to the yield of a Treasury issue of comparable remaining life; or
 6. An asset-backed security that relies on cash flows from assets that are not prepayable at any time at par, but is not otherwise governed by subparagraph 5. of this paragraph, if the asset-backed security has a par value reflecting principal payments to be received if held until retired by or on behalf of the issuer and is purchased at a price no greater than one hundred five percent (105%) of the par amount.
- (b) An asset-backed security that:
1. Relies on cash flows from assets that are prepayable at par at any time;
 2. Does not make payments of par that are fixed as to amount and timing; and
 3. Has a negative rate of return at the time of acquisition if a prepayment threshold assumption is used with the prepayment threshold assumption defined as either:
 - a. Two (2) times the prepayment expectation reported by a recognized, publicly available source as being the median of expectations contributed by broker dealers or other entities, except insurers, engaged in the business of selling or evaluating the securities or assets. The prepayment expectation used in this calculation shall be, at the insurer's election, the prepayment expectation for pass-through securities of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or for other assets of the same type as the assets that underlie the asset-backed security, in either case with a gross weighted average coupon comparable to the gross weighted average coupon of the assets that underlie the asset-backed security; or
 - b. Another prepayment threshold assumption specified by the ~~commissioner~~^{executive director} by administrative regulation promulgated under KRS 304.7-367.

- (c) For purposes of paragraph (b) of this subsection, if the asset-backed security is purchased in combination with one (1) or more other asset-backed securities that are supported by identical underlying collateral, the insurer may calculate the rate of return for these specific combined asset-backed securities in combination. The insurer shall maintain documentation demonstrating that the securities were acquired and are continuing to be held in combination.
- (82) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- (83) "Substantially similar securities" means securities that meet all criteria for substantially similar securities specified in the NAIC Accounting Practices and Procedures manual, as amended, and in an amount that constitutes good delivery form as determined from time to time by the Public Securities Administration.
- (84) "SVO" means the Securities Valuation Office of the NAIC or any successor office established by the NAIC.
- (85) "Swap" means an agreement to exchange or to net payments at one (1) or more times based on the actual or expected price, level, performance, or value of one (1) or more underlying interests.
- (86) "Underlying interest" means the assets, liabilities, other interests, or a combination thereof underlying a derivative instrument, such as any one (1) or more securities, currencies, rates, indices, commodities, or derivative instruments.
- (87) "Unrestricted surplus" means the amount by which total admitted assets exceed one hundred twenty-five percent (125%) of the insurer's required liabilities.
- (88) "Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger, recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

➔Section 1009. KRS 304.7-014 is amended to read as follows:

- (1) (a) Insurers may acquire, hold, or invest investments or engage in investment practices as set forth in this subtitle. Investments not conforming to this subtitle or otherwise expressly allowed in this chapter shall not be admitted assets.
- (b) This subtitle shall apply to investments and investment practices of domestic insurers and United States branches of alien insurers entered through this state. This subtitle shall not apply to separate accounts of an insurer except to the extent that the provisions of KRS 304.7-240 so provide.
- (2) Subject to subsection (3) of this section, an insurer shall not acquire or hold an investment as an admitted asset unless at the time of acquisition it is:
- (a) Eligible for the payment or accrual of interest or discount, whether in cash or other securities, eligible to receive dividends or other distributions, or is otherwise income producing; or
- (b) Acquired under KRS 304.7-413(3), 304.7-415, 304.7-419, 304.7-423, 304.7-465(3), 304.7-467, 304.7-471, or 304.7-473, or under the authority of sections of the code other than in this subtitle.
- (3) An insurer may acquire or hold as admitted assets investments that do not otherwise qualify under this subtitle if the insurer has not acquired them for the purpose of circumventing any limitations contained in this subtitle, if the insurer acquires the investments in the following circumstances and the insurer complies with the provisions of KRS 304.7-363 as to the investments:
- (a) As payment on account of existing indebtedness or in connection with the refinancing, restructuring, or workout of existing indebtedness, if taken to protect the insurer's interest in that investment;
- (b) As realization on collateral for an obligation;
- (c) In connection with an otherwise qualified investment or investment practice, as interest on a dividend, other distribution related to the investment, investment practice, or in connection with the refinancing of the investment, in each case for no additional or only nominal consideration;
- (d) Under a lawful and bona fide agreement of recapitalization, voluntary, or involuntary reorganization in connection with an investment held by the insurer; or

- (e) Under a bulk reinsurance, merger, or consolidation transaction approved by the **commissioner**~~executive director~~ if the assets constitute admissible investments for the ceding, merged, or consolidated companies.
- (4) A foreign insurer that becomes a domestic insurer in accordance with KRS 304.24-500 may hold as admitted assets investments that do not otherwise qualify under this subtitle if the investments were qualified as admitted assets in the insurer's former state of domicile immediately prior to the insurer's becoming a Kentucky domestic insurer, if the insurer has not acquired the investments for the purpose of circumventing any limitations contained in this subtitle and if the insurer complies with the provisions of KRS 304.7-363 as to the investments.
- (5) An investment or portion of an investment acquired by an insurer under subsections (3) or (4) of this section shall become a nonadmitted asset three (3) years, or five (5) years in the case of mortgage loans and real estate, from the date of its acquisition, unless within that period the investment has become a qualified investment under this subtitle other than subsections (3) or (4) of this section, but an investment acquired under an agreement of bulk reinsurance, merger, or consolidation may be qualified for a longer period if so provided in the plan for reinsurance, merger, or consolidation as approved by the **commissioner**~~executive director~~. Upon application by the insurer and a showing that the nonadmission of an asset held under subsections (3) or (4) of this section would materially injure the interests of the insurer, the **commissioner**~~executive director~~ may extend the period for admissibility for an additional reasonable period of time.
- (6) Except as provided in subsections (7) and (9) of this section, an investment shall qualify under this subtitle if, on the date the insurer committed to acquire the investment or on the date of its acquisition, it would have qualified under this subtitle. For the purposes of determining limitations contained in this subtitle, an insurer shall give appropriate recognition to any commitments to acquire investments.
- (7) (a) An investment held as an admitted asset by an insurer on July 14, 2000 that qualified under this subtitle shall remain qualified as an admitted asset under this subtitle.
- (b) Each specific transaction constituting an investment practice of the type described in this subtitle that was lawfully entered into by an insurer and was in effect on July 14, 2000 shall continue to be permitted under this subtitle until its expiration or termination under its terms.
- (8) Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or capital and surplus shall relate to the amount required to be shown on the statutory balance sheet of the insurer most recently required to be filed with the **commissioner**~~executive director~~. For purposes of computing any limitation based upon admitted assets, the insurer shall deduct from the amount of its admitted assets the amount of the liability recorded on its statutory balance sheet for:
- (a) The return of acceptable collateral received in a reverse repurchase transaction or a securities lending transaction;
- (b) Cash received in a dollar roll transaction; and
- (c) The amount reported as borrowed money in the most recently filed financial statement to the extent not included in paragraphs (a) and (b) of this subsection.
- (9) An investment qualified, in whole or in part, for acquisition or holding as an admitted asset may be qualified or requalified at the time of acquisition or a later date, in whole or in part, under any other section of this subtitle, if the relevant conditions contained in the other section of this subtitle are satisfied at the time of qualification or requalification.
- (10) An insurer shall maintain documentation demonstrating that investments were acquired in accordance with this subtitle, and specifying the section of this subtitle under which they were acquired.
- (11) An insurer shall not enter into an agreement to purchase securities in advance of their issuance for resale to the public as part of a distribution of the securities by the issuer, or otherwise guarantee the distribution, except that an insurer may acquire privately placed securities with registration rights.
- (12) Notwithstanding the provisions of this subtitle, the **commissioner**~~executive director~~, for good cause, may order under the state's administrative regulations, an insurer to nonadmit, limit, dispose of, withdraw from or discontinue an investment or investment practice. The authority of the **commissioner**~~executive director~~ under this subsection is in addition to any other authority of the **commissioner**~~executive director~~.

- (13) Insurance futures and insurance futures options are not considered investments or investment practices for the purposes of this subtitle.

➔Section 1010. KRS 304.7-240 is amended to read as follows:

- (1) The amounts allocated to each separate account established by the insurer in connection with a pension, retirement or profit-sharing plan, life insurance or an annuity pursuant to KRS 304.15-390 together with accumulations thereon, may be invested and reinvested in any class of investments which may be authorized in the written contract or agreement without regard to any requirements or limitations prescribed by this subtitle; except, that to the extent that the insurer's reserve liability with regards to:
- (a) Benefits guaranteed as to amount and duration; and
 - (b) Funds guaranteed as to principal amount or stated rate of interest, is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the applicable provisions of this subtitle.

The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the insurer.

- (2) On application by an insurer, the **commissioner**~~executive director~~ may approve different investment limitations and restrictions for specified separate accounts of the insurer. The **commissioner**~~executive director~~ shall only approve the insurer's proposed limitations and restrictions if he *or she* finds that the requested investment limitations and restrictions adequately protect the interests of the insured protected by the separate account and the solvency of the insurer.

➔Section 1011. KRS 304.7-350 is amended to read as follows:

- (1) All obligations having a fixed term, rate, and face value held by an insurer authorized to do business in this state may, if amply secured and not in default either as to principal or interest, be valued as follows: if acquired at face value, at the face value; if acquired above or below face value, on the basis of the purchase price adjusted annually to bring the value to face value at maturity and so as to yield in each year the effective rate of interest at which the purchase was made. The amortization provided for in this subsection may be calculated with reasonable approximations. The **commissioner**~~executive director~~ shall have the power to determine by rule the eligibility of investments for valuation under this subsection.
- (2) (a) Securities, other than those referred to in subsection (1) of this section, held by an insurer shall be valued, in the discretion of the **commissioner**~~executive director~~, at their fair market value, at their appraised value, or at prices determined by the **commissioner**~~executive director~~ as representing their fair market value.
- (b) Preferred or guaranteed stock or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the **commissioner**~~executive director~~ and in accordance with the method of computation he *or she* approves.
- (c) Securities qualifying under KRS 304.7-120, 304.7-423, or 304.7-473 shall be valued at their fair value or net equity value, except that securities of a subsidiary insurance corporation as provided for in KRS 304.7-120 shall be valued either at cost or on a net equity basis, whichever is greater.
- (3) (a) Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal deemed by the **commissioner**~~executive director~~ to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of acquisition, together with any taxes and expenses paid or incurred in connection with acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.
- (b) Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal deemed by the **commissioner**~~executive director~~ to be reliable. If valuation is based on an appraisal more than three (3) years old, the **commissioner**~~executive director~~ may, at his *or her* discretion, call for and require a new appraisal in order to determine fair value.
- (c) Personal property acquired pursuant to chattel mortgages or security agreements shall not be valued at an amount greater than the unpaid principal of the defaulted loan at the date of acquisition, together with

any taxes and expenses paid or incurred in connection with acquisition, or the fair value of the property, whichever amount is the lesser.

- (4) However, in all cases securities shall be valued in accordance with the standards promulgated by the National Association of Insurance Commissioners including the Purposes and Procedures of the Securities Valuation Office, the Valuation of Securities Manual, the Accounting Practices and Procedures Manual, the Annual Statement Instructions, or any successor valuation procedures officially adopted by the NAIC.

➔Section 1012. KRS 304.7-360 is amended to read as follows:

- (1) As used in this section:

- (a) "Clearing corporation" shall be defined as provided in KRS 355.8-102(3) except that, with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation organized or existing under the laws of any foreign country which is legally qualified under such laws to effect transactions in securities by computerized book entry.
- (b) "Custodian bank" means a national bank, state bank or trust company which is a member of the Federal Reserve System which acts as custodian of all or any part of an insurance company's securities.
- (c) "Direct participant" means a bank, trust company, or other institution which maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.
- (d) "Federal reserve book-entry system" means the computerized systems sponsored by the United States Department of the Treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in federal reserve banks through banks which are members of the Federal Reserve System or which otherwise have access to such computerized systems.
- (e) "Member bank" means a national bank, state bank or trust company which is a member of the Federal Reserve System through which an insurance company participates in the federal reserve book-entry system.
- (f) "Security" means a certificated security or an uncertificated security.
- (g) "Certificated security" means a share, participation or other interest in property or an enterprise of the issuer or an obligation of the issuer which is represented by an instrument issued in bearer or registered form, of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment, and either one (1) of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.
- (h) "Uncertificated security" means a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer, of a type commonly dealt in on securities exchanges or markets; and either one (1) of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

- (2) Notwithstanding any other provision of law, an insurance company or its custodian bank may deposit or arrange for the deposit of securities held in or purchased for the general account and the separate accounts of such insurance company in a clearing corporation or the federal reserve book-entry system. When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities, and certificates representing securities of small denominations may be merged into one (1) or more certificates of larger denominations. The records of any member bank through which an insurance company holds securities in the federal reserve book-entry system, and the records of any direct participant through which an insurance company holds securities in a clearing corporation, shall at all times show that such securities are held for such insurance company or its custodian bank and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation or in the federal reserve book-entry system without, in either case, physical delivery of certificates representing such securities.

- (3) Notwithstanding any other provision of law, an insurance company may deposit securities held in or purchased for its general account and its separate accounts in a custodial account with a custodian bank approved by, and under a custodial agreement approved by, the *commissioner*~~[executive director]~~. When securities are deposited in such custodial account, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the custodian bank or its nominee with any other securities held in the custody of the custodian bank or its nominee by any person, regardless of the ownership of such securities, and certificates representing securities of small denominations may be merged into one (1) or more certificates of larger denominations. The records of the custodian bank which holds securities for an insurance company in a custodial account shall at all times show that such securities are held for such insurance company and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such custodian bank without physical delivery of certificates representing such securities.
- (4) The same bank or trust company may act as direct participant, member bank, and custodian bank for an insurance company.
- (5) The *commissioner*~~[executive director]~~ of insurance shall promulgate rules and regulations governing the deposit by insurance companies of securities with clearing corporations and in the federal reserve book-entry system and with custodian banks.

➔Section 1013. KRS 304.7-363 is amended to read as follows:

An insurer shall not, directly or indirectly:

- (1) Invest in an obligation or security or make a guarantee for the benefit of or in favor of an officer or director of the insurer, except as provided in KRS 304.7-365;
- (2) Invest in an obligation or security, make a guarantee for the benefit of or in favor of, or make other investments in a business entity of which ten percent (10%) or more of the voting securities or equity interests are owned directly or indirectly by or for the benefit of one (1) or more officers or directors of the insurer, except as authorized in KRS 304.37-110, or provided in KRS 304.7-365;
- (3) Engage on its own behalf or through one (1) or more affiliates in a transaction or series of transactions designed to evade the prohibitions of this subtitle;
- (4)
 - (a) Invest in a partnership as a general partner, except that an insurer may make an investment as a general partner;
 1. If all other partners in the partnership are subsidiaries of the insurer;
 2. For the purpose of:
 - a. Meeting cash calls committed to prior to July 14, 2000;
 - b. Completing those specific projects or activities of the partnership in which the insurer was a general partner as of July 14, 2000 that had been undertaken as of that date; or
 - c. Making capital improvements to property owned by the partnership on July 14, 2000 if the insurer was a general partner as of that date; or
 3. In accordance with KRS 304.7-014(3);
 - (b) This subsection shall not prohibit a subsidiary or other affiliate of the insurer from becoming a general partner; or
- (5) Invest in or lend its funds upon the security of shares of its own stock, except that an insurer may acquire shares of its own stock for the following purposes, but the shares shall not be admitted assets of the insurer;
 - (a) Conversion of a stock insurer into a mutual or reciprocal insurer or a mutual or reciprocal insurer into a stock insurer;
 - (b) Issuance to the insurer's officers, employees, or agents in connection with a plan approved by the *commissioner*~~[executive director]~~ for converting a publicly held insurer into a privately held insurer or in connection with other stock option and employee benefit plans; or
 - (c) In accordance with any other plan approved by the *commissioner*~~[executive director]~~.

➔Section 1014. KRS 304.7-365 is amended to read as follows:

- (1) (a) Except as provided in subsection (2) of this section, an insurer shall not, without the prior written approval of the **commissioner**~~[executive director]~~, directly or indirectly:
1. Make a loan to or invest in an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest;
 2. Make a guarantee for the benefit of or in favor of an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest; or
 3. Enter into an agreement for the purchase or sale of property from or to an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest.
- (b) For purposes of this section, an officer or director shall not be deemed to have a financial interest by reason of an interest that is held directly or indirectly through the ownership of equity interests representing less than two percent (2%) of all outstanding equity interests issued by a person that is a party to the transaction, or solely by reason of that individual's position as a director or officer of a person that is a party to the transaction.
- (c) This subsection does not permit an investment that is prohibited by KRS 304.7-363.
- (d) This subsection does not apply to a transaction between an insurer and any of its subsidiaries or affiliates that is entered into in compliance with Subtitle 37 of KRS Chapter 304, other than a transaction between an insurer and its officer or director.
- (2) An insurer may make, without the prior written approval of the **commissioner**~~[executive director]~~;
- (a) Policy loans in accordance with the terms of the policy or contract and KRS 304.7-401;
 - (b) Advances to officers or directors for expenses reasonably expected to be incurred in the ordinary course of the insurer's business or guarantees associated with credit or charge cards issued or credit extended for the purpose of financing these expenses;
 - (c) Loans secured by the principal residence of an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request, if the loans comply with the requirements of KRS 304.7-413 or 304.7-465, and the terms and conditions otherwise are the same as those generally available from unaffiliated third parties;
 - (d) Secured loans to an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request, if the loans:
 1. Do not have a term exceeding two (2) years;
 2. Are required to finance mortgage loans outstanding at the same time on the prior and new residences of the officer;
 3. Do not exceed an amount equal to the equity of the officer in the prior residence; and
 4. Are required to be fully repaid upon the earlier of the end of the two (2) year period or the sale of the prior residence; and
 - (e) Loans and advances to officers or directors made in compliance with state or federal law specifically related to the loans and advances by a regulated noninsurance subsidiary or affiliate of the insurer in the ordinary course of business and on terms no more favorable than available to other customers of the entity.

➔Section 1015. KRS 304.7-367 is amended to read as follows:

The **commissioner**~~[executive director]~~ may promulgate administrative regulations implementing the provisions of this subtitle.

➔Section 1016. KRS 304.7-407 is amended to read as follows:

- (1) An insurer may acquire investments in investment pools that:
- (a) Invest only in:

1. Obligations that are rated 1 or 2 by SVO or have an equivalent of an SVO 1 or 2 rating or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating by a nationally recognized statistical rating organization recognized by the SVO and have:
 - a. A remaining maturity of three hundred ninety-seven (397) days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven (397) days; or
 - b. A remaining maturity of three (3) years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London InterBank Offered Rate (LIBOR), or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;
2. Government money market mutual funds or class one money market mutual funds; or
3. Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of KRS 304.7-415, except the quantitative limitations of KRS 304.7-415(4); or
 - (b) Invest only in investments that an insurer may acquire under this subtitle, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this subtitle.
- (2) For an investment in an investment pool to be qualified under this subtitle, the investment pool shall not:
 - (a) Acquire securities issued, assumed, guaranteed, or insured by the insurer or an affiliate of the insurer;
 - (b) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of KRS 304.7-415, except the quantitative limitations of KRS 304.7-415(4); or
 - (c) Permit the aggregate value of securities then loaned or sold to, purchased from, or invested in any one (1) business entity under this section to exceed ten percent (10%) of the total assets of the investment pool.
- (3) The limitations of KRS 304.7-403(1) shall not apply to an insurer's investment in an investment pool, however an insurer shall not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investment then held by the insurer under this section:
 - (a) In any one (1) investment pool would exceed ten percent (10%) of its admitted assets;
 - (b) In all investment pools investing in investments permitted under paragraph (b) of subsection (1) of this section would exceed twenty-five (25%) of its admitted assets; or
 - (c) In all investment pools would exceed thirty-five percent (35%) of its admitted assets.
- (4) For an investment in an investment pool to be qualified under this subtitle, the manager of the investment pool shall:
 - (a) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;
 - (b) Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;
 - (c) Compile and maintain detailed accounting records setting forth:
 1. The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;
 2. A complete description of all underlying assets of the investment pool, including amount, interest rate, maturity date if any, and other appropriate designations; and

3. Other records that, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and
- (d) Maintain the assets of the investment pool in one (1) or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:
 1. State and recognize the claims and rights of each participant;
 2. Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and
 3. Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person.
- (5) The pooling agreement for each investment pool shall be in writing and shall provide that:
 - (a) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under paragraph (a) of subsection (1) of this section, the insurer and its subsidiaries, affiliates, or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall at all times, hold one hundred percent (100%) of the interest in the investment pool;
 - (b) The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person;
 - (c) In proportion to the aggregate amount of each pool participant's interest in the investment pool:
 1. Each participant owns an undivided interest in the underlying assets of the investment pool; and
 2. The underlying assets of the investment pool are held solely for the benefit of each participant;
 - (d) A participant, or in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;
 - (e) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five (5) business days. Distributions under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:
 1. In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;
 2. In kind, a pro rata share of each underlying asset; or
 3. In a combination of cash and in-kind distributions, a pro rata share in each underlying asset; and
 - (f) The pool manager shall make the records of the investment pool available for inspection by the **commissioner**~~executive director~~.

➔Section 1017. KRS 304.7-413 is amended to read as follows:

- (1) (a) Subject to the limitations of KRS 304.7-403, an insurer may acquire, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by KRS 304.7-363(4), joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by mortgages on real estate situated within a domestic jurisdiction, but a mortgage loan that is secured by other than a first lien shall not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, shall not, at the time of acquisition of the obligation, exceed:
 1. Ninety percent (90%) of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;
 2. Eighty percent (80%) of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an

amortization period of thirty (30) years or less, and periodic payments made no less frequently than annually. Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan shall be no greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent (80%) limitation may be increased to ninety-seven percent (97%) if acceptable private mortgage insurance has been obtained; or

3. Seventy-five percent (75%) of the fair market value of the real estate for mortgage loans that do not meet the requirements of subparagraph 1. or 2. of this paragraph.
- (b) For purposes of paragraph (a) of this subsection, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the Federal Housing Administration, guaranteed by the Administrator of Veteran Affairs, or their successors.
 - (c) A mortgage loan that is held by an insurer under KRS 304.7-014(7) or acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or successor publication shall continue to qualify as a mortgage loan under this subtitle.
 - (d) Subject to the limitations of KRS 304.7-403, credit lease transactions that do not qualify for investment under KRS 304.7-405 with the following characteristics shall be exempt from the provisions of paragraph (a) of this subsection:
 1. The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;
 2. The lease payments cover or exceed the total debt service over the life of the loan;
 3. A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;
 4. The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;
 5. The expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking, and heating, ventilation, and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and
 6. There is a perfected assignment of the rents due in accordance with the lease to or for the benefit of the insurer.
- (2) (a) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by KRS 304.7-363(4), joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program in which case the real estate shall be deemed to be income producing.
 - (b) The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (4)(b) and (c) of this section.
- (3) (a) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's, which may include its affiliates, business operations, including home office, branch office, and field office operations:

1. Real estate acquired under this subsection may include excess space for rent to others, if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (2) of this section and is so qualified by the insurer;
 2. The real estate acquired under this subsection may be subject to one (1) or more mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with paragraph (d) of subsection (4) of this section; and
 3. For purposes of this subsection, "business operations" shall not include that portion of real estate used for the direct provision of health care services by an accident and health insurer or its insured. An insurer may acquire real estate used for these purposes under subsection (2) of this section.
- (4) (a) An insurer shall not acquire an investment under subsection (1) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (1) of this section would exceed:
1. One percent (1%) of its admitted assets in mortgage loans covering any one (1) secured location;
 2. One-quarter of one percent (0.25%) of its admitted assets in construction loans covering any one (1) secured location; or
 3. Two percent (2%) of its admitted assets in construction loans in the aggregate.
- (b) An insurer shall not acquire an investment under subsection (2) of this section if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsection (2) of this section plus the guarantees then outstanding would exceed:
1. One percent (1%) of its admitted assets in one (1) parcel or group of contiguous parcels of real estate, except that this limitation shall not apply to that portion of real estate used for the direct provision of health care services by an accident and health insurer for its insureds, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or
 2. Fifteen percent (15%) of its admitted assets in the aggregate, but not more than five percent (5%) of its admitted assets as to properties that are to be improved or developed.
- (c) An insurer shall not acquire an investment under subsection (1) or (2) of this section if, as a result of and after giving effect to the investment and any guarantees made by the insurer in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (1) and (2) of this section plus the guarantees then outstanding would exceed forty-five percent (45%) of its admitted assets. However, an insurer may exceed this limitation by no more than thirty percent (30%) of its admitted assets if:
1. This increased amount is invested only in residential mortgage loans;
 2. The insurer has no more than ten percent (10%) of its admitted assets invested in mortgage loans other than residential mortgage loans;
 3. The loan-to-value ratio of each residential mortgage loan does not exceed sixty percent (60%) at the time the mortgage loan is qualified under this increased authority, and the fair market value is supported by an appraisal no more than two (2) years old, prepared by an independent appraiser;
 4. A single mortgage loan qualified under this increased authority shall not exceed one-half of one percent (0.5%) of its admitted assets;
 5. The insurer files with the *commissioner*~~executive director~~, and receives approval from the *commissioner*~~executive director~~ for, a plan that is designed to result in a portfolio of residential mortgage loans that is sufficiently geographically diversified; and
 6. The insurer agrees to file annually with the *commissioner*~~executive director~~ records that demonstrate that its portfolio of residential mortgage loans is geographically diversified in accordance with the plan.

- (d) The limitations of KRS 304.7-403 shall not apply to an insurer's acquisition of real estate under subsection (3) of this section. An insurer shall not acquire real estate under subsection (3) of this section if, as a result of and after giving effect to the acquisition, the aggregate amount of real estate then held by the insurer under subsection (3) of this section would exceed ten percent (10%) of its admitted assets. With the permission of the **commissioner**~~executive director~~, additional amounts of real estate may be acquired under subsection (3) of this section.

➔Section 1018. KRS 304.7-415 is amended to read as follows:

An insurer may enter into securities lending, repurchase, reverse repurchase, and dollar roll transactions with business entities, subject to the following requirements:

- (1) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan in KRS 304.7-361 that specifies guidelines and objectives to be followed, such as:
 - (a) A description of how cash received will be invested or used for general corporate purposes of the insurer;
 - (b) Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transactions; and
 - (c) The extent to which the insurer may engage in these transactions.
- (2) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate not more than one (1) year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:
 - (a) Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and
 - (b) Prohibits securities lending transactions under the agreement with the agent or its affiliates.
- (3) Cash received in a transaction under this section shall be invested in accordance with this subtitle and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or its custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the **commissioner**~~executive director~~:
 - (a) Possession of the acceptable collateral;
 - (b) A perfected security interest in the acceptable collateral; or
 - (c) In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.
- (4) The limitations of KRS 304.7-403 and 304.7-417 shall not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:
 - (a) The aggregate amount of securities then loaned, sold to, or purchased from any one (1) business entity counterparty under this section would exceed five percent (5%) of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or
 - (b) The aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed forty percent (40%) of its admitted assets.
- (5) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities

loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the market value of the loaned securities.

- (6) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent (95%) of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent (95%) of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent (95%) of the market value of the transferred securities.
- (7) In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.
- (8) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two percent (102%) of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent (100%) of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

➔Section 1019. KRS 304.7-419 is amended to read as follows:

An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

- (1) (a) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined in regulations promulgated by the **commissioner**~~executive director~~; and
 - (b) An insurer shall be able to demonstrate to the **commissioner**~~executive director~~ the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analyses.
- (2) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:
 - (a) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent (7.5%) of its admitted assets;
 - (b) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent (3%) of its admitted assets; and
 - (c) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent (6.5%) of its admitted assets.
- (3) An insurer may only enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent (10%) of its admitted assets:
 - (a) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;

- (b) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call options sold;
 - (c) Sales of covered puts on investments that the insurer is permitted to acquire under this subtitle, if the insurer has escrowed or entered into a custodian agreement segregating cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or
 - (d) Sales of covered caps or floors, if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding.
- (4) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of KRS 304.7-403.
- (5) In accordance with administrative regulations promulgated under KRS 304.7-367, the ~~commissioner~~~~executive director~~ may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (2) of this section or for other risk management purposes under administrative regulations promulgated by the ~~commissioner~~~~executive director~~, but replication transactions shall not be permitted for other than risk management purposes.

➔Section 1020. KRS 304.7-423 is amended to read as follows:

- (1) Solely for the purpose of acquiring investments that exceed the quantitative limitations of KRS 304.7-403, 304.7-405, 304.7-407, 304.7-409, 304.7-411, 304.7-413, 304.7-415, and 304.7-417, an insurer may acquire under this subsection an investment, or engage in investment practices described in KRS 304.7-415, but an insurer shall not acquire an investment, or engage in investment practices described in KRS 304.7-415, under this subsection if, as a result of and after giving effect to the transaction:
- (a) The aggregate amount of investments then held by an insurer under this subsection would exceed three percent (3%) of its admitted assets; or
 - (b) The aggregate amount of investments as to one (1) limitation in KRS 304.7-403, 304.7-405, 304.7-407, 304.7-409, 304.7-411, 304.7-413, 304.7-415, and 304.7-417 then held by the insurer under this subsection would exceed one percent (1%) of its admitted assets.
- (2) (a) In addition to the authority provided under subsection (1) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in KRS 304.7-415, that are not specifically prohibited by this subtitle, without regard to the categories, conditions, standards, or other limitations of KRS 304.7-403, 304.7-405, 304.7-407, 304.7-409, 304.7-411, 304.7-413, 304.7-415, and 304.7-417 if, as a result of and after giving effect to the transaction, the aggregate amount of investments then held under this subsection would not exceed the lesser of:
- 1. Ten percent (10%) of its admitted assets; or
 - 2. Seventy-five percent (75%) of its capital and surplus.
- (b) However, an insurer shall not acquire any investment or engage in any investment practice under this subsection if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one (1) person then held by the insurer under this subsection would exceed three percent (3%) of its admitted assets.
- (3) In addition to the investments acquired under subsections (1) and (2) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in KRS 304.7-415, that are not specifically prohibited by this subtitle without regard to any limitations of KRS 304.7-403, 304.7-405, 304.7-407, 304.7-409, 304.7-411, 304.7-413, 304.7-415, and 304.7-417 if:
- (a) The ~~commissioner~~~~executive director~~ grants prior approval;
 - (b) The insurer demonstrates that its investments are being made in a prudent manner and that the additional amounts will be invested in a prudent manner; and

- (c) As a result of and after giving effect to the transaction, the aggregate amount of investments then held by the insurer under this subsection does not exceed the greater of:
 - 1. Twenty-five percent (25%) of its capital and surplus; or
 - 2. One hundred percent (100%) of capital and surplus less ten percent (10%) of its admitted assets.
- (4) An investment prohibited under KRS 304.7-363, not permitted under KRS 304.7-419, or additional derivative instruments acquired under KRS 304.7-419 shall not be acquired under this section.

➔Section 1021. KRS 304.7-453 is amended to read as follows:

- (1) Subject to all other limitations and requirements of this subtitle, a property and casualty, financial guaranty, mortgage guaranty, or accident and health insurer shall maintain an amount at least equal to one hundred percent (100%) of adjusted loss reserves and loss adjustment expense reserves, one hundred percent (100%) of adjusted unearned premium reserves, and one hundred percent (100%) of statutorily required policy and contract reserves in:
 - (a) Cash and cash equivalents;
 - (b) High and medium grade investments that qualify under KRS 304.7-457 or 304.7-459;
 - (c) Equity interests that qualify under KRS 304.7-461 and that are traded on a qualified exchange;
 - (d) Investments of the type set forth in KRS 304.7-469, if the investments are rated in the highest generic rating category by a nationally recognized statistical rating organization recognized by the SVO for rating foreign jurisdictions and if any foreign currency exposure is effectively hedged through the maturity date of the investments;
 - (e) Qualifying investments of the type set forth in paragraph (b), (c), or (d) of this subsection that are acquired under KRS 304.7-473;
 - (f) Interest and dividends receivable on qualifying investments of the type set forth in paragraphs (a) to (e) of this subsection; or
 - (g) Reinsurance recoverable on paid losses.
- (2) Determination of the reserve requirement amount shall be as follows:
 - (a) For purposes of determining the amount of assets to be maintained under this subsection, the calculation of adjusted loss reserves and loss adjustment expense reserves, adjusted unearned premium reserves, and statutorily required policy and contract reserves shall be based on the amounts reported as of the most recent annual or quarterly statement date;
 - (b) Adjusted loss reserves and loss adjustment expense reserves shall be equal to the sum of the amounts derived from the following calculations:
 - 1. The result of each amount reported by the insurer as losses and loss adjustment expenses unpaid for each accident year for each individual line of business; multiplied by
 - 2. The discount factor that is applicable to the line of business and accident year published by the Internal Revenue Service under Internal Revenue Code Section 846 (26 U.S.C. sec. 846), as amended, for the calendar year that corresponds to the most recent annual statement of the insurer; minus
 - 3. Accrued retrospective premiums discounted by an average discount factor. The discount factor shall be calculated by dividing the losses and loss adjustment expenses unpaid after discounting (the product of subparagraphs 1. and 2. of this paragraph) by loss and loss adjustment expense reserves before discounting subparagraph 1. of this paragraph; and
 - 4. For purposes of these calculations, the losses and loss adjustment expenses unpaid shall be determined net of anticipated salvage and subrogation, and gross of any discount for the time value of money or tabular discount.
 - (c) Adjusted unearned premium reserves shall be equal to the result of the following calculation:
 - 1. The amount reported by the insurer as unearned premium reserves; minus
 - 2. The admitted asset amounts reported by the insurer as:

- a. Premiums in and agents' balances in the course of collection, accident and health premiums due and unpaid, and uncollected premiums for accident and health premiums;
 - b. Premiums, agents' balances, and installments booked but deferred and not yet due; and
 - c. Bills receivable, taken for premium.
- (d) Statutorily required policy and contract reserves also shall include, in the case of a title insurer, the amounts required by KRS 304.6-080 and, in the case of a mortgage guaranty insurer, the amounts required by KRS 304.6-090 and, in the case of an accident and health insurer, the amounts required by KRS 304.6-070.
- (3) A property and casualty, financial guaranty, mortgage guaranty, or accident and health insurer shall supplement its annual statement with a reconciliation and summary of its assets and reserve requirements as required in subsection (1) of this section. A reconciliation and summary showing that an insurer's assets as required in subsection (1) of this section are greater than or equal to its undiscounted reserves referred to in subsection (1) of this section shall be sufficient to satisfy this requirement. Upon prior notification, the **commissioner**~~{executive director}~~ may require an insurer to submit a reconciliation and summary with any quarterly statement filed during the calendar year.
- (4) If a property and casualty, financial guaranty, mortgage guaranty, or accident and health insurer's assets and reserves do not comply with subsection (1) of this section, the insurer shall notify the **commissioner**~~{executive director}~~ immediately of the amount by which the reserve requirements exceed the annual statement value of the qualifying assets, explain why the deficiency exists, and within thirty (30) days of the date of the notice propose a plan of action to remedy the deficiency.
- (5) If the **commissioner**~~{executive director}~~ determines that an insurer is not in compliance with subsection (1) of this section, the **commissioner**~~{executive director}~~ shall require the insurer to eliminate the condition causing the noncompliance within a specified time from the date the notice of the **commissioner's**~~{executive director's}~~ requirement is mailed or delivered to the insurer.
- (6) If an insurer fails to comply with the **commissioner's**~~{executive director's}~~ requirement under subsection (5) of this section, the insurer is deemed to be in hazardous financial condition, and the **commissioner**~~{executive director}~~ shall take one (1) or more of the actions authorized by Subtitle 33 of KRS Chapter 304, and KRS 304.3-200.

➔Section 1022. KRS 304.7-459 is amended to read as follows:

- (1) An insurer may acquire investments in investment pools that:
- (a) Invest only in:
 - 1. Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 equivalent rating by a nationally recognized statistical rating organization recognized by the SVO and have:
 - a. A remaining maturity of three hundred ninety-seven (397) days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven (397) days; or
 - b. A remaining maturity of three (3) years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London InterBank Offered Rate (LIBOR), or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;
 - 2. Government money market mutual funds or class one money market mutual funds; or
 - 3. Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of KRS 304.7-467, except the quantitative limitations of KRS 304.7-467(4); or

- (b) Invest only in investments that an insurer may acquire under this subtitle, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this subtitle.
- (2) For an investment in an investment pool to be qualified under this subtitle, the investment pool shall not:
- (a) Acquire securities issued, assumed, guaranteed, or insured by the insurer or an affiliate of the insurer;
 - (b) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of KRS 304.7-467, except the quantitative limitations of KRS 304.7-467(4); or
 - (c) Permit the aggregate value of securities then loaned or sold to, purchased from, or invested in any one (1) business entity under this section to exceed ten percent (10%) of the total assets of the investment pool.
- (3) The limitations of KRS 304.7-455(1) to (3) shall not apply to an insurer's investment in an investment pool, however an insurer shall not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:
- (a) In any one (1) investment pool would exceed ten percent (10%) of its admitted assets;
 - (b) In all investment pools investing in investments permitted under paragraph (b) of subsection (1) of this section would exceed twenty-five percent (25%) of its admitted assets; or
 - (c) In all investment pools would exceed forty percent (40%) of its admitted assets.
- (4) For an investment in an investment pool to be qualified under this subtitle, the manager of the investment pool shall:
- (a) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;
 - (b) Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;
 - (c) Compile and maintain detailed accounting records setting forth:
 - 1. The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;
 - 2. A complete description of all underlying assets of the investment pool, including amount, interest rate, maturity date if any, and other appropriate designations; and
 - 3. Other records that, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and
 - (d) Maintain the assets of the investment pool in one (1) or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:
 - 1. State and recognize the claims and rights of each participant;
 - 2. Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investment in the investment pool; and
 - 3. Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person.
- (5) The pooling agreement for each investment pool shall be in writing and shall provide that:
- (a) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under paragraph (a) of subsection (1) of this section, the insurer and its subsidiaries, affiliates, or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a

- United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall, at all times, hold one hundred percent (100%) of the interests in the investment pool;
- (b) The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person;
 - (c) In proportion to the aggregate amount of each pool participant's interest in the investment pool:
 1. Each participant owns an undivided interest in the underlying assets of the investment pool; and
 2. The underlying assets of the investment pool are held solely for the benefit of each participant;
 - (d) A participant, or in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;
 - (e) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five (5) business days. Distributions under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:
 1. In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;
 2. In kind, a pro rata share of each underlying asset; or
 3. In a combination of cash and in-kind distributions, a pro rata share in each underlying asset; and
 - (f) The pool manager shall make the records of the investment pool available for inspection by the *commissioner*~~{executive director}~~.

➔Section 1023. KRS 304.7-465 is amended to read as follows:

- (1) Subject to the limitations of KRS 304.7-455, an insurer may acquire, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by KRS 304.7-363(4), joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by mortgages on real estate situated within a domestic jurisdiction, but a mortgage loan that is secured by other than a first lien shall not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, shall not, at the time of acquisition of the obligation, exceed:
 - (a) Ninety percent (90%) of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;
 - (b) Eighty percent (80%) of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payments in periodic installments of principal and interest, has an amortization period of thirty (30) years or less, and periodic payments made no less frequently than annually. Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan shall not be greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent (80%) limitation may be increased to ninety-seven percent (97%) if acceptable private mortgage insurance has been obtained; or
 - (c) Seventy-five percent (75%) of the fair market value of the real estate for mortgage loans that do not meet the requirements of paragraph (a) or (b) of this subsection.
- (2) For purposes of subsection (1) of this section, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the Federal Housing Administration, guaranteed by the Administrator of Veteran Affairs, or their successors.

- (3) A mortgage loan that is held by an insurer under KRS 304.7-014(7) or acquired under this section and is restructured in a manner that meets the requirement of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or successor publication shall continue to qualify as a mortgage loan under this subtitle.
- (4) Subject to the limitations of KRS 304.7-455, credit lease transactions that do not qualify for investment under KRS 304.7-457 with the following characteristics shall be exempt from the provisions of subsection (1) of this section:
 - (a) The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;
 - (b) The lease payments cover or exceed the total debt service over the life of the loan;
 - (c) A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;
 - (d) The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;
 - (e) The expenses of the real estate are passed through to the tenant excluding exterior, structural, parking, and heating, ventilation and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and
 - (f) There is a perfected assignment of the rents due under the lease to or for the benefit of the insurer.
- (5) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by KRS 304.7-363(4), joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program, in which case the real estate shall be deemed to be income producing.
- (6) The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsections (9) and (10) of this section.
- (7) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's, which may include its affiliates, business operations, including home office, branch office, and field office operations.
 - (a) Real estate acquired under this subsection may include excess space for rent to others if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsections (5) and (6) of this section and is so qualified by the insurer;
 - (b) The real estate acquired under this subsection may be subject to one (1) or more mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (11) of this section; and
 - (c) For purposes of this subsection, "business operations" shall not include that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively. An insurer may acquire real estate used for these purposes under subsections (5) and (6) of this section.
- (8) An insurer shall not acquire an investment under subsections (1) to (4) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsections (1) to (4) of this section would exceed:
 - (a) One percent (1%) of its admitted assets in mortgage loans covering any one (1) secured location;
 - (b) One-quarter of one percent (0.25%) of its admitted assets in construction loans covering any one (1) secured location; or

- (c) One percent (1%) of its admitted assets in construction loans in the aggregate.
- (9) An insurer shall not acquire an investment under subsections (5) and (6) of this section if, a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsections (5) and (6) of this section plus the guarantees then outstanding would exceed:
- (a) One percent (1%) of its admitted assets in any one (1) parcel or group of contiguous parcels of real estate, except that this limitation shall not apply to that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or
 - (b) The lesser of ten percent (10%) of its admitted assets or forty percent (40%) of its surplus as regards policyholders in the aggregate, except for an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively, this limitation shall be increased to fifteen percent (15%) of its admitted assets in the aggregate.
- (10) An insurer shall not acquire an investment under subsections (1) to (6) of this section if, as a result of and after giving effect to the investment and any guarantees it has made in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (1) to (6) of this section plus the guarantees then outstanding would exceed twenty-five percent (25%) of its admitted assets.
- (11) The limitations of KRS 304.7-455 shall not apply to an insurer's acquisition of real estate under subsection (7) of this section. An insurer shall not acquire real estate under subsection (7) of this section if, as a result of and after giving effect to the acquisition, the aggregate amount of all real estate then held by the insurer under subsection (7) of this section would exceed ten percent (10%) of its admitted assets. With the permission of the **commissioner**~~executive director~~, additional amounts of real estate may be acquired under subsection (7) of this section.

➔Section 1024. KRS 304.7-467 is amended to read as follows:

An insurer may enter into securities lending, repurchase, reverse repurchase and dollar roll transactions with business entities, subject to the following requirements:

- (1) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan in KRS 304.7-361(1) that specifies guidelines and objectives to be followed, such as:
 - (a) A description of how cash received will be invested or used for general corporate purposes of the insurer;
 - (b) Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and
 - (c) The extent to which the insurer may engage in these transactions.
- (2) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate not more than one (1) year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:
 - (a) Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and
 - (b) Prohibits securities lending transactions under the agreement with the agent or its affiliates.
- (3) Cash received in a transaction under this section shall be invested in accordance with this subtitle and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or custodian shall maintain,

as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the *commissioner*~~{executive director}~~:

- (a) Possession of the acceptable collateral;
 - (b) A perfected security interest in the acceptable collateral; or
 - (c) In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.
- (4) The limitations of KRS 304.7-455 and 304.7-469 shall not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:
- (a) The aggregate amount of securities then loaned, sold to, or purchased from any one (1) business entity counterparty under this section would exceed five percent (5%) of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or
 - (b) The aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed forty percent (40%) of its admitted assets, but the limitation of this subsection shall not apply to reverse repurchase transactions for so long as the borrowing is used to meet operational liquidity requirements resulting from an officially declared catastrophe and subject to a plan approved by the *commissioner*~~{executive director}~~.
- (5) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the market value of the loaned securities.
- (6) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent (95%) of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent (95%) of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent (95%) of the market value of the transferred securities.
- (7) In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.
- (8) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two percent (102%) of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent (100%) of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

➔Section 1025. KRS 304.7-471 is amended to read as follows:

- (1) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

- (a) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined in administrative regulations promulgated by the *commissioner*~~[executive director]~~.
 - (b) An insurer shall be able to demonstrate to the *commissioner*~~[executive director]~~ the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analyses.
- (2) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:
- (a) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent (7.5%) of its admitted assets;
 - (b) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent (3%) of its admitted assets; and
 - (c) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent (6.5%) of its admitted assets.
- (3) An insurer may only enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent (10%) of its admitted assets:
- (a) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;
 - (b) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold; or
 - (c) Sales of covered puts on investments that the insurer is permitted to acquire under this subtitle, if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold.
- (4) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of KRS 304.7-455.
- (5) In accordance with administrative regulations promulgated under KRS 304.7-367, the *commissioner*~~[executive director]~~ may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (2) of this section or for other risk management purposes under administrative regulations promulgated by the *commissioner*~~[executive director]~~, but replication transactions shall not be permitted for other than risk management purposes.
- ➔Section 1026. KRS 304.8-010 is amended to read as follows:
- (1) All deposits of assets of insurers required or permitted under this code and made in this state shall be made and maintained with the *commissioner*~~[executive director]~~.
 - (2) In addition to deposits required for an insurer's authority to transact insurance in this state, an insurer may deposit and maintain with the *commissioner*~~[executive director]~~ deposit of assets:
 - (a) Required of an insurer by the laws of other states as prerequisite for authority to transact insurance in such other states.
 - (b) Required by application of the retaliatory provision, KRS 304.3-270.
 - (c) In such additional amounts as is permitted by this subtitle, or as expressly required by this code.
- ➔Section 1027. KRS 304.8-020 is amended to read as follows:

- (1) All deposits shall be held by the **commissioner**~~{executive director}~~ in trust for the benefit and protection of all of the insurer's policyholders and creditors in the United States.
- (2) The deposit of a domestic insurer shall further be security for payment of taxes, assessments, forfeitures, fines, or other charges due and unpaid to this state or any other state in which the insurer has been authorized to transact insurance, and may be applied to the extent as may be necessary for payment.
- (3) Except, that deposits required pursuant to the retaliatory provision, KRS 304.3-270, or required of a domestic insurer pursuant to the laws of another state, may be limited to the uses and purposes as are consistent with the provision or laws. But no deposit so required of a domestic insurer shall be allowed in lieu of or as a credit upon any deposit required of an insurer under this subtitle if the purpose of the deposit so required by another state is materially inconsistent with the purpose stated in subsection (1) of this section.

➔Section 1028. KRS 304.8-040 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may accept the home office real property of a domestic insurer as a part of any deposit of assets required of the insurer under this code. For this purpose the insurer shall convey such real property by deed to the **commissioner**~~{executive director}~~, and the deed shall be duly recorded and deposited with the **commissioner**~~{executive director}~~.
- (2) Real property so deposited shall not be sold or further encumbered by the insurer except upon advance approval of the **commissioner**~~{executive director}~~ after full submission of the purposes and detail of the sale or encumbrance to the **commissioner**~~{executive director}~~. The **commissioner**~~{executive director}~~ shall join in the execution of any deed or other document required to consummate the sale or encumbrance. Upon the sale or encumbrance the insurer shall deposit other assets in lieu of such real property.
- (3) This real property shall be valued at its fair value as determined by the **commissioner**~~{executive director}~~.

➔Section 1029. KRS 304.8-050 is amended to read as follows:

- (1) The insurer's policyholders and creditors in the United States, and this state and other states in which the insurer is authorized to transact insurance, shall have a first lien upon other real property, of which the evidence of the insurer's title is deposited by the insurer. The **commissioner**~~{executive director}~~ shall file proper notice of such lien with the county clerk of the county in which any such property is located.
- (2) Such real property shall not be withdrawn, sold, or further encumbered unless other eligible assets of equal or greater value are deposited by the insurer in lieu thereof. Upon any such withdrawal, sale, or encumbrance the **commissioner**~~{executive director}~~ shall execute a proper release of such property, which release shall be recorded in the office of such county clerk.
- (3) For the purpose of determining the amount of deposit, such real property shall be valued at sixty percent (60%) of its fair value as determined by the **commissioner**~~{executive director}~~.

➔Section 1030. KRS 304.8-090 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall designate at least one (1) bank or trust company in each county of this state containing a city of the first class or a consolidated local government and such other banks as proposed by the insurer and approved by the **commissioner**~~{executive director}~~ which vaults shall be used as depositories for assets of insurers deposited under this code.
- (2) Any expense associated with depositing assets under this chapter shall be borne by the insurer.

➔Section 1031. KRS 304.8-095 is amended to read as follows:

Notwithstanding any other provision of law, the **commissioner**~~{executive director}~~ may cause any or all deposits of assets of insurers required or permitted under this code and maintained in this state to be made and maintained in trust with depositories designated pursuant to KRS 304.8-090(1) under trust agreements to which depositories, insurers, and the **commissioner**~~{executive director}~~ are parties, for the purpose of this subtitle. These trust agreements shall provide with respect to deposits thereunder provisions, conditions and stipulations corresponding to those applicable to other deposits under this subtitle and shall require depositories to perform the same duties with respect to deposits thereunder as the **commissioner**~~{executive director}~~ is required to perform with respect to other deposits under the subtitle. Insurers who have made deposits under these trust agreements shall be relieved of all other obligations under this subtitle with respect to the assets deposited thereunder.

➔Section 1032. KRS 304.8-100 is amended to read as follows:

As to each insurer making or having a deposit the *commissioner*~~[executive director]~~ shall keep a complete record thereof showing:

- (1) The particular assets so deposited.
- (2) The face value, if any, of any asset, and the value thereof as determined by the *commissioner*~~[executive director]~~.
- (3) Date of deposit, and place thereof.
- (4) Assets withdrawn, date thereof, value of assets so withdrawn, and the name and address of any person to whom the assets were delivered.
- (5) All other information as the *commissioner*~~[executive director]~~ deems necessary.

➔Section 1033. KRS 304.8-110 is amended to read as follows:

- (1) The *commissioner*~~[executive director]~~ may at any time inventory assets on deposit as to any insurer. Upon request of the insurer the *commissioner*~~[executive director]~~ shall make an inventory at the insurer's expense, and shall furnish the insurer a copy thereof. All inventories shall be made in the presence of the *commissioner*~~[executive director]~~ and two (2) representatives of the insurer designated for the purpose by its board of directors.
- (2) Upon request, the *commissioner*~~[executive director]~~ shall give to any insurer depositing assets a certificate thereof describing the assets and setting forth their par value, if any, and their value, which valuation shall be determined by the *commissioner*~~[executive director]~~.

➔Section 1034. KRS 304.8-120 is amended to read as follows:

- (1) All assets deposited shall be valued by the *commissioner*~~[executive director]~~ when deposited, such valuation to be determined in accordance with the applicable provisions of this code.
- (2) If at any time the *commissioner*~~[executive director]~~ finds that the value of assets on deposit by an insurer is less than the amount required for the purposes for which the deposit was made, *the commissioner*~~[he]~~ shall by certified mail, return receipt requested, addressed to the insurer at its home office, notify the insurer of such deficiency and require that the deficiency be cured within thirty (30) days from the date of such mailing. The *commissioner*~~[executive director]~~ may suspend or revoke the certificate of authority of any insurer failing to cure any such deficiency within such thirty (30) days.

➔Section 1035. KRS 304.8-140 is amended to read as follows:

- (1) While solvent and complying with this code an insurer shall be entitled:
 - (a) To collect and receive interest, dividends, and payments accruing upon assets so held on deposit for its account.
 - (b) From time to time, to exchange and substitute for any of such assets, other assets eligible for deposit.
- (2) If the insurer fails to cure a deficiency when required, is insolvent, is subject to delinquency proceedings, or is in default as to taxes or other charges due to this state under law, the *commissioner*~~[executive director]~~ shall collect such interest, dividends, and payments and add them to the insurer's deposit.

➔Section 1036. KRS 304.8-150 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, every domestic life insurer shall, within ninety (90) days after the net cash value of each policy in force has been ascertained as required by law, deposit with the *commissioner*~~[executive director]~~ for the security and benefit of its policyholders, assets in an amount which, together with the sums as may be deposited by it with other states and governments by the requirements of their laws, shall be not less than the ascertained valuation of all policies in force less any sums that it has advanced from its legal reserve to its policyholders on the pledge to it of their policies and any accumulations thereon.
- (2) If the legal reserve or the aggregate ascertained valuation of all policies in force in any domestic life insurer equals \$20,000,000, no further deposit shall be required of the insurer so long as the legal reserve remains at or above \$20,000,000, unless the insurer elects to represent on its policies or otherwise that the legal reserve or cash value of its policies thereafter written is on deposit with this state or one or more of its designated

agencies, in which event the insurer shall deposit assets as above set out in an amount equal to the ascertained valuation of all of its policies in force at the time the representation is made.

➔Section 1037. KRS 304.8-160 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, no judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors.
- (2) As to deposits made pursuant to the retaliatory provision, KRS 304.3-270, levy thereupon shall be permitted if so provided in the *commissioner's*~~{executive director's}~~ order under which the deposit is required.

➔Section 1038. KRS 304.8-170 is amended to read as follows:

- (1) Any required deposit shall be released, in addition to circumstances already provided for, in these instances only:
 - (a) Upon extinguishment of substantially all liabilities of the insurer for the security of which the deposit is held, by reinsurance contract or otherwise.
 - (b) If the deposit is no longer required under this code.
 - (c) If the deposit was made pursuant to the retaliatory provision, KRS 304.3-270, it shall be released in whole or in part when no longer so required.
 - (d) Upon proper order of a court of competent jurisdiction the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the insurer.
- (2) No release shall be made except on application to and written order of the *commissioner*~~{executive director}~~ made upon proof satisfactory to the *commissioner*~~{executive director}~~ of the existence of one of the grounds therefor. The *commissioner*~~{executive director}~~ shall not have any personal liability for any such release of any deposit or part thereof so ordered by the *commissioner*~~{executive director}~~ in good faith.
- (3) All release of deposits or any part thereof shall be made to the person then entitled thereto upon proof of right satisfactory to the *commissioner*~~{executive director}~~.

➔Section 1039. KRS 304.8-180 is amended to read as follows:

- (1) Assets shall not be removed from the bank or trust company wherein the assets are deposited, except upon the written order of at least two (2) officers authorized for the purpose by the insurer's board of directors or other governing body, which order must have been approved by the *commissioner*~~{executive director}~~.
- (2) The assets shall be deposited or removed only in the joint presence of the *commissioner*~~{executive director}~~ and two (2) representatives of the insurer authorized for the purpose by the insurer's board of directors or other governing body.
- (3) Except that assets may be deposited or removed under the direction and upon the order of a court of competent jurisdiction, and in the presence of the *commissioner*~~{executive director}~~.

➔Section 1040. KRS 304.8-190 is amended to read as follows:

- (1) Insurers maintaining deposits of assets in this state under this subtitle, shall pay into the examination expense revolving fund as provided in Subtitle 2 of this chapter, moneys sufficient to pay travel and other necessary expenses of the *commissioner*~~{executive director}~~ related to the maintenance, valuation, protection, or administration of the insurer's deposit.
- (2) The portion of the expense fund to be paid by each such insurer shall be in the same approximate proportion as the amount the insurer had on deposit on December 31 of the preceding year bears to the total such deposits of all insurers as of December 31 of the preceding year. The *commissioner*~~{executive director}~~ shall assess each insurer for its proportionate share of the expense fund. The minimum charge for each insurer shall be five dollars (\$5).

➔Section 1041. KRS 304.9-020 is amended to read as follows:

As used in this subtitle:

- (1) "Agent" means an individual or business entity appointed by an insurer to sell or to solicit applications for insurance or annuity contracts or to negotiate insurance or annuity contracts on its behalf;

- (2) "Appointment" means a notification filed with the insurance *department*~~{office}~~ that an insurer has established an agency relationship with a producer;
- (3) "Appointment renewal" means continuation of an insurer's existing appointment based on payment of the required fee without submission of an appointment form;
- (4) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, employer group, professional employer organization, or other legal entity;
- (5) "Crop insurance" means insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease, or other yield-reducing conditions or perils provided by the private insurance market or that is subsidized by the Federal Crop Insurance Corporation, including multi-peril crop insurance;
- (6) "Home state" means the District of Columbia and any state or territory of the United States in which a licensee maintains his or her principal place of residence or principal place of business and is licensed by that state;
- (7) "Insurance producer" means an individual or business entity required to be licensed under the laws of Kentucky to sell, solicit, or negotiate insurance or annuity contracts. Insurance producer includes agent, managing general agent, surplus lines broker, reinsurance intermediary broker and manager, rental vehicle agent and managing employee, specialty credit producer and managing employee, and consultant;
- (8) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the *commissioner*~~{executive director}~~ determines should be designated a form of limited line credit insurance;
- (9) "Limited line credit insurance agent" means an individual or business entity who sells, solicits, or negotiates one (1) or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy;
- (10) "Limited lines insurance" means the lines of insurance defined in subsections (5), (8), (14), and (16) of this section and any other line of insurance that the *commissioner*~~{executive director}~~ identifies in accordance with KRS 304.9-230(1)(e) or recognizes for the purpose of complying with KRS 304.9-140(5);
- (11) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract;
- (12) "Sell" means to exchange a contract of insurance by any means, for money or other valuable consideration, on behalf of an insurer;
- (13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer;
- (14) "Surety" means insurance or bond that covers obligation to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust. Surety also includes surety insurance as defined in KRS 304.5-060;
- (15) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance;
- (16) "Travel insurance" means insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects if limited to a specific trip and sold in connection with transportation provided by a common carrier;
- (17) "Uniform business entity application" means the current version of the National Association of Insurance Commissioners uniform business entity application for resident and nonresident business entities; and
- (18) "Uniform individual application" means the current version of the National Association of Insurance Commissioners uniform individual application for resident and nonresident individuals.

➔Section 1042. KRS 304.9-030 is amended to read as follows:

- (1) Unless denied a license according to KRS 304.9-440, applicants who have met the requirements for the license in accordance with this subtitle, shall be issued the applicable license.
- (2) An insurance agent may receive qualification for a license in one (1) or more of the following applicable lines of authority:
 - (a) Life -- insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;
 - (b) Health -- insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;
 - (c) Property -- insurance coverage for the direct or consequential loss or damage to property of every kind;
 - (d) Casualty -- insurance coverage against legal liability, including that for death, injury, or disability, or damage to real or personal property;
 - (e) Variable life and variable annuity products -- insurance coverage provided under variable life insurance contracts and variable annuities;
 - (f) Limited line insurance as identified in KRS 304.9-230;
 - (g) Personal lines -- property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; and
 - (h) Any other line of insurance authorized by Kentucky law and deemed by the *commissioner*~~[executive director]~~ appropriate to be issued as a separate line of authority.
- (3) A resident applicant for a variable life and variable annuities line of authority shall hold an active life line of authority.

➔Section 1043. KRS 304.9-052 is amended to read as follows:

- (1) No individual or business entity shall in this state be, act as, or hold himself *or herself* out to be an administrator unless then licensed as an administrator by the *commissioner*~~[executive director]~~.
- (2) For the protection of the people of this state, the *commissioner*~~[executive director]~~ shall not issue, continue, or permit to exist any administrator license for any person unless such person demonstrates to the satisfaction of the *commissioner*~~[executive director]~~ that the following standards are met:
 - (a) If an individual, the applicant has attained the age of twenty-one (21) years;
 - (b) The applicant is competent, trustworthy, reliable, and of good reputation;
 - (c) If an individual, the applicant has attained an educational level acceptable to the *commissioner*~~[executive director]~~;
 - (d) The applicant is financially responsible;
 - (e) The applicant has not had any license issued by the *commissioner*~~[executive director]~~, or application therefor, terminated for cause;
 - (f) The applicant is a resident of Kentucky or is currently licensed and in good standing in his or her home state;
 - (g) The applicant has paid the fee prescribed in KRS 304.4-010;
 - (h) If a business entity, each individual authorized to act for the business entity under its administrator license shall be designated with the *commissioner*~~[executive director]~~ in accordance with KRS 304.9-133; and
 - (i) Administrator licenses shall be renewed in accordance with KRS 304.9-260.

➔Section 1044. KRS 304.9-080 is amended to read as follows:

- (1) An individual or business entity shall not sell, solicit, or negotiate insurance in this state unless duly licensed as the appropriate insurance producer for that line of authority in accordance with this subtitle or Subtitle 10 of this chapter.

- (2) No individual or business entity shall in this state be, act as, or hold himself, herself, or itself out as an adjuster unless then licensed as an adjuster.
- (3) No individual or business entity shall in this state be, act as, or hold himself, herself, or itself out as a consultant unless then licensed as a consultant. No consultant shall act as a consultant with respect to any kind of insurance unless duly licensed as a consultant for that line of authority.
- (4) Except as provided in KRS 304.9-410 and KRS 304.9-270(4), no agent shall place, and no insurer shall accept, any insurance with any insurer as to which the agent does not then hold a license and appointment as agent under this subtitle.
- (5) No rental vehicle agent, rental vehicle managing employee, specialty credit producer, or specialty credit managing employee shall place, and no insurer shall accept, any insurance with any insurer as to which the licensee does not then hold a license and appointment under this subtitle.
- (6) The **commissioner**~~{executive director}~~ shall prescribe and furnish all forms required under this subtitle as to licenses and appointments.

➔Section 1045. KRS 304.9-085 is amended to read as follows:

- (1) A "managing general agent" is an individual or business entity appointed by an insurer to solicit applications from agents for insurance contracts or to negotiate insurance contracts on behalf of an insurer and, if authorized to do so by an insurer, to effectuate and countersign insurance contracts.
- (2) No individual or business entity shall in this state be, act as, or hold himself,~~or~~ herself, **or itself** out as a managing general agent unless then licensed as a managing general agent. In order to qualify for a managing general agent license, an individual shall:
 - (a) Hold an agent license with property and casualty lines of authority and be appointed by each authorized insurer the licensee holds the contract to represent;
 - (b) If a nonresident, hold a nonresident agent license with property and casualty lines of authority and be appointed by each authorized insurer the licensee holds a contract to represent in Kentucky; and
 - (c) Hold a surplus lines broker license if any unauthorized insurers are represented or used.

In order for a business entity to qualify for a managing general agent license, all individuals acting on behalf of the business entity under its license shall be licensed agents with property and casualty lines of authority and shall be designated with the **commissioner**~~{executive director}~~ as to the license in accordance with all provisions of KRS 304.9-133 except for subsection (2)(a).

- (3) As used in this chapter, "agent" includes managing general agent unless the context requires otherwise.
- (4) A managing general agent is a representative of the insurers which the managing general agent holds a contract to represent. Each insurer is liable for the acts of the managing general agent in representing that insurer.
- (5) The **commissioner**~~{executive director}~~ shall renew managing general agent licenses in accordance with KRS 304.9-260.

➔Section 1046. KRS 304.9-100 is amended to read as follows:

- (1) The purpose of a license issued under this subtitle to an insurance producer is to authorize and enable the licensee actively and in good faith to engage in the business of insurance with respect to the general public, and to facilitate the public supervision of such activities in the public interest; and not for the purpose of enabling the licensee to receive a rebate of premium in the form of "commission" or other compensation upon his **or her** own interest or upon those of other persons with whom he **or she** is closely associated in capacities other than as an insurance producer.
- (2) The **commissioner**~~{executive director}~~ shall not grant, renew, continue, or permit to exist any license of an insurance producer as to any applicant therefor or licensee thereunder if he **or she** finds that the license has been or is being or will probably be used by the applicant or licensee principally for the purpose of writing "controlled business," that is:
 - (a) Insurance on his **or her** own interest or those of his **or her** family or of his **or her** employer; or

- (b) Insurance or annuity contracts covering himself, *herself*, or members of his *or her* family, or the officers, directors, stockholders, partners, employees, or debtors of a partnership, association, or corporation of which he *or she*, or a member of his *or her* family, is an officer, director, stockholder, partner, associate, or employee.
- (3) Such a license shall be deemed to have been, or intended to be, used principally for the purpose of writing controlled business if the **commissioner**~~{executive director}~~ finds that during any twelve (12) months' period the aggregate premiums accruing or to accrue from controlled business have exceeded or probably will exceed the aggregate premiums accruing or to accrue on other business written or probably to be written by the applicant or licensee during the same period.
- (4) This section shall not apply as to:
 - (a) Insurance of the interest of a motor vehicle sales or financing agent in a motor vehicle sold or financed by it;
 - (b) Insurance of the interest of real property mortgagee in the mortgaged property, except title insurance;
 - (c) Limited line credit insurance; and
 - (d) Rental vehicle insurance.

→Section 1047. KRS 304.9-105 is amended to read as follows:

- (1) An individual applying for an agent license shall make application to the **commissioner**~~{executive director}~~ on the uniform individual application or other application prescribed by the **commissioner**~~{executive director}~~. Before approving the application, the **commissioner**~~{executive director}~~ shall find that the applicant:
 - (a) Is at least eighteen (18) years of age;
 - (b) Has fulfilled the residence requirements as set forth in KRS 304.9-120 or is a nonresident who is not eligible to be issued a license in accordance with KRS 304.9-140;
 - (c) Has not committed any act that is a ground for denial, suspension, or revocation set forth in KRS 304.9-440;
 - (d) Is trustworthy, reliable, and of good reputation, evidence of which shall be determined through an investigation by the **commissioner**~~{executive director}~~;
 - (e) Is competent to exercise the license and has:
 - 1. Except for variable life and variable annuities line of authority and limited lines of authority identified in KRS 304.9-230, completed a prelicensing course of study consisting of forty (40) hours for life and health, forty (40) hours for property and casualty, or twenty (20) hours for each line of authority, as applicable, for which the individual has applied. The **commissioner**~~{executive director}~~ shall promulgate administrative regulations to carry out the purpose of this section;
 - 2. Except for variable life and variable annuities line of authority and limited lines of authority identified in accordance with KRS 304.9-230, successfully passed the examinations required by the **commissioner**~~{executive director}~~ for the lines of authority for which the individual has applied; and
 - 3. Paid the fees set forth in KRS 304.4-010; and
 - (f) Is financially responsible to exercise the license and has:
 - 1. a. Filed with the **commissioner**~~{executive director}~~ the certificate of an insurer authorized to write legal liability insurance in this state, that the insurer has and will keep in effect on behalf of the person a policy of insurance covering the legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as an insurance agent, and enuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year, and that the policy shall not be terminated unless at least thirty (30) days' prior written notice will have been given to the **commissioner**~~{executive director}~~; or

- b. Deposited with the **commissioner**~~{executive director}~~ cash, or a cash surety bond executed by an insurer authorized to write business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000), which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as an agent; or
 - c. Filed with the **commissioner**~~{executive director}~~ on his or her behalf, by an authorized insurer or group of affiliated insurers for which he or she is or is to become an exclusive agent, an agreement whereby the insurer or group of affiliated insurers agrees to assume responsibility, to the benefit of any aggrieved party, for legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as an insurance agent on behalf of the insurer or group of affiliated insurers in the sum of twenty thousand dollars (\$20,000) for any single occurrence and that the agreement shall not be terminated until the license is surrendered to the **commissioner**~~{executive director}~~ or at least thirty (30) days' prior written notice will have been given to the **commissioner**~~{executive director}~~, whichever shall first occur; and
2. Agreed with the **commissioner**~~{executive director}~~ that if at any time notice is given to the **commissioner**~~{executive director}~~ that any policy filed in accordance with subparagraph 1.a. of this paragraph, or agreement filed in accordance with subparagraph 1.c. of this paragraph, is to be terminated and has not been replaced by another policy or agreement within the time established by regulations of the **commissioner**~~{executive director}~~, or if any deposit in accordance with subparagraph 1.b. of this paragraph be reduced through levy of execution and not replaced by any necessary additional deposit within the time established by administrative regulations of the **commissioner**~~{executive director}~~, any and all licenses held by the licensee are revoked and shall be promptly surrendered to the **commissioner**~~{executive director}~~ without demand.
- (2) The **commissioner**~~{executive director}~~ may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.

➔Section 1048. KRS 304.9-107 is amended to read as follows:

- (1) The following persons shall be exempt from the prelicensing course of study requirements for specific lines of authority of KRS 304.9-105(1)(e)1.:
- (a) Persons holding a Chartered Life Underwriter (CLU) designation for a life line of authority;
 - (b) Persons holding a Chartered Property and Casualty Underwriter (CPCU) designation for property, personal lines, and casualty lines of authority;
 - (c) Persons holding a Certified Insurance Counselor (CIC) designation for life, health, property, personal lines, and casualty lines of authority;
 - (d) Persons holding a designation as a Certified Employee Benefit Specialist (CEBS), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Fellow of the Life Management Institute (FLMI), or Life Underwriter Training Council Fellow (LUTCF) for a life line of authority;
 - (e) Persons holding a designation as a Registered Health Underwriter (RHU), Certified Employee Benefit Specialist (CEBS), Registered Employee Benefit Consultant (REBC), or Health Insurance Advisor (HIA) for a health line of authority;
 - (f) Persons holding a designation as an Accredited Advisor in Insurance (AAI) or Associate in Risk Management (ARM) for property, personal lines, and casualty lines of authority; and
 - (g) Persons holding an insurance degree from an accredited college or university for all lines of authority.
- (2) The **commissioner**~~{executive director}~~ may promulgate administrative regulations to specify additional designations and degrees for exemption from a prelicensing course of study for specified lines of authority to comply with NAIC uniformity standards.

➔Section 1049. KRS 304.9-120 is amended to read as follows:

- (1) Each applicant for license as a resident licensee shall be qualified to designate and shall designate Kentucky as the applicant's home state at the date of application for the license and shall maintain that eligibility throughout the duration of the license.
- (2) In determining the good faith of an applicant's claim that Kentucky is the applicant's principal place of residence, the *commissioner*~~{executive director}~~ may give due consideration to the following:
 - (a) The amount of time actually spent by the applicant within this state during the claimed residence period;
 - (b) The circumstances of the applicant's residence, that is, whether in a single or multiple family-type dwelling, or leased apartment, or permanent residential type; or in hotel, resort, motel, mobile home, or other temporary or transient type of dwelling or accommodation;
 - (c) The circumstances of the applicant, his or her past history and activities, and the probability that he or she will continue as a resident of this state indefinitely into the future if the license were to be issued; and
 - (d) All other pertinent factors.

➔Section 1050. KRS 304.9-130 is amended to read as follows:

- (1) A business entity acting as an agent is required to obtain an agent license. Application shall be made using the uniform business entity application or other application prescribed by the *commissioner*~~{executive director}~~. Before approving the application of a business entity as a resident or as a nonresident which is not eligible to be issued a license in accordance with KRS 304.9-140, the *commissioner*~~{executive director}~~ shall find that:
 - (a) The business entity has paid the fees set forth in KRS 304.4-010;
 - (b) Each officer, director, and member of the business entity who is acting as an agent has obtained an agent's license;
 - (c) The business entity has disclosed to the *Department*~~{Office}~~ of Insurance the identity of all officers and directors and whether or not they are licensed as agents; and
 - (d) The business entity has designated a licensed agent responsible for the business entity's compliance with the insurance laws and regulations of this state.
- (2) Within thirty (30) days of the change, the licensee shall notify the *commissioner*~~{executive director}~~ of all changes among its members, directors, officers, and other individuals designated in or registered as to the license.
- (3) Each agent authorized to act for the business entity shall be designated with the *commissioner*~~{executive director}~~ as to the license in accordance with KRS 304.9-133.
- (4) The *commissioner*~~{executive director}~~ may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.

➔Section 1051. KRS 304.9-133 is amended to read as follows:

- (1) A business entity issued a license in accordance with this subtitle, or issued a life settlement broker or life settlement provider license, shall designate only individuals to act under the business entity license.
- (2) Each designated individual shall:
 - (a) Hold the same kind of license as the business entity;
 - (b) If the business entity license has lines of authority, have one (1) or more of the same lines of authority; and
 - (c) If the individual is designated under an agent license, have at least one (1) appointment with an insurer.
- (3) The licensed business entity shall file with the *commissioner*~~{executive director}~~:
 - (a) Notice of the designation of an individual within thirty (30) days of the designation; and
 - (b) Notice of termination of designation of an individual within thirty (30) days of the termination of designation.

- (4) (a) On or before January 31 of each odd-numbered year, each licensed business entity shall file with the **commissioner**~~[executive director]~~ an annual report of all designated individuals whose designations were not terminated on or prior to December 31 of the preceding calendar year.
- (b) The report shall include each individual licensee's name, identification number, and lines of authority the individual is designated to exercise on behalf of the business entity.
- (5) The notice and report shall be on a form or in a format prescribed by the **commissioner**~~[executive director]~~.
- (6) A licensed business entity shall exercise the license only through a designated individual licensee.
 - (a) The business entity shall have for each of its active lines of authority at least one (1) licensed individual with the same line of authority designated with the **commissioner**~~[executive director]~~. If the business entity fails to have at least one (1) licensed individual designated with the **commissioner**~~[executive director]~~ for a line of authority, that line of authority shall become inactive; and
 - (b) The business entity shall have at least one (1) licensed individual designated with the **commissioner**~~[executive director]~~ at all times. If the business entity fails to have at least one (1) individual designated with the **commissioner**~~[executive director]~~, the business entity license shall terminate and shall be promptly surrendered to the **commissioner**~~[executive director]~~ without demand.
- (7) An insurer that has appointed the business entity licensee shall be responsible for the acts of each designated individual performed under the business entity's license as if the insurer had appointed the individual licensee.

➔Section 1052. KRS 304.9-135 is amended to read as follows:

- (1) As used in this section:
 - (a) "Financial institution" means a bank or bank holding company as defined in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. sec. 1841, a savings bank, savings and loan association, trust company, or any depository institution as defined by the Federal Deposit Insurance Act in 12 U.S.C. sec. 1813(c)(1), and any other individual, corporation, partnership, or association authorized to take deposits and make loans in the Commonwealth, and any affiliate or subsidiary of any of the above;
 - (b) "Insurance agency activities" means any activity relating to insurance other than title insurance, for which a license as agent, reinsurance intermediary broker or manager, specialty credit producer or managing employee, surplus lines broker, or consultant is required under this chapter; and
 - (c) "Insurance information" means any information concerning premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and claims maintained in the records of the financial institution or affiliate.
- (2) A financial institution authorized by law to engage in insurance agency activities in this state shall, in addition to any other applicable requirements, comply with the following requirements:
 - (a) The financial institution or officer, agent, representative, or employee thereof shall qualify for licensure under all applicable provisions of this chapter and abide by all applicable provisions of this chapter and applicable administrative regulations;
 - (b) A financial institution shall provide a written statement to a consumer regarding the consumer's free choice of agent and insurer according to KRS 304.12-150, when the consumer's application for a loan or other extension of credit from the financial institution is pending and when insurance is offered to the consumer, sold to the consumer, or required in connection with the loan or extension of credit by the financial institution or affiliate;
 - (c) A financial institution shall not release a consumer's insurance information to any person or entity for the solicitation or selling of insurance, other than an officer, director, employee, agent, or affiliate of a financial institution, without prior disclosure to the consumer and the opportunity for the consumer to prevent the disclosure;
 - (d) A financial institution shall not release or use health information obtained from the insurance records of a consumer for any purpose, other than activities of a licensed agent, administrator, reinsurance intermediary broker or manager, specialty credit producer or managing employee, surplus lines broker, or consultant, without the written consent of the consumer;

- (e) A financial institution licensed by the **department**~~[office]~~ to engage in insurance agency activities shall:
1. Not violate the anti-tying provisions of the Bank Holding Company Act, 12 U.S.C. secs. 1971 et seq., in effect as of December 31, 1997; and
 2. Notify the **department**~~[office]~~ in writing within ten (10) days of any final judgment or any final administrative action, by a federal agency authorized to enforce the anti-tying provision, that finds that the financial institution or any of its employees committed a violation of the Bank Holding Company Act. Any such final and unappealable judgment or final and unappealable administrative action shall be deemed a violation of this chapter;
- (f) Prior to the sale of any policy of insurance to a consumer, a financial institution shall, when practicable, provide to the consumer a written statement that:
1. The insurance offered by the financial institution is not a deposit;
 2. The insurance offered by the financial institution is not insured by the Federal Deposit Insurance Corporation or other government agency that insures deposits;
 3. The insurance offered by the financial institution is not guaranteed by the financial institution or any affiliate;
 4. The insurance may involve investment risk, including potential loss of principal; and
- (g) The **commissioner**~~[executive director]~~ shall promulgate administrative regulations in accordance with KRS Chapter 13A that specify the disclosure forms required by subsections (b), (c), and (f) of this section.
- (3) An officer or employee of a financial institution shall not directly or indirectly delay or impede the completion of a loan transaction or any other transaction with a financial institution for the purpose of influencing a consumer's selection or purchase of any insurance.
- (4) A financial institution shall not use any advertisement or promotional material causing a reasonable person to mistakenly believe that:
- (a) The federal government or any state guarantees the insurance sales activities of financial institutions or guarantees the credit of the financial institution; or
 - (b) Any state or federal government guarantees any return on insurance products or is a source of payment on any insurance product sold by the financial institution.
- (5) A financial institution shall use separate documentation for all credit and insurance transactions when a consumer obtains insurance and credit, other than credit insurance, from a financial institution or any individual or business entity soliciting or selling insurance on the premises of a financial institution.
- (6) A financial institution shall not include an expense of insurance premiums in a credit transaction when a consumer obtains insurance and credit, other than credit insurance, from a financial institution or any individual or business entity soliciting or selling insurance on the premises of a financial institution, without the written consent of the consumer.
- (7) A financial institution shall maintain separate and distinct books and records relating to insurance transactions conducted through the financial institution, including files relating to consumer complaints. The books, records, and files shall be made available to the **commissioner**~~[executive director]~~ for inspection in accordance with KRS 304.2-220.

➔Section 1053. KRS 304.9-140 is amended to read as follows:

- (1) Unless denied a license in accordance with KRS 304.9-440, a nonresident individual or business entity shall receive the applicable insurance producer license if:
- (a) The applicant is currently licensed as a resident and in good standing in his or her home state;
 - (b) The applicant has submitted the proper request for license and has paid the fees required by KRS 304.4-010 and administrative regulations;
 - (c) The applicant has submitted or transmitted to the **commissioner**~~[executive director]~~ the application for a license that the applicant submitted to his or her home state or a completed uniform individual application or uniform business entity application; and

- (d) The applicant's home state awards nonresident licenses to residents of this state on the same basis.
- (2) The **commissioner**~~{executive director}~~ may verify the applicant's license status through the database maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.
 - (3) A nonresident licensee who changes his or her home state to a state other than Kentucky shall file a change of address and provide certification from the new home state within thirty (30) days of the change of home state. No fee or license application is required.
 - (4) Notwithstanding any other provisions of this chapter, on or after July 1, 2002, an individual licensed as a surplus lines broker in his or her home state shall receive a nonresident surplus lines broker license by meeting the requirements of subsection (1) of this section. Except as to subsection (1) of this section, nothing in this section otherwise amends or supersedes any provision of Subtitle 10 of this chapter.
 - (5) Notwithstanding any other provision of this subtitle, an individual licensed as a limited lines agent in his or her home state shall receive a nonresident limited lines agent license in accordance with subsection (1) of this section, granting the same scope of authority as granted under the license issued by the agent's home state.
 - (6) The **commissioner**~~{executive director}~~ shall waive any requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by subsection (1) of this section, if the applicant's home state awards nonresident licenses to residents of Kentucky on the same basis.
 - (7) As a condition to or in connection with the continuation of an insurance producer license issued under this section, the licensee must maintain the applicable license in his or her home state. The insurance producer license issued under this section shall terminate and be surrendered to the **commissioner**~~{executive director}~~ if and when the licensee's applicable home state license terminates for any reason.

➔Section 1054. KRS 304.9-150 is amended to read as follows:

- (1) Application for a license issued under this subtitle, surplus lines broker license, life settlement broker license, or life settlement provider license shall be made by the applicant. Applications under this subsection shall be certified by the applicant as true, correct, and complete to the best of the applicant's knowledge and belief under penalty of perjury and under penalty of refusal, suspension, or revocation of the license.
- (2) The form of application shall require full answers to any questions as may be reasonably necessary to determine the applicant's identity, residence, personal history, business record, financial responsibility, experience in insurance, purpose for which the license is to be used, and other facts as required by the **commissioner**~~{executive director}~~ to determine whether the applicant meets the applicable qualifications for the license applied for.
- (3) The application shall state the kinds of insurance and any applicable lines of authority proposed to be transacted.
- (4) The application of a resident individual shall show whether the applicant is a citizen of the United States. If the applicant is not a citizen of the United States, the applicant shall attach to the application a copy of his or her legal work authorization document.
- (5) The application shall also show whether the applicant was ever convicted of or is currently charged with committing a crime; whether the applicant was ever involved in an administrative proceeding regarding any professional or occupational license; whether the applicant has a history of not being financially responsible; whether the applicant has any delinquent tax obligation that is not the subject of a repayment agreement; whether the applicant is currently charged with or has ever been found liable of fraud, misappropriation, conversion of funds, misrepresentation, or breach of fiduciary duty; whether the applicant has child support obligations in arrearage or is subject to a child support-related subpoena or warrant; and whether the applicant has ever had a business relationship with an insurer terminated for any alleged misconduct, and the facts thereof.
- (6) The **commissioner**~~{executive director}~~ may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.
- (7) All applications shall be accompanied by:
 - (a) The applicable license fee and examination fee, in the respective amounts stated in KRS 304.4-010:

- (b) Documentation supporting affirmative answers to the questions posed in the background section;
 - (c) If a business entity, certificates issued by the Kentucky Secretary of State demonstrating the business entity is qualified to conduct business in Kentucky; and
 - (d) If using an assumed name, copy of any certificate required under KRS 365.015.
- (8) An individual designating Kentucky as his or her home state shall submit to the **commissioner**~~{executive director}~~ the applicant's criminal background report from the Kentucky Administrative Office of the Courts.
 - (9) No applicant for any license shall willfully misrepresent or withhold any fact or information called for in the application form or in connection therewith.
 - (10) If the licensee is a business entity, the licensee shall notify the **commissioner**~~{executive director}~~ of all changes among its members, directors, officers and other individuals designated in or registered as to the license, within thirty (30) days of such change.

➔Section 1055. KRS 304.9-160 is amended to read as follows:

- (1) An individual applying for any license under this subtitle requiring an examination shall pass a written examination unless exempt under KRS 304.9-170. Examinations required by this section shall be developed and conducted in accordance with administrative regulations promulgated by the **commissioner**~~{executive director}~~.
- (2) The **commissioner**~~{executive director}~~ may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in KRS 304.4-010.
- (3) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the **commissioner**~~{executive director}~~ as set forth in KRS 304.4-010.
- (4) An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

➔Section 1056. KRS 304.9-170 is amended to read as follows:

No preclicensing education or examination shall be required of:

- (1)
 - (a) An individual licensee who allows his or her license to lapse if the license renewal fee is paid within twelve (12) months from the due date of the license renewal fee. However, a penalty in the amount of double the unpaid renewal fee shall be imposed. The **department**~~{office}~~ shall issue a license with the same lines of authority as the lapsed license.
 - (b) Any applicant for license covering any line of authority to which the applicant was licensed under a similar license in Kentucky, other than a temporary license, within the twelve (12) months next preceding date of application. The applicant is not eligible for this exemption if the previous license was revoked or suspended by the **commissioner**~~{executive director}~~ for reasons other than failure to maintain financial responsibility or to meet continuing education requirements as required by KRS 304.9-105 and 304.9-295.
 - (c) A licensed insurance agent operating as a life settlement broker pursuant to KRS 304.15-700(2)(b).
- (2) An individual who applies for an insurance producer license in Kentucky who was previously licensed for the same lines of authority in another state shall not be required to complete any preclicensing education or examination. This exemption is only available if the applicant is currently licensed in the other state or if the application is received within ninety (90) days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's database records, maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries, indicate that the insurance producer is or was licensed in good standing for the line of authority requested.
- (3) An individual licensed as an insurance producer in another state within the last twelve (12) months who moves to Kentucky shall make application within ninety (90) days of establishing legal residence to become a resident licensee in accordance with KRS 304.9-105. No preclicensing education or examination shall be required of that applicant to obtain a license for any line of authority previously held in the prior home state except where the **commissioner**~~{executive director}~~ determines otherwise by administrative regulation.

- (4) An applicant for an insurance producer's license who is currently licensed in Kentucky as a consultant as to the same line of authority, or has been so licensed within twelve (12) months next preceding the date of application for the license, unless the previous license was revoked or suspended or continuation thereof refused by the **commissioner**~~{executive director}~~ for reasons other than failure to maintain financial responsibility as required by KRS 304.9-330.
- (5) Any applicant for license covering the same line of authority as to which that applicant shall have held a valid license issued in accordance with this subtitle or other applicable Kentucky law which was surrendered, in accordance with KRS 304.2-080 or other applicable law, in order to accept employment with the **Department**~~{Office}~~ of Insurance, provided, however, that the applicant shall apply for relicensing within twelve (12) months of the date of termination of his or her employment with the **Department**~~{Office}~~ of Insurance.

➔Section 1057. KRS 304.9-180 is amended to read as follows:

- (1) The examination shall test the knowledge or relevant skills and abilities of the individual concerning the lines of authority for which application is made, the duties and responsibilities of a licensee, and the pertinent insurance laws and administrative regulations of this state.
- (2) The **commissioner**~~{executive director}~~ shall make available to applicants for license, printed information as to the general scope of, and principal subjects to be covered by, the examination for a particular license, together with information as to published books and other reference sources which may be studied by the applicant to prepare for the examination; but the **commissioner**~~{executive director}~~ shall not furnish lists of examination questions and examination questions shall not be selected from lists known to the **commissioner**~~{executive director}~~ to have been furnished applicants.

➔Section 1058. KRS 304.9-190 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall provide a reasonable opportunity to all applicants to take the examinations required by this subtitle. Examinations shall be held at least monthly at places in this state designated by the **commissioner**~~{executive director}~~ reasonably accessible to applicants, and at least weekly at Frankfort.
- (2) The **commissioner**~~{executive director}~~ shall give, conduct, and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.
- (3) The **commissioner**~~{executive director}~~ may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same line of authority.

➔Section 1059. KRS 304.9-200 is amended to read as follows:

- (1) The license issued under this subtitle or to a surplus lines broker, life settlement broker, or life settlement provider shall contain the licensee's name, city and state of principal place of business address, personal identification number, and the date of issuance, the lines of authority, and any other information the **commissioner**~~{executive director}~~ deems necessary.
- (2) The licensee shall inform the **commissioner**~~{executive director}~~ in writing in a format acceptable to the **commissioner**~~{executive director}~~ of a change of address or change of legal name within thirty (30) days of the change.
- (3) After completion of application for a license, completion of any prelicensing education required under this chapter, payment of applicable fees, and the taking and passing of any examination required under this chapter, the **commissioner**~~{executive director}~~ shall promptly consider the application. If the **commissioner**~~{executive director}~~ finds that the applicant has fully met the requirements for licensure, the **commissioner**~~{executive director}~~ shall promptly issue the license to the applicant; otherwise, the **commissioner**~~{executive director}~~ shall refuse to issue the license and promptly notify the applicant of the refusal, stating the grounds thereof.
- (4) If a license is refused, the executive director shall promptly refund any appointment fee tendered with the license application. All other fees for application for license or examination shall be deemed earned when paid and shall not be refundable.
- (5) In order to assist in the performance of the **commissioner's**~~{executive director's}~~ duties, the **commissioner**~~{executive director}~~ may contract with nongovernmental entities, including the National

Association of Insurance Commissioners or its affiliate or subsidiary, to perform ministerial functions, including the collection of fees or data related to licensing.

➔Section 1060. KRS 304.9-230 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may issue, in accordance with KRS 304.9-080, an agent's license with the limited line of authority as follows:
 - (a) Surety;
 - (b) Travel;
 - (c) Limited line credit;
 - (d) Crop; and
 - (e) Other limited lines, as specified by the **commissioner**~~{executive director}~~ through the promulgation of administrative regulations.
- (2) The **commissioner**~~{executive director}~~ shall promulgate administrative regulations to establish the requirements, if any, for prelicensing courses of instruction and examination for each limited line of authority.
- (3) On and after July 15, 2002, the **commissioner**~~{executive director}~~ shall not issue an agent license with a limited line of authority for motor vehicle physical damage or for mechanical breakdown insurance. However, an agent license with a limited line of authority for motor vehicle physical damage or for mechanical breakdown insurance in effect on July 15, 2002, shall continue in effect until surrendered or otherwise terminated in accordance with this subtitle.

➔Section 1061. KRS 304.9-240 is amended to read as follows:

- (1) A licensed agent may solicit for and issue personal travel accident insurance policies by means of mechanical vending machines supervised by the agent and placed at airports and similar places of convenience to the traveling public, if the **commissioner**~~{executive director}~~ finds that:
 - (a) The policy provides reasonable coverage and benefits, is suitable for sale and issuance by vending machine, and that use of such a machine in a proposed location would be of material convenience to the public;
 - (b) The type of machine proposed to be used is reasonably suitable for the purpose;
 - (c) Reasonable means are provided for informing prospective purchasers of policy coverages and restrictions;
 - (d) Reasonable means are provided for the refund of money inserted in defective machines and for which insurance so paid for is not received; and
 - (e) The cost of maintaining such a machine at a particular location is reasonable in amount.
- (2) For each machine to be used, the **commissioner**~~{executive director}~~ shall issue to the agent upon his *or her* application a special vending machine license. The license shall specify the name and address of the insurer and agent, the name of the policy to be sold, the serial number and operating location of the machine. The license shall be subject to annual continuation, to expiration, suspension or revocation coincidentally with that of the agent. The **commissioner**~~{executive director}~~ shall also revoke the license of any machine as to which he *or she* finds that the license qualifications no longer exist. The license fee shall be the same as specified in KRS 304.4-010, for an agent, for each license year or part thereof for each respective machine. Proof of the existence of a subsisting license shall be displayed on or about each machine in use, in such manner as the **commissioner**~~{executive director}~~ reasonably requires.

➔Section 1062. KRS 304.9-260 is amended to read as follows:

- (1) Each license issued under this subtitle, surplus lines broker license, life settlement broker license, and life settlement provider license shall continue in force until expired, suspended, revoked, or otherwise terminated. License renewal fees shall be received on or before the applicable due date for the license as stated in KRS 304.4-010. Beginning January 1, 2003, request for renewal shall be on a form or in a format prescribed by the **commissioner**~~{executive director}~~ and made as follows:
 - (a) At least thirty (30) days before the renewal request and fees are due from the licensee, the office shall make available to each respective licensee a list of his or her licenses to be renewed during that calendar

- year. With the licensee's written consent, an insurer or the licensee's employer may request that the **department**~~{office}~~ send the renewal list to the insurer or to the employer. The **department**~~{office}~~ may distribute the renewal list to the requesting insurer or employer instead of to the licensee;
- (b) Beginning January 31, 2006, in conjunction with license renewal, an individual holding a resident license for agent, rental vehicle managing employee, and life settlement broker shall show proof of compliance with continuing education pursuant to KRS 304.9-295. An individual licensee whose birth date is in an even-numbered year shall submit the renewal request, continuing education course completion documentation pursuant to KRS 304.9-295, and fees to the **commissioner**~~{executive director}~~ by the last day of the licensee's birth month in the next even-numbered year after the date the license is issued, and each subsequent even-numbered year thereafter;
 - (c) Beginning January 31, 2006, in conjunction with license renewal, an individual holding a resident license for agent, rental vehicle managing employee, and life settlement broker shall show proof of compliance with continuing education pursuant to KRS 304.9-295. An individual licensee whose birth date is in an odd-numbered year shall submit the renewal request, continuing education course completion documentation pursuant to KRS 304.9-295, and fees to the **commissioner**~~{executive director}~~ by the last day of the licensee's birth month in the next odd-numbered year after the date the license is issued, and each subsequent odd-numbered year thereafter;
 - (d) A business entity that is issued a license in an even-numbered year shall submit the renewal request and fees to the **commissioner**~~{executive director}~~ by March 31 of the next even-numbered year, and each subsequent even-numbered year thereafter; and
 - (e) A business entity that is issued a license in an odd-numbered year shall submit the renewal request and fees to the **commissioner**~~{executive director}~~ by March 31 of the next odd-numbered year, and each subsequent odd-numbered year thereafter.
- (2) (a) Any license referred to in subsection (1) of this section for which the request for renewal, any required continuing education course completion documentation, if applicable, and fee are not received by the **commissioner**~~{executive director}~~ shall be deemed to have expired at midnight on the last day of the birth month for individuals and on March 31 for business entities;
 - (b) Any renewal request and fees received by the **commissioner**~~{executive director}~~ within thirty (30) days after the expiration date may be accepted with no penalty or interruption in license;
 - (c) Any renewal request and fees received by the **commissioner**~~{executive director}~~ after thirty (30) days from the date of expiration, but within sixty (60) days after the date of expiration, may be accepted with no interruption in license if accompanied by a penalty as provided in Subtitle 99 of this chapter; and
 - (d) Completion of the required continuing education course, if applicable, shall be on or before the expiration date, which is deemed as the last day of the birth month of the licensee during the applicable odd or even year on a biennial basis. Proof of compliance shall be received by the **commissioner**~~{executive director}~~ within sixty (60) days after the expiration date.
- (3) A licensee who is unable to comply with license renewal procedures due to military service, long-term medical disability, or some other extenuating circumstance may make a written request for a waiver of those procedures. The licensee may also make a written request for a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with these renewal procedures.
 - (4) As a condition to or in connection with the continuation of any insurance producer license, the **commissioner**~~{executive director}~~ may require the licensee to file with him or her information relative to use made of the license during the next preceding calendar year and especially as to whether the license has been used principally for the writing of controlled business, as defined in KRS 304.9-100.
 - (5) As a condition to or in connection with the continuation of any license, the **commissioner**~~{executive director}~~ shall require continuous demonstration of continuing education course completion to sustain the license, and any license shall terminate and be surrendered to the **commissioner**~~{executive director}~~ if and when the demonstration becomes impaired.
 - (6) This section does not apply to temporary licenses issued under KRS 304.9-300, and licensees not licensed for one (1) full year prior to the end of the applicable biennial renewal year.

➔Section 1063. KRS 304.9-270 is amended to read as follows:

- (1) Each insurer appointing an agent, including managing general agent, rental vehicle agent, rental vehicle managing employee, specialty credit producer, and specialty credit managing employee, in this state shall obtain approval of the appointment from the **commissioner**~~{executive director}~~ by filing with the **commissioner**~~{executive director}~~ the notice of appointment, specifying the lines of authority to be transacted by the agent for the insurer, and submit the appointment fee, as specified in KRS 304.4-010. Each insurer shall notify the **commissioner**~~{executive director}~~ of additional lines of authority for which a licensee is deemed authorized to transact business, after the initial appointment, in a format prescribed by the **commissioner**~~{executive director}~~.
- (2) Prior to appointment, the insurer shall satisfy itself through investigation that the named applicant has not been convicted of any felony offense involving dishonesty or a breach of trust and has not been convicted of a fraudulent insurance act under Subtitle 47 of this chapter, unless the named applicant has received written consent from the **commissioner**~~{executive director}~~ that specifically refers to KRS 304.47-025(3).
- (3) No agent shall claim to be an agent or representative of, or in any way imply a contractual relationship with, a particular insurer, or place applications for insurance with an insurer unless the agent becomes an appointed agent of the insurer and the agent's appointment has been approved by the **commissioner**~~{executive director}~~.
- (4) An agent may act as a representative of and place insurance with an insurer without first obtaining approval of the appointment by the **commissioner**~~{executive director}~~ for a period of fifteen (15) days from the date the first insurance application is executed by the agent. If the agent does not obtain confirmation that the agent's appointment has been approved by the **commissioner**~~{executive director}~~ within fifteen (15) days from the date the first insurance application is executed, the agent shall immediately discontinue acting as an agent on behalf of the insurer until confirmation is received.
- (5)
 - (a) The insurer shall, no later than fifteen (15) days from the date the agent contract is executed or the first insurance application is submitted by an agent, whichever is earlier, file with the **commissioner**~~{executive director}~~ a notice of appointment on a form or in a format prescribed by the **commissioner**~~{executive director}~~.
 - (b) If there is no executed agent contract, the insurer shall also mail to the agent, within the same fifteen (15) day period specified in paragraph (a) of this subsection, a copy of the notice of appointment form filed with the **commissioner**~~{executive director}~~.
- (6) Within fifteen (15) days of receipt of the notice of appointment, the **commissioner**~~{executive director}~~ shall determine and notify the insurer whether the agent is eligible for appointment. If the agent's license is in good standing and no other grounds exist to deny the appointment, the **commissioner**~~{executive director}~~ shall approve the appointment.
- (7) Subject to renewal by the insurer as provided in subsection (8) of this section, each appointment shall remain in effect until the earliest of the following:
 - (a) The **commissioner**~~{executive director}~~ revokes or otherwise terminates the insurance producer's license;
 - (b) The **commissioner**~~{executive director}~~ suspends, revokes, or otherwise terminates the appointment; or
 - (c) The insurer terminates the appointment as provided in KRS 304.9-280.
- (8) Biennially, before January 31, the **department**~~{office}~~ shall distribute to each insurer a listing of the names and individual identification numbers of that insurer's agents whose appointments were in effect during the preceding calendar year and who were not terminated on or prior to December 31 of that calendar year. Any appointment not expressly terminated shall remain in effect as to the lines of authority thereof for which the respective agents are currently appointed, and subject to the fees specified under KRS 304.4-010. On or before March 31, each insurer shall submit the renewal of appointment fee as specified in KRS 304.4-010 for each appointment not terminated on or prior to December 31 of the preceding calendar year.
- (9) Any appointment as to which the request for renewal and fees are not received by the **commissioner**~~{executive director}~~ by March 31 shall be deemed to have expired at midnight on March 31. Any appointment renewal request and fees received by the **commissioner**~~{executive director}~~ after March 31 and prior to the next following June 30 may be accepted by the **commissioner**~~{executive director}~~, in his or her discretion, and the expired appointment may be reinstated as of March 31 if the late request and fees are accompanied by a penalty as provided in KRS 304.99-100.

➔Section 1064. KRS 304.9-280 is amended to read as follows:

- (1) Subject to the agent contract rights of a rental vehicle agent, rental vehicle managing employee, specialty credit producer, specialty credit managing employee, managing general agent, or agent, if any, an insurer may terminate an appointment at any time. However, if any appointment is not terminated on or prior to December 31, then on January 1 the fees designated shall be due for submission as provided in KRS 304.9-270.
- (2) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a licensee shall notify the **commissioner**~~{executive director}~~ within thirty (30) days following the effective date of the termination, using a form or a format prescribed by the **commissioner**~~{executive director}~~, if the reason for termination is one (1) of the reasons set forth in KRS 304.9-440 or if the insurer has knowledge the licensee was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in KRS 304.9-440. Termination under this subsection shall be deemed termination for cause. Upon the written request of the **commissioner**~~{executive director}~~ the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the licensee.
- (3) An insurer or authorized representative of the insurer that terminates the appointment of a licensee for any reason not set forth in subsection (2) of this section, shall notify the **commissioner**~~{executive director}~~ within thirty (30) days following the effective date of the termination, using a form or a format prescribed by the **commissioner**~~{executive director}~~. Termination under this subsection shall be deemed termination for cause. Upon written request of the **commissioner**~~{executive director}~~, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.
- (4) The insurer or the authorized representative of the insurer shall promptly notify the **commissioner**~~{executive director}~~ in a form or a format acceptable to the **commissioner**~~{executive director}~~ if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the **commissioner**~~{executive director}~~ in accordance with subsection (2) of this section had the insurer known of its existence.
- (5)
 - (a) Within fifteen (15) days after making the notification required for termination without cause, the insurer shall mail a notice of the termination to the licensee at his or her last known address by first-class mail. The notice of termination shall include and indicate the reasons for termination provided to the **commissioner**~~{executive director}~~.
 - (b) Within fifteen (15) days after making the notification required for termination for cause, the insurer shall provide a copy of the form to the licensee at his or her last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.
 - (c) Within thirty (30) days after the licensee has received a copy of the form, the licensee may file written comments concerning the substance of the notification with the **commissioner**~~{executive director}~~. The licensee shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the **commissioner's**~~{executive director's}~~ file and accompany every copy of a report distributed or disclosed for any reason about the licensee as permitted under subsection (7)(c) of this section.
- (6)
 - (a)
 1. In the absence of actual malice, an insurer, the authorized representative of the insurer, a licensee, the **commissioner**~~{executive director}~~, or their respective representatives or employees, or an organization of which the **commissioner**~~{executive director}~~ is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies, shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these individuals, entities, or their respective representatives or employees as a result of:
 - a. Any statement or information required by or provided in accordance with this section;
 - b. Any information relating to any statement that may be requested in writing from an insurer or licensee by the **commissioner**~~{executive director}~~; or
 - c. A statement by a terminating insurer or licensee to an insurer or licensee that is limited solely and exclusively to whether a termination for cause under subsection (2) of this section was reported to the **commissioner**~~{executive director}~~.

2. The propriety of any termination for cause under subsection (2) of this section shall be certified in writing by an officer or authorized representative of the insurer or licensee terminating the relationship.
 - (b) In any action brought against an individual, business entity, or organization that may have immunity under paragraph (a) of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the **commissioner**~~{executive director}~~, the party bringing the action shall plead specifically in any allegation that paragraph (a) of this subsection does not apply because the individual, business entity, or organization making the statement, or providing the information did so with actual malice.
 - (c) Paragraph (a) or (b) of this subsection shall not abrogate or modify any existing statutory or common law privileges or immunities.
- (7) (a) 1. Any document, material, or other information in the control or possession of the **department**~~{office}~~ that is furnished by an insurer, licensee, or an employee or representative acting on behalf of the insurer or licensee, or obtained by the **commissioner**~~{executive director}~~ in an investigation in accordance with this section:
- a. Shall be confidential by law and privileged;
 - b. Shall not be subject to subpoena; or
 - c. Shall not be subject to discovery or admissible in evidence in any private civil action.
- Notwithstanding subdivisions a., b., and c. of this subparagraph, any document, material, or other information that is furnished by an insurer, licensee, or an employee or representative acting on behalf of the insurer or licensee, or obtained by the **commissioner**~~{executive director}~~ in an investigation in accordance with this section, that is used in a formal administrative proceeding or enforcement action in accordance with KRS Chapter 13B shall be subject to the Kentucky Open Records Act.
2. However, the **commissioner**~~{executive director}~~ is authorized to use the documents, materials, or other information referred to in paragraph (a)1. of this subsection in the furtherance of any regulatory or legal action brought to carry out the **commissioner's**~~{executive director's}~~ duties.
- (b) Neither the **commissioner**~~{executive director}~~ nor any individual who received documents, materials, or other information while acting under the authority of the **commissioner**~~{executive director}~~, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (a) of this subsection.
- (c) In order to assist in the performance of the **commissioner's**~~{executive director's}~~ duties, the **commissioner**~~{executive director}~~:
1. May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (a) of this subsection, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;
 2. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information; and
 3. May enter into agreements governing sharing and use of information consistent with this subsection.
- (d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the **commissioner**~~{executive director}~~ or of sharing as authorized in this subsection.

- (e) The **commissioner**~~{executive director}~~ shall release only final, adjudicated actions including for-cause terminations that are open to public inspection in accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.
- (f) As part of the nonresident license certification process, the **department**~~{office}~~ shall release only final adjudicated actions on licensees identified in subsection (1) of this section.

➔Section 1065. KRS 304.9-295 is amended to read as follows:

- (1) This section shall apply to individuals who hold licenses or lines of authority requiring continuing education each biennium.
- (2) Beginning January 31, 2006, the continuing education biennial compliance date for an individual resident licensee shall be as follows:
 - (a) A licensee whose birth date is in an even-numbered year shall satisfy continuing education requirements on or before the last day of the licensee's birth month in the even-numbered year. A licensee shall show proof of compliance to the **commissioner**~~{executive director}~~ within sixty (60) days after the continuing education biennial compliance date. If the licensee has not held the license for one (1) year, the compliance date is adjusted to the next even-numbered year and each subsequent even-numbered year thereafter. If the license becomes inactive and reissued within a twelve (12) month period, the compliance date shall remain the same;
 - (b) A licensee whose birth date is in an odd-numbered year shall satisfy continuing education requirements and show proof of compliance to the **commissioner**~~{executive director}~~ on or before the last day of the licensee's birth month in the odd-numbered year. A licensee shall show proof of compliance to the **commissioner**~~{executive director}~~ within sixty (60) days after the continuing education biennial compliance date. If the licensee has not held the license for one (1) year, the compliance date is adjusted to the next odd-numbered year and each subsequent odd-numbered year thereafter. If the license becomes inactive and reissued within a twelve (12) month period, the compliance date shall remain the same.
- (3) This section shall not apply to:
 - (a) Limited lines of authority under agent licenses, as exempted by the **commissioner**~~{executive director}~~ in accordance with KRS 304.9-230;
 - (b) Licensees not licensed for one (1) full year prior to the end of the applicable continuing education biennium;
 - (c) Licensees holding nonresident licenses who have met the continuing education requirements of their home state and whose home state gives credit to Kentucky resident licensees on the same basis; or
 - (d) Licensees maintaining their licenses for the sole purpose of receiving renewals or deferred commissions and providing the **department**~~{office}~~ with a supporting affidavit.
- (4) A licensee, who holds an agent license and who is not exempt under subsection (3) of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which twelve (12) shall be classroom hours and three (3) hours shall have a course concentration in ethics, during each continuing education biennium.
- (5) Only continuing education courses approved by the **commissioner**~~{executive director}~~ shall be used to satisfy the continuing education requirement of subsection (4) of this section and any other continuing education requirement of this chapter.
 - (a) The continuing education courses which meet the **commissioner's**~~{executive director's}~~ standards for continuing education requirements are:
 1. Any part of the Life Underwriter Training Council life course curriculum;
 2. Any part of the Life Underwriter Training Council health course curriculum;
 3. Any part of the American College Chartered Life Underwriter diploma curriculum;

4. Any part of the American Institute for Property and Liability Underwriters' chartered property and casualty underwriter profession designation program;
 5. Any part of the Insurance Institute of America's programs;
 6. Any part of the certified insurance counselor program;
 7. Any insurance related course taught at an accredited college or university, if the course is approved by the **commissioner**~~{executive director}~~;
 8. Any course of instruction or seminar developed or sponsored by any authorized insurer, recognized agent association, recognized insurance trade association, or any independent program of instruction, if approved by the **commissioner**~~{executive director}~~;
 9. Any correspondence course approved by the **commissioner**~~{executive director}~~; and
 10. Any course in accordance with provisions of reciprocal agreements the **commissioner**~~{executive director}~~ enters with other states.
- (b) The **commissioner**~~{executive director}~~ shall prescribe the number of hours of continuing education credit for each continuing education course approved in accordance with this subsection. Continuing education courses submitted in accordance with a reciprocal agreement shall be approved according to the provisions of the reciprocal agreement.
 - (c) If a continuing education course requires successful completion of a written examination, no continuing education credit shall be given to licensees who do not successfully complete the written examination.
 - (d) The fee for filing continuing education courses for approval by the **commissioner**~~{executive director}~~ shall be as specified in Subtitle 4 of KRS Chapter 304.
 - (e) For continuing education courses of reciprocal states, continuing education providers shall be approved in accordance with the provisions of the reciprocal agreements.
- (6) An individual teaching any approved continuing education course shall qualify for the same number of hours of continuing education credit as would be granted to a licensee taking and satisfactorily completing the course.
 - (7) Excess credit hours accumulated during any continuing education biennium may be carried forward. The **commissioner**~~{executive director}~~ may, by regulation, limit the number of hours carried forward.
 - (8) For good cause shown, the **commissioner**~~{executive director}~~ may grant an extension of time during which the continuing education requirement of subsection (3) of this section may be completed, but the extension of time shall not exceed two (2) years. What constitutes good cause for the extension of time rests within the discretion of the **commissioner**~~{executive director}~~.
 - (9) Every licensee subject to this section shall furnish to the **commissioner**~~{executive director}~~ written certification as to the continuing education courses satisfactorily completed by the licensee. The certification shall be signed by or on behalf of the provider sponsoring the continuing education course. The certification shall be on a form prescribed by the **commissioner**~~{executive director}~~.
 - (10) The provider shall furnish to the **commissioner**~~{executive director}~~ certification as to the continuing education courses satisfactorily completed by each licensee. The certification shall be signed or authenticated by or on behalf of the provider sponsoring the continuing education course. The certification shall be on a form or in a format prescribed by the **commissioner**~~{executive director}~~.
 - (11) The license or line of authority requiring continuing education shall terminate if the individual holding the license or line of authority fails to comply with the continuing education requirement and has not been granted an extension of time to comply in accordance with subsection (8) of this section. If the license has terminated, the license shall be promptly surrendered to the **commissioner**~~{executive director}~~ without demand. If the line of authority has terminated but another line of authority not requiring continuing education is still in effect, the license shall be promptly delivered to the **commissioner**~~{executive director}~~ for reissuance as to the line of authority still in effect.
 - (12) The license of any individual subject to the continuing education requirement shall be suspended or revoked, a civil penalty imposed, or both, in accordance with KRS 304.9-440, if the individual submits to the **commissioner**~~{executive director}~~ a false or fraudulent certificate of compliance with the continuing education requirement.

- (13) (a) The **commissioner**~~{executive director}~~ may withdraw approval of a continuing education provider, course, or instructor for good and just cause.
- (b) In addition to or in lieu of withdrawal of approval, the **commissioner**~~{executive director}~~ may impose a civil penalty of not more than one thousand dollars (\$1,000) per violation of this chapter by a provider or an instructor.

➔Section 1066. KRS 304.9-300 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may issue a temporary license for a period not to exceed one hundred eighty (180) days without requiring an examination or prelicensing course of study if the **commissioner**~~{executive director}~~ deems that a temporary license is necessary for the servicing of an insurance business in the following cases:
- (a) To the surviving spouse or court-appointed personal representative of a licensed agent who dies or becomes mentally or physically disabled, to allow adequate time for the:
1. Sale of the insurance business owned by the agent;
 2. Recovery or return of the agent to the business; or
 3. Training and licensing of new personnel to operate the agent's business.
- (b) To a member or employee of a business entity licensed as an agent, upon the death or disability of the sole individual designated in the business entity application or the license.
- (c) To the designee of a licensed agent entering upon active service in the Armed Forces of the United States.
- (d) In any other circumstance where the **commissioner**~~{executive director}~~ deems that the public interest will best be served by the issuance of this license.
- (2) In addition to the restrictions on temporary licenses set forth in KRS 304.9-310, the **commissioner**~~{executive director}~~ may, by order, limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The **commissioner**~~{executive director}~~ may require the temporary licensee to have a suitable sponsor who is a licensed agent or insurer and who assumes responsibility for all acts of the temporary licensee, and may impose other similar requirements designed to protect insureds and the public. The **commissioner**~~{executive director}~~ may, by order, revoke a temporary license if the interests of insureds or the public are endangered. A temporary license shall not continue after the owner or the personal representative disposes of the business.
- (3) Application for a temporary license shall be filed with the **commissioner**~~{executive director}~~ in the form and containing the information as the **commissioner**~~{executive director}~~ may reasonably require, and be accompanied by the application fee as specified in KRS 304.4-010.

➔Section 1067. KRS 304.9-320 is amended to read as follows:

For the protection of the people of this Commonwealth the **commissioner**~~{executive director}~~ shall not issue, continue, or permit to exist any license as consultant except in compliance with this subtitle, or as to any person not qualified therefor as follows:

- (1) If an individual, the applicant:
- (a) Must be eighteen (18) or more years of age;
 - (b) Must have had not less than five (5) years of actual experience as a licensed agent with respect to the kinds of insurance and contracts to be covered by the license, or other special experience, education or training, all of sufficient content and duration reasonably necessary for competence in fulfilling the responsibilities of a consultant;
 - (c) Must have a thorough knowledge of insurance and annuity contracts of the kinds proposed to be covered under the license;
 - (d) Must satisfy the **commissioner**~~{executive director}~~ by written examination;

- (e) Must be competent, trustworthy under highest fiduciary standards, financially responsible, and of good personal and business reputation; and
 - (f) Must have filed the bond required by KRS 304.9-330.
- (2) If a business entity, the applicant:
- (a) Must complete and submit a National Association of Insurance Commissioners uniform license application;
 - (b) Must pay applicable fees as set forth in KRS 304.4-010;
 - (c) Must be competent, trustworthy under the highest fiduciary standards, financially responsible, and of good business reputation; and
 - (d) Must designate each individual authorized to act for the business entity under its consultant license in accordance with KRS 304.9-133.
- (3) A consultant license shall cover either or both of the following categories, as selected by the licensee:
- (a) Property and casualty; or
 - (b) Life and health.

A consultant licensed in both categories shall qualify separately for, and be licensed in, each category.

➔Section 1068. KRS 304.9-330 is amended to read as follows:

- (1) To the extent the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6751(f), provides that evidence of financial responsibility may be required for licensing, every applicant for license as a consultant shall file with the **commissioner**~~{executive director}~~ with his **or her** application for license, and shall maintain in effect while so licensed:
- (a) The certificate of an insurer authorized to write legal liability insurance in this state, that the insurer has and will keep in effect on behalf of the consultant a policy of insurance covering the legal liability of the consultant as the result of erroneous acts or failure to act in his **or her** capacity as an insurance consultant, and inuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year, and that the policy shall not be terminated unless at least thirty (30) days prior written notice will have been given to the **commissioner**~~{executive director}~~; or
 - (b) A deposit with the **commissioner**~~{executive director}~~ of cash, or a cash surety bond executed by an insurer authorized to write this business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000) which shall be subject to lawful levy of execution by any party to whom the consultant has been found to be legally liable as the result of erroneous acts or failure to act in his **or her** capacity as a consultant.
- (2) The bond shall indemnify any person damaged by any fraudulent or unlawful act or conduct of the licensee in transactions under the license, and shall likewise be conditioned upon faithful accounting and application of all moneys coming into the licensee's possession in connection with his **or her** activities as the licensee.
- (3) The bond shall remain in force until released by the **commissioner**~~{executive director}~~, or until canceled by the surety. Without prejudice to any liability previously incurred thereunder, the surety may cancel the bond upon thirty (30) days advance written notice to the licensee and the **commissioner**~~{executive director}~~.

➔Section 1069. KRS 304.9-350 is amended to read as follows:

- (1) A consultant who is also licensed as an agent shall not, directly or indirectly, receive or share in both a fee and other compensation paid, directly or indirectly, from an insured or any insurer with respect to any insurance or annuity contract procured, renewed, continued, modified, terminated, or otherwise disposed of pursuant to any recommendation given or transaction engaged in by the licensee under this license or any license issued under this code.
- (2) (a) If the licensee has received or is to receive any fee, commission, or compensation from the insured or proposed insured, or from any other person other than the insurer, directly or indirectly, with respect to any insurance transaction or proposed insurance transaction, or with respect to any insurance or annuity

contract existing or proposed, it shall conclusively be presumed that the licensee was acting as a consultant with respect to such transaction or contract.

- (b) An individual or business entity dually licensed as a consultant and an agent shall not sell, solicit, or negotiate insurance, or otherwise act as an agent, either directly or indirectly, with respect to the insurance risk of the insured or prospective insured that was the subject of a written consulting contract required by subsection (4) of this section:
 - 1. During the term of the written consulting contract; or
 - 2. Within twelve (12) months after the expiration of the consulting contract, but no less than twenty-four (24) months from the inception of the contract.
- (c) An agent who has a financial or business ownership interest or affiliation with the consultant acting as such pursuant to a written consulting contract required by subsection (4) of this section shall not sell, solicit, or negotiate insurance, either directly or indirectly, with respect to the insurance risk of the insured or prospective insured that was the subject of a consulting contract:
 - 1. During the term of the written consulting contract; or
 - 2. Within twelve (12) months after the expiration of the consulting contract, but no less than twenty-four (24) months from the inception of the contract.
- (d) Consulting fees paid to a consultant pursuant to a written contract in compliance with subsection (4) of this section may be shared between a business entity licensed as a consultant and an individual who is licensed as a consultant and is an owner, officer, partner, member, or employee of the business entity.
- (3) No person licensed as a consultant under this section may receive any fee, commission or thing of value for examining, appraising, reviewing or evaluating any insurance policy, bond, annuity or pension or profit-sharing contract, plan or program or for making recommendation or giving advice with regard to any of the above, unless such compensation is based upon a prior written contract as provided in subsection (4) of this section.
- (4) Prior to the provision of consultant's services, a person licensed as a consultant under this section shall disclose the following in a written contract signed by the party to be charged:
 - (a) The services to be provided by the consultant to the insured and prospective insured;
 - (b) The beginning and ending date of the agreement;
 - (c) Any insurance to which the contract for consultant's services applies;
 - (d) The arrangement for compensation of the consultant, whether by a flat rate, hourly rate, or otherwise;
 - (e) Whether the consultant is dually licensed as an agent; and
 - (f) Whether the consultant has a financial or business ownership interest in or affiliation with, or controls in whole or in part, any business entity or insurer.

A copy of every contract shall be retained by the consultant for not less than five (5) years after expiration of the contract.
- (5) No person licensed as a consultant may receive any compensation, direct or indirect, as a result of:
 - (a) The sale of insurance or annuities to; or
 - (b) The use of securities or trusts in connection with pensions for any person to whom any such licensee has performed any related consulting service for which he has received a fee or contracted to receive a fee within the preceding twelve (12) months unless such compensation is provided for in the written contract required by subsection (4) of this section.
- (6) No person licensed as an insurance consultant under this section may be an executive in, or employee of, or own stock which gives him a majority interest, direct or indirect, in any authorized insurer. No consultant may recommend or encourage the purchase of insurance, annuities, or securities from any authorized insurer in which any member of his immediate family holds an executive position or holds a majority interest.
- (7) A person dually licensed as a consultant and an agent shall not act as both a consultant and an agent with regards to any risk which is the subject of a contract required by subsection (4) of this section.

- (8) Nothing in this section shall prohibit an agent who holds some form of formal financial planning certification or designation recognized in administrative regulation promulgated by the ~~department~~~~office~~ from receiving a fee for services provided under that certification or designation and from receiving a commission for the sale, solicitation, or negotiation of life insurance or annuities if:
- (a) Prior to providing financial planning services, the agent discloses the following in a written contract signed by the party to be charged:
1. The financial planning services for which the fee is to be charged;
 2. The amount of the fee to be charged, including a description of how the fee will be determined or calculated; and
 3. That the party to be charged is under no obligation to purchase any insurance product through the agent; and
- (b) Prior to the execution of the written agreement provided for in paragraph (a) of this subsection, or solicitation of the sale of a product or service, the agent discloses that:
1. He or she is an agent; and
 2. A commission for the sale, solicitation, or negotiation of insurance will be received in addition to a fee for financial planning, if applicable.

➔Section 1070. KRS 304.9-373 is amended to read as follows:

Every administrator shall maintain at its administrative office, for the duration of the written agreement referred to in KRS 304.9-371 and at least five (5) years thereafter, adequate books and records of all transactions between it, insurers, and insureds. Such books and records shall be maintained in accordance with prudent standards of insurance industry recordkeeping. The ~~commissioner~~~~executive director~~ shall have access to such books and records for the purpose of examination, audit, and inspection. Any trade secrets contained therein, including but not limited to the identity and addresses of insureds, shall be confidential except the ~~commissioner~~~~executive director~~ may use such information in any proceedings instituted against the administrator. An insurer shall retain the right to continuing access to such books and records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insureds subject to any restrictions in the written agreement between the insurer and administrator on the proprietary rights of the parties in such books and records. Any examination or any part of the examination of any administrator shall be made by the ~~commissioner~~~~executive director~~ or by examiners designated by ~~the commissioner~~~~him~~ and shall be at the expense of the administrator examined as specified in Subtitle 2 of this chapter.

➔Section 1071. KRS 304.9-390 is amended to read as follows:

- (1) Every individual and business entity issued a license with Kentucky as its home state shall have and maintain in this state a place of business accessible to the public, and wherein the licensee principally conducts transactions under his or her license. This provision shall not be deemed to prohibit maintenance of this place of business in the office of an insurer, office of the employer, or in the residence of the licensee.
- (2) The licenses of the licensee shall be conspicuously displayed in each of the places of business in a part customarily open to the public.
- (3) The licensee shall keep at his or her place of business complete records of transactions under the license.
 - (a) The records shall be kept available for inspection by the ~~commissioner~~~~executive director~~ for a period of at least five (5) years after completion of the respective transactions.
 - (b) For an insurance producer, the record shall show, as to each insurance policy or contract placed by or through the licensee, the names of the insurer and insured, the number and expiration date of, and premium payable as to, the policy or contract, and any other information as the ~~commissioner~~~~executive director~~ may reasonably require.

➔Section 1072. KRS 304.9-410 is amended to read as follows:

- (1) An agent with a line of authority for property, casualty, or limited line surety insurance may:
 - (a) Occasionally place an insurance coverage with an insurer as to which he or she is not then appointed as an agent, and such insurer may accept such business only when placed through an appointed agent of the

insurer. Both agents involved in this exchange of business must be then licensed as to all of the kinds of insurance represented by the coverage; and

- (b) Without limitation, place insurance coverage with an insurer as to which he *or she* is not then appointed as agent, and such insurer may accept such business only if placed through a licensed managing general agent.
- (2) An agent with a line of authority for life or health insurance may, occasionally, place with another insurer as to which he or she is not appointed as agent, a particular risk or portion thereof which has been rejected by the insurers as to which the agent is appointed or is known to the agent to be unacceptable to such insurers, and without then being appointed as to the other insurer.
- (3) The **commissioner**~~{executive director}~~ shall, by regulation, establish the amount or volume of business that constitutes the occasional placement of business permitted by subsections (1) and (2) of this section. Such regulations may be based on a percentage or ratio of the agent's business or any other appropriate standard.

➔Section 1073. KRS 304.9-430 is amended to read as follows:

- (1) No individual or business entity shall in this state act as or hold himself or herself out to be an adjuster unless then licensed by the Kentucky **Department**~~{Office}~~ of Insurance as an adjuster. Application for license shall be made to the **commissioner**~~{executive director}~~ according to forms as prescribed and furnished by him or her. The **commissioner**~~{executive director}~~ shall issue the license as to applicants qualified upon payment of the license application fee stated in KRS 304.4-010.
- (2) To be licensed as an adjuster the applicant shall:
 - (a) Be an individual twenty-one (21) years or more of age;
 - (b) Be a resident of Kentucky, or resident of another state which will permit residents of Kentucky to act as adjusters in the other state;
 - (c) Be an employee of an insurer, a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school, or have experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent to make him or her reasonably competent to fulfill the responsibilities of an adjuster;
 - (d) Be trustworthy and of good reputation;
 - (e) Have and maintain an office accessible to the public, and keep therein the usual and customary records pertaining to transactions under the license. This provision shall not be deemed to prohibit maintenance of the office in the office of an insurer, of the employer, or in the home of the licensee;
 - (f) Have successfully passed a written examination prescribed by the **commissioner**~~{executive director}~~, except if the applicant has successfully passed a written examination in a state which permits residents of Kentucky to act as adjusters in the other state; and
 - (g) Be financially responsible to exercise the license.
- (3) A business entity, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the license powers is designated with the **commissioner**~~{executive director}~~ as to the license in accordance with KRS 304.9-133.
- (4) The **commissioner**~~{executive director}~~ may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.
- (5) Notwithstanding the provisions of this section, no adjuster's license or qualifications shall be required as to any adjuster who is sent into this state on behalf of an insurer for the purpose of investigating or making adjustment of a particular loss under an insurance policy, or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

➔Section 1074. KRS 304.9-440 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may place on probation, suspend, or may impose conditions upon the continuance of a license for not more than twenty-four (24) months, revoke, or refuse to issue or renew any

license issued under this subtitle or any surplus lines broker, life settlement broker, or life settlement provider license, or may levy a civil penalty in accordance with KRS 304.99-020, or any combination of actions for any one (1) or more of the following causes:

- (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (b) Violating any insurance laws, or violating any administrative regulations, subpoena, or order of the *commissioner*~~[executive director]~~ or of another state's insurance *commissioner*~~[executive director]~~;
- (c) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance or the business of life settlements;
- (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract, life settlement contract, or application for insurance;
- (f) Having been convicted of or having pled guilty or nolo contendere to any felony;
- (g) Having admitted or been found to have committed any unfair insurance trade practice, insurance fraud, or fraudulent life settlement act;
- (h) Using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business in this state or elsewhere;
- (i) Having an insurance license, life settlement license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
- (j) Surrendering or otherwise terminating any license issued by this state or by any other jurisdiction, under threat of disciplinary action, denial, or refusal of the issuance of or renewal of any other license issued by this state or by any other jurisdiction; or revocation or suspension of any other license held by the licensee issued by this state or by any other jurisdiction;
- (k) Forging another's name to an application for insurance, to any other document related to an insurance transaction, or to any document related to the business of life settlements;
- (l) Cheating, including improperly using notes or any other reference material to complete an examination for license;
- (m) Knowingly accepting insurance or life settlement business from an individual or business entity who is not licensed, but who is required to be licensed under this subtitle;
- (n) Failing to comply with an administrative or court order imposing a child support obligation;
- (o) Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax;
- (p) Having been convicted of a misdemeanor for which restitution is ordered in excess of three hundred dollars (\$300), or of any misdemeanor involving dishonesty, breach of trust, or moral turpitude;
- (q) Failing to no longer meet the requirements for initial licensure;
- (r) If a life settlement provider, demonstrating a pattern of unreasonable payments to owners or failing to honor contractual obligations set out in a life settlement contract;
- (s) Entering into any life settlement contract or using any form that has not been approved pursuant to Subtitle 15 of this chapter;
- (t) If a licensee, having assigned, transferred, or pledged a policy subject to a life settlement contract to a person other than a life settlement provider licensed in this state, an accredited investor or qualified institutional buyer as defined, respectively, in Regulation D, Rule 501 or Rule 144a of the Federal Securities Act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust; or
- (u) Any other cause for which issuance of the license could have been refused, had it then existed and been known to the *commissioner*~~[executive director]~~.

- (2) The license of a business entity may be suspended, revoked, or refused for any cause relating to an individual designated in or registered under the license if the **commissioner**~~[executive director]~~ finds that an individual licensee's violation was known or should have been known by one (1) or more of the partners, officers, or managers acting on behalf of the business entity and the violation was not reported to the **Department**~~[Office]~~ of Insurance nor corrective action taken.
- (3) The applicant or licensee may make written request for a hearing in accordance with KRS 304.2-310.
- (4) The **commissioner**~~[executive director]~~ shall retain the authority to enforce the provisions and penalties of this chapter against any individual or business entity who is under investigation for or charged with a violation of this chapter, even if the individual's or business entity's license has been surrendered or has lapsed by operation of law.
- (5) The **commissioner**~~[executive director]~~ may suspend, revoke, or refuse to renew the license of a licensed insurance agent operating as a life settlement broker, pursuant to KRS 304.15-700, if the **commissioner**~~[executive director]~~ finds that such insurance agent has violated the provisions of KRS 304.15-700 to 304.15-725.
- (6) If the **commissioner**~~[executive director]~~ denies a license application or suspends, revokes, or refuses to renew the license of a life settlement provider or life settlement broker, or suspends, revokes, or refuses to renew the license of a licensed life insurance agent operating as a life settlement broker pursuant to KRS 304.15-700, the **commissioner**~~[executive director]~~ shall comply with the provisions of this section and KRS Chapter 13B.

➔Section 1075. KRS 304.9-450 is amended to read as follows:

- (1) Upon suspension or revocation of any license the **commissioner**~~[executive director]~~ shall notify the licensee either in person or by mail addressed to the licensee at his or her address last of record with the **commissioner**~~[executive director]~~. Notice by mail shall be deemed effectuated when so mailed. The **commissioner**~~[executive director]~~ shall give like notice to the insurer represented by the agent, in the case of an agent's license.
- (2) The **commissioner**~~[executive director]~~ shall not again issue a license under this code to or as to any individual or business entity whose license has been revoked, until after expiration of one (1) year and thereafter not until the individual or business entity again qualifies in accordance with the applicable provisions of this code. An individual or business entity whose license has been revoked twice shall not again be eligible for any license under this code.
- (3) If the license of a business entity is suspended or revoked, no member, officer, or director of the business entity shall be licensed or be designated in or as to any license to exercise the powers thereof during the period of the suspension or revocation, unless the **commissioner**~~[executive director]~~ determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.
- (4) In the event that the action by the **commissioner**~~[executive director]~~ is to nonrenew or to deny an application for a license, the **commissioner**~~[executive director]~~ shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the **commissioner**~~[executive director]~~ in accordance with KRS 304.2-310.

➔Section 1076. KRS 304.9-460 is amended to read as follows:

- (1) All licenses issued under this code, although issued and delivered to the licensee or his **or her** employer, shall at all times be the property of the Commonwealth of Kentucky. Upon any expiration, termination, suspension, or revocation of the license, the licensee or other person having possession or custody of the license shall forthwith deliver it to the **commissioner**~~[executive director]~~ either by personal delivery or by mail.
- (2) As to any license lost, stolen, or destroyed while in the possession of any such licensee or person, the **commissioner**~~[executive director]~~ may accept in lieu of return of the license, the affidavit of the licensee or other person responsible for or involved in the safekeeping of such license, concerning the facts of such loss, theft, or destruction.

➔Section 1077. KRS 304.9-465 is amended to read as follows:

- (1) For the protection of the people of Kentucky, the **commissioner**~~{executive director}~~ may by order deny, suspend, or place conditions upon any license subject to the provisions of this subtitle.
- (2) An order denying a license or appointment shall be based upon the application and any other information pertaining to the applicant available to the **department**~~{office}~~.
- (3) One (1) or more of the following circumstances shall be considered for an order suspending a license:
 - (a) The licensee's indictment for crime involving dishonesty, breach of trust, a violation of Subtitle 47 of this chapter, or a violation of 18 U.S.C. sec. 1033;
 - (b) Sworn complaints to the **department**~~{office}~~ against the licensee showing clear and convincing evidence of a violation of KRS 304.9-400 totaling in the aggregate three hundred dollars (\$300) or more;
 - (c) The suspension or revocation of any other professional license held by the licensee in Kentucky or any other jurisdiction.
- (4) The **commissioner**~~{executive director}~~ may place conditions upon any license for any reason set forth in subsection (3) of this section.
- (5) Any person aggrieved by an order of the **commissioner**~~{executive director}~~ under this section may file an application for an emergency hearing pursuant to KRS 13B.125 within sixty (60) days of the date of the order. The **department**~~{office}~~ shall conduct the hearing within ten (10) working days of the request for a hearing, and within five (5) working days of the completion of the hearing the agency or hearing officer shall render a written decision affirming, modifying, or revoking the emergency order. The emergency order shall be affirmed if there is substantial evidence of a violation of law that constitutes an immediate danger to the public health, safety, or welfare. The **commissioner**~~{executive director}~~ shall participate in an expedited hearing at the applicant's written request.

➔Section 1078. KRS 304.9-467 is amended to read as follows:

- (1) An individual or business entity holding a license issued under this subtitle or holding a license as a surplus lines broker, life settlement broker, or life settlement provider shall notify the **commissioner**~~{executive director}~~ in writing immediately if the licensee's license to conduct insurance, securities, real estate, auctioneer, investment, financial, or financial planning business of any kind in this state or elsewhere is surrendered or terminated under threat of disciplinary action, refused, suspended, revoked, or renewal of continuance is denied.
- (2) A licensee shall report to the **commissioner**~~{executive director}~~ any administrative action taken against the licensee in another jurisdiction or by another governmental agency in Kentucky within thirty (30) days of the final disposition of the matter. This report shall include:
 - (a) A written statement identifying the type of license and explaining the circumstances of each incident;
 - (b) A copy of the notice of hearing or other document that states the charges and allegations; and
 - (c) A copy of the official document which demonstrates the resolution of the charges or any final judgment.
- (3) Within thirty (30) days of service upon the licensee of any criminal complaint, information, or indictment in any jurisdiction, the licensee shall submit to the **commissioner**~~{executive director}~~ the following:
 - (a) A written statement explaining the circumstances of each incident;
 - (b) A copy of the charging document; and
 - (c) A copy of the official document which demonstrates the resolution of the charges or any final judgment.
- (4) If the charges alleged in the criminal complaint, information, or indictment have not been finally resolved within the thirty (30) day period following service of the criminal complaint, information, or indictment, the licensee shall, within thirty (30) days following the resolution of the charges, submit to the **commissioner**~~{executive director}~~ a copy of the official document which demonstrates the resolution of the charges or any final judgment.

➔Section 1079. KRS 304.9-485 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may issue to an applicant qualified under this section a license to act as a specialty credit insurance producer for the following lines of insurance only:

- (a) Credit life;
 - (b) Credit health;
 - (c) Credit personal property;
 - (d) Credit involuntary unemployment; and
 - (e) Any other credit-related insurance approved by the **commissioner**~~[executive director]~~ as promulgated by administrative regulation.
- (2) For a specialty license to be issued under this section, the applicant shall submit to the **commissioner**~~[executive director]~~ all of the following:
- (a) A written application, signed by the applicant, on a form prescribed by the **commissioner**~~[executive director]~~, that contains the information prescribed by the **commissioner**~~[executive director]~~, including a list of physical locations where activities authorized by the specialty license will be conducted;
 - (b) A certification by an insurer authorized to do business in this state, signed and affirmed as true under penalty of perjury by an officer stating that:
 - 1. The insurer has satisfied itself that the named applicant is trustworthy and competent to act as the insurer's agent; and
 - 2. The insurer has appointed the managing employee and business entity applicants to act as agents for the type of insurance specified; and
 - (c) The applicable fee set forth in KRS 304.4-010.
- (3) A specialty license issued under this section authorizes an employee or representative of the license holder to participate in any aspect of selling the types of insurance specified in this section, without being licensed, registered, or otherwise individually identified, if all of the following are true:
- (a) The employee or representative operates with permission from and under the supervision of a managing employee license holder;
 - (b) The employee or representative has been instructed by the managing employee license holder with respect to the disclosures that may be required to be made to consumers in connection with the sale of credit insurance; and
 - (c) The employee or representative is not primarily compensated based on the amount of insurance sold by the employee or representative.
- (4) A specialty license holder may not in any manner advertise, represent, or otherwise hold out the license holder or any employee or representative of the license holder as a licensed insurance agent under another section of this subtitle, unless the entity or individual actually holds the applicable license.
- (5) Insurance shall not be transacted under this section at any location unless the sale of insurance includes the consumer protection disclosures set forth in Regulation Z of the Federal Truth in Lending Act, 15 U.S.C. sec. 501 et seq.
- (6) If a specialty credit insurance producer violates this chapter, the **commissioner**~~[executive director]~~ may, after notice and the opportunity for a hearing, impose any penalties set forth in KRS 304.2-360, 304.9-440, and 304.99-020.
- (7) An examination is not required for issuance of a license under this section and continuing education requirements do not apply to a license issued under this section. A business entity shall continuously maintain at least one (1) managing employee licensed under this section, but shall not be required to license any of its officers, directors, or other employees individually.
- (8) A licensee under this section may receive commissions or other compensation for services rendered in connection with the sale of credit insurance under this section.
- (9) Licenses shall be renewed biennially as set forth in KRS 304.9-260 and 304.9-270.

- (10) The **commissioner**~~executive director~~ shall establish revenue-neutral license, location, and renewal fees by administration regulation in an amount sufficient to maintain the **department's**~~office's~~ revenues generated by credit-limited license fees for the fiscal year ending June, 2000, indexed annually for inflation.

➔Section 1080. KRS 304.9-503 is amended to read as follows:

- (1) A rental vehicle agent may sell, solicit, or negotiate insurance at the rental vehicle company office as specified in this section for any of the following types of insurance:
- (a) Insurance that covers the risks of travel, including accident and health insurance that provides coverage to renters and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses that result from the operation or use of the rental vehicle during the rental period;
 - (b) Liability insurance that provides coverage to renters and other authorized drivers of rental vehicles for liability that arises from the operation or use of the rental vehicle, which may include uninsured motorist and underinsured motorist coverage, whether offered separately or in combination with other liability insurance;
 - (c) Personal property insurance that provides coverage to renters and other rental vehicle occupants for the loss of or damage to personal effects that occurs during the rental period;
 - (d) Roadside assistance;
 - (e) Emergency sickness protection programs; and
 - (f) Any other insurance incidental to the rental of a motor vehicle and approved by the **commissioner**~~executive director~~.
- (2) When a renter purchases any of the rental vehicle insurance coverages listed in subsection (1) of this section, the coverages shall be primary over any other coverages which may be available to the renter or authorized driver covering the same loss.

➔Section 1081. KRS 304.9-505 is amended to read as follows:

- (1) A license issued under this section shall permit rental vehicle insurance sales by the license holder provided the sales are conducted in accordance with the provisions of KRS 304.9-507.
- (2) A business entity licensee shall register with the **commissioner**~~executive director~~ each separate business location where its employees sell, solicit, or negotiate insurance and may pay a location registration fee for each separate location.
- (3) The **commissioner**~~executive director~~ may issue to an applicant qualified under this section a license to act as a rental vehicle agent.
- (4) For a license to be issued under this section, the applicant shall submit to the **commissioner**~~executive director~~ all of the following:
- (a) A written application, signed by the applicant, on a form prescribed by the **commissioner**~~executive director~~, that contains the information prescribed by the **commissioner**~~executive director~~;
 - (b) A certification by an insurer authorized to do business in this state, signed, and affirmed as true under penalty of perjury by an officer stating that:
 1. The insurer has satisfied itself that the named applicant is trustworthy and competent to act as the insurer's agent; and
 2. The insurer has appointed the applicant to act as agent for the type of insurance specified;
 - (c) The application fee, appointment fee, and location registration fee as provided in KRS 304.4-010 and KRS 304.9-501 to 304.9-513;
 - (d) A business entity applicant shall submit a list of physical locations where activities authorized by the rental vehicle agent license will be conducted;
 - (e) A business entity applicant shall certify that each proposed licensed managing employee has successfully completed education and training programs, successfully passed course examinations, and will receive continuing education all approved by the **commissioner**~~executive director~~ in accordance with KRS 304.9-513; and

(f) A business entity applicant shall submit proof that the applicant will provide education, training, and continuing education approved by the *commissioner*~~{executive director}~~ in accordance with KRS 304.9-513 for each rental vehicle employee or representative. However, a test shall not be required for each rental vehicle employee or representative who is not a licensed managing employee.

(5) The *commissioner*~~{executive director}~~ may require any documents reasonably necessary to verify the information contained in the application submitted in accordance with subsection (4) of this section.

➔Section 1082. KRS 304.9-507 is amended to read as follows:

(1) A license issued to a business entity under KRS 304.9-505 shall authorize an employee or representative of the business entity licensee to sell, solicit, or negotiate rental vehicle insurance without being licensed, registered, or otherwise individually identified, if all of the following are true:

(a) The employee, representative, or managing employee operates with permission from the business entity licensee;

(b) The business entity licensee assumes responsibility for the insurance activities of its unlicensed employees or representatives;

(c) The employee or representative operates under the supervision of a managing employee who is licensed as a rental vehicle agent and who shall be available at all times for consultation for and adequate supervision of the business locations registered with the *commissioner*~~{executive director}~~ during the sale, solicitation, or negotiation of rental vehicle insurance. However, a managing employee need not be present at each business location registered with the *commissioner*~~{executive director}~~;

(d) The business entity maintains an adequate number of managing employees available for consultation and supervision for the employees or representatives offering insurance products;

(e) The employee, representative, or managing employee has been instructed by the rental vehicle agent with respect to the consumer disclosures that are required under KRS 304.9-509 prior to the sale of the rental vehicle insurance;

(f) The employee or representative is not primarily compensated based on the amount of insurance sold by the employee or representative; and

(g) The business location is registered with the *commissioner*~~{executive director}~~.

(2) A licensee shall not advertise, represent, or otherwise hold out the licensee or any employee or representative of the licensee as a licensed insurance agent under another section of this subtitle, unless the entity or individual actually holds the applicable license.

➔Section 1083. KRS 304.9-513 is amended to read as follows:

(1) If a licensee violates a provision of this chapter, the *commissioner*~~{executive director}~~ may take administrative action and impose penalties in accordance with this chapter.

(2) A licensed business entity under KRS 304.9-505 shall provide to the *commissioner*~~{executive director}~~ its courses of instruction, course examinations for managing employees, employee training, and continuing education material for all employees subject to the *commissioner's*~~{executive director's}~~ approval prior to issuance of a license under this section.

(3) A licensee under KRS 304.9-505 may receive commissions or other compensation for services rendered in connection with the sale of rental vehicle insurance.

(4) Licenses shall be renewed biennially as set forth in KRS 304.9-260 and 304.9-270.

(5) The *commissioner*~~{executive director}~~ shall promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513.

➔Section 1084. KRS 304.9-700 is amended to read as follows:

As used in KRS 304.9-700 to 304.9-759, unless the context requires otherwise:

(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries;

- (2) "Controlling person" means any person, firm, association, or corporation who directly or indirectly has the power to direct or cause to be directed the management, control, or activities of the reinsurance intermediary;
- (3) "Insurer" means any person, firm, association, or corporation duly authorized by the **commissioner**~~executive director~~ pursuant to the applicable provisions of this chapter as an insurer;
- (4) "Licensed producer" means an agent, surplus lines broker, or reinsurance intermediary licensed pursuant to the applicable provisions of this chapter;
- (5) "Reinsurance intermediary" means a reinsurance intermediary broker or a reinsurance intermediary manager as defined in subsections (6) and (7) of this section;
- (6) "Reinsurance intermediary broker" means any person, other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer;
- (7) "Reinsurance intermediary manager" means any person, firm, association, or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department, or underwriting office) and acts as an agent for a reinsurer whether known as a reinsurance intermediary manager, manager, or by other similar term. However, the following persons shall not be considered a reinsurance intermediary manager with respect to the reinsurer for the purposes of KRS 304.9-700 to 304.9-759:
- (a) An employee of the reinsurer;
 - (b) A United States manager of the United States branch of an alien reinsurer;
 - (c) An underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to Subtitle 37 of this chapter, and whose compensation is not based on the volume of premiums written; or
 - (d) The manager of a group, association, pool, or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance regulatory official of the state in which the manager's principal business office is located;
- (8) "Reinsurer" means any person, firm, association, or corporation duly authorized in Kentucky pursuant to this chapter as an insurer with the authority to assume reinsurance;
- (9) "To be in violation" means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to comply substantially with the provisions of KRS 304.9-700 to 304.9-759; and
- (10) "Qualified United States financial institution" means an institution that:
- (a) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;
 - (b) Is regulated, supervised, and examined by the United States government or state authorities having regulatory authority over banks and trust companies; and
 - (c) Has been determined by either the **commissioner**~~executive director~~, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the **commissioner**~~executive director~~.

➔Section 1085. KRS 304.9-705 is amended to read as follows:

- (1) No individual or business entity shall act as a reinsurance intermediary broker in Kentucky if the reinsurance intermediary broker maintains an office either directly or as a director, officer, member, or employee of a business entity:
- (a) In Kentucky, unless the reinsurance intermediary broker is a licensed insurance producer in Kentucky and may sell reinsurance products under that insurance producer license; or
 - (b) In another state, unless the reinsurance intermediary broker is a licensed insurance producer in Kentucky and may sell reinsurance products under that producer license, or is licensed in another state having a law substantially similar to KRS 304.9-700 to 304.9-759, or the reinsurance intermediary broker is licensed in Kentucky as a nonresident reinsurance intermediary.

- (2) No individual or business entity shall act as a reinsurance intermediary manager:
- (a) For a reinsurer domiciled in Kentucky, unless the reinsurance intermediary manager is a licensed insurance producer in Kentucky and may sell reinsurance products under that insurance producer license;
 - (b) In Kentucky, if the reinsurance intermediary manager maintains an office, either directly or as a director, officer, member, or employee of a business entity in Kentucky, unless the reinsurance intermediary manager is a licensed insurance producer in Kentucky and may sell reinsurance products under that insurance producer license; or
 - (c) In another state for a nondomestic insurer, unless the reinsurance intermediary manager is a licensed insurance producer in Kentucky and may sell reinsurance products under that insurance producer license, is licensed in another state having a law substantially similar to KRS 304.9-700 to 304.9-759, or the person is licensed in Kentucky as a nonresident reinsurance intermediary.
- (3) The **commissioner**~~executive director~~ may issue a reinsurance intermediary license to any individual or business entity who has complied with the requirements of KRS 304.9-700 to 304.9-759 and who is financially responsible to exercise the license. The license issued to a business entity shall be exercised only by individuals designated with the **commissioner**~~executive director~~ as to the license in accordance with KRS 304.9-133.
- (4) The **commissioner**~~executive director~~ may refuse to issue a reinsurance intermediary license if, in his *or her* judgment, the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant is not trustworthy or of good reputation, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing persons have given cause for revocation or suspension of the license, or has failed to comply with any prerequisite for the issuance of the license.
- (5) Licensed attorneys-at-law of Kentucky, when acting in their professional capacity as attorneys, shall be exempt from this section.

➔Section 1086. KRS 304.9-725 is amended to read as follows:

Transactions between a reinsurance intermediary manager and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty (30) days before the reinsurer assumes or cedes business through such producer, a true copy of the contract approved by the reinsurer's board of directors shall be filed with the **commissioner**~~executive director~~ for approval. The contract shall, at a minimum, contain provisions that:

- (1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary manager. The reinsurer may suspend the authority of the reinsurance intermediary manager to assume or cede business during the pendency of any dispute regarding the cause for termination;
- (2) The reinsurance intermediary manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the reinsurance intermediary manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;
- (3) All funds collected for the reinsurer's account shall be held by the reinsurance intermediary manager in a fiduciary capacity in a bank which is a qualified United States financial institution. The reinsurance intermediary manager may retain no more than three (3) months estimated claims payment and allocated loss adjustment expenses. The reinsurance intermediary manager shall maintain a separate bank account for each reinsurer that it represents;
- (4) For at least ten (10) years after expiration of each contract of reinsurance transacted by the reinsurance intermediary manager, the reinsurance intermediary manager shall keep a complete record for each transaction showing:
 - (a) The type of contract, limits, underwriting restrictions, classes or risks, and territory;
 - (b) Period of coverage, including effective and expiration dates, cancellation provisions and notice required for cancellation; and disposition of outstanding reserves on covered risks;

- (c) Reporting and settlement requirements of balances;
- (d) Rate used to compute the reinsurance premium;
- (e) Names and addresses of reinsurers;
- (f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary manager;
- (g) Related correspondence and memoranda;
- (h) Proof of placement;
- (i) Details regarding retrocessions handled by the reinsurance intermediary manager, as permitted by KRS 304.9-735(4), including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- (j) Financial records, including, but not limited to, premium and loss accounts; and
- (k) When the reinsurance intermediary manager places a reinsurance contract on behalf of a ceding insurer:
 - 1. Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; and
 - 2. If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative;
- (5) The reinsurer shall have access to and the right to copy all accounts and records maintained by the reinsurance intermediary manager related to its business in a form usable by the reinsurer;
- (6) The contract shall not be assigned in whole or in part by the reinsurance intermediary manager;
- (7) The reinsurance intermediary manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks;
- (8) Set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary manager may levy against the reinsurer;
- (9) If the contract permits the reinsurance intermediary manager to settle claims on behalf of the reinsurer:
 - (a) All claims shall be reported to the reinsurer in a timely manner;
 - (b) A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim:
 - 1. Has the potential to exceed the lesser of an amount determined by the **commissioner**~~executive director~~ or the limit set by the reinsurer;
 - 2. Involves a coverage dispute;
 - 3. May exceed the reinsurance intermediary manager's claims settlement authority;
 - 4. Is open for more than six (6) months; or
 - 5. Is closed by payment of the lesser of an amount set by the **commissioner**~~executive director~~ or an amount set by the reinsurer;
 - (c) All claim files shall be the joint property of the reinsurer and the reinsurance intermediary manager. However, upon an order of liquidation of the reinsurer, the files shall become the sole property of the reinsurer or its estate, but the reinsurance intermediary manager shall have reasonable access to and the right to copy the files; and
 - (d) Any settlement authority granted to the reinsurance intermediary manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination;
- (10) If the contract provides for a sharing of interim profits by the reinsurance intermediary manager, that the interim profits shall not be paid until one (1) year after the end of each underwriting period for property business and five (5) years after the end of each underwriting period for casualty business, or a later period set

by the **commissioner**~~{executive director}~~ for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to KRS 304.9-735(3);

- (11) The reinsurance intermediary manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;
- (12) The reinsurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary manager;
- (13) The reinsurance intermediary manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such reinsurer pursuant to this contract; and
- (14) The acts of the reinsurance intermediary manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

➔Section 1087. KRS 304.9-735 is amended to read as follows:

- (1) A reinsurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary manager on its behalf unless the person is licensed as required by KRS 304.9-705(2).
- (2) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary manager which the reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the **commissioner**~~{executive director}~~.
- (3) If a reinsurance intermediary manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary manager. This opinion shall be in addition to any other required loss reserve certification.
- (4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary manager.
- (5) Within thirty (30) days of termination of a contract with a reinsurance intermediary manager, the reinsurer shall provide written notification of such termination to the **commissioner**~~{executive director}~~.
- (6) A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary manager. This subsection shall not apply to relationships governed by Subtitle 37 of this chapter or, if applicable, any provisions of Subtitle 3 of this chapter on producer controlled insurers.

➔Section 1088. KRS 304.9-740 is amended to read as follows:

- (1) A reinsurance intermediary shall be subject to examination by the **commissioner**~~{executive director}~~. The **commissioner**~~{executive director}~~ shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the **commissioner**~~{executive director}~~.
- (2) A reinsurance intermediary manager may be examined as if it were the reinsurer.

➔Section 1089. KRS 304.9-745 is amended to read as follows:

- (1) The license of a reinsurance intermediary may be suspended or revoked, civil penalties imposed in the amount applicable to agents under KRS 304.99-020, conditions imposed on the license, or any combination thereof, on the grounds set forth in KRS 304.9-440.
- (2) If a reinsurance intermediary violates any provision of this chapter or any other statute or administrative regulation administered by the **commissioner**~~{executive director}~~, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for net losses incurred by the insurer or reinsurer attributable to the violation.
- (3) Nothing contained in this section shall affect the right of the **commissioner**~~{executive director}~~ to impose any other penalties provided in this chapter.
- (4) Nothing contained in KRS 304.9-700 to 304.9-759 is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or third parties.

➔Section 1090. KRS 304.9-750 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may promulgate reasonable administrative regulations for the implementation, interpretation, and administration of the provisions of KRS 304.9-700 to 304.9-759.
- (2) Insurers or reinsurers shall not continue to utilize the services of a reinsurance intermediary on and after July 14, 1992, unless utilization is in compliance with KRS 304.9-700 to 304.9-759.

➔Section 1091. KRS 304.10-050 is amended to read as follows:

At the time of effecting any such surplus lines insurance, the broker shall execute an affidavit in form prescribed or accepted by the **commissioner**~~{executive director}~~ setting forth facts from which it can be determined whether such insurance was eligible for export under KRS 304.10-040. The broker shall file this affidavit with the **commissioner**~~{executive director}~~ in the manner and form as prescribed by the **commissioner**~~{executive director}~~ through administrative regulation.

➔Section 1092. KRS 304.10-060 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may by order declare eligible for export generally and without compliance with the provisions of subsections (2) and (3) of KRS 304.10-040, and 304.10-050, any class or classes of insurance coverage or risk for which he *or she* finds, after a hearing of which notice was given to each insurer authorized to transact such class or classes in this state, that there is not a reasonable or adequate market among authorized insurers either as to acceptance of the risk, contract terms or premium or premium rate. Any such order shall continue in effect during the existence of the conditions upon which predicated, but subject to earlier termination by the **commissioner**~~{executive director}~~.
- (2) The broker shall file with or as directed by the **commissioner**~~{executive director}~~ a memorandum as to each such coverage placed by *the broker*~~{him}~~ in an unauthorized insurer, in such form and content as the **commissioner**~~{executive director}~~ may reasonably require for the identification of the coverage and determination of the tax payable to the state relative thereto.
- (3) The broker, or a licensed agent of the authorized insurer may also place with authorized insurers any insurance coverage made eligible for export generally under subsection (1) of this section, and without regard to rate or form filings which may otherwise be applicable as to the authorized insurer. As to coverages so placed in an authorized insurer the premium tax thereon shall be reported and paid by the insurer as required generally under KRS Chapter 136.

➔Section 1093. KRS 304.10-070 is amended to read as follows:

- (1) A broker shall not place surplus lines insurance with an insurer that he or she knows, or in the exercise of reasonable diligence could know:
 - (a) Has a surplus in regard to policyholders of less than six million dollars (\$6,000,000);
 - (b) Has not established satisfactory evidence of good repute and financial integrity;
 - (c) Is unsound financially; or
 - (d) Is ineligible under the Kentucky insurance code.
- (2) A broker may:
 - (a) Place insurance covering certificates of investment with an insurance company or guarantee fund which is financially sound and has capital funds and reserves in excess of fifteen million dollars (\$15,000,000); and
 - (b) Place insurance with a United States insurance exchange which the **commissioner**~~{executive director}~~, in his or her discretion, may designate for use by surplus lines brokers licensed by the Commonwealth of Kentucky.
- (3) A broker shall not place insurance with an alien insurer that is not recognized by the National Association of Insurance Commissioners and does not maintain in the United States a trust fund for the benefit of United States policyholders of at least five million four hundred thousand dollars (\$5,400,000).
- (4) A broker shall not place insurance with an insurer that has engaged in the insurance business less than three (3) years unless the insurer has deposited with the **commissioner**~~{executive director}~~ publicly-traded securities with a market value of at least six hundred thousand dollars (\$600,000).

- (5) This section shall not apply to surplus lines insurers eligible to do business in Kentucky as of July 15, 1982, except that the *commissioner*~~{executive director}~~ may revoke eligibility, or may order the insurer to comply with this section or may suspend the operation of the insurer in Kentucky.
- (6) The *commissioner*~~{executive director}~~ may declare that a surplus lines insurer is ineligible to transact business in Kentucky. The *commissioner*~~{executive director}~~ shall promptly mail notice of all declarations of ineligibility to each surplus lines broker if at any time the *commissioner*~~{executive director}~~ has reason to believe that a surplus lines insurer:
- (a) Is in unsound financial condition;
 - (b) Has acted in an untrustworthy manner;
 - (c) No longer meets the standards set forth in this subtitle;
 - (d) Has willfully violated the laws of Kentucky; or
 - (e) Does not conduct a proper claims practice.

➔Section 1094. KRS 304.10-120 is amended to read as follows:

- (1) Any person who:
- (a) Is a resident of Kentucky or is a nonresident who is not eligible to be issued a license in accordance with KRS 304.9-140;
 - (b) Holds an agent license with lines of authority for property and casualty; and
 - (c) Is deemed by the *commissioner*~~{executive director}~~ to be competent and trustworthy with respect to the handling of surplus lines;
- may be licensed as a surplus lines broker.
- (2) Application for the license shall be made to the *commissioner*~~{executive director}~~ on forms as designated and furnished by the *commissioner*~~{executive director}~~.
- (3) The license fee shall be as specified in KRS 304.4-010.
- (4) The license and licensee shall be subject to the applicable provisions of Subtitle 9 of this chapter.
- (5) Notwithstanding subsection (1) of this section, on or after July 1, 2002, an applicant licensed as a surplus lines broker in the applicant's home state may be issued a nonresident surplus lines broker's license in Kentucky if the applicant's home state issues surplus lines broker licenses to Kentucky residents on the same basis.
- (6) If the resident surplus lines broker fails to maintain his or her agent license with lines of authority for property and casualty, the surplus lines broker license shall terminate and shall be promptly surrendered to the *commissioner*~~{executive director}~~ without demand.

➔Section 1095. KRS 304.10-130 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ may suspend or revoke any surplus lines broker's license:
- (a) If the broker fails to file his or her annual statement or to remit the tax as required by this subtitle; or
 - (b) If the broker fails to keep records, or to allow the *commissioner*~~{executive director}~~ to examine his or her records as required by this subtitle; or
 - (c) If the broker knowingly or negligently places a surplus lines coverage in an insurer that is in unsound financial condition in violation of KRS 304.10-070; or
 - (d) For any other applicable cause for which an agent's license may be suspended or revoked.
- (2) The procedures provided by Subtitle 9 of this chapter for suspension or revocation of licenses shall apply to suspension or revocation of a surplus lines broker's license.
- (3) Upon suspending or revoking the broker's surplus lines license the *commissioner*~~{executive director}~~ shall also suspend or revoke all other licenses of or as to the same individual under this code.

- (4) No broker whose license has been suspended or revoked shall again be so licensed until any fines or delinquent taxes owed have been paid, or in case of revocation until after expiration of one (1) year from the date revocation became final.

➔Section 1096. KRS 304.10-140 is amended to read as follows:

- (1) To the extent the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6751(f), provides that evidence of financial responsibility may be required for licensing, prior to issuance of a license as a surplus lines broker, the applicant shall file with the *commissioner*~~[executive director]~~, and for as long as the license remains in effect shall keep in force:
- (a) Evidence of financial responsibility in the sum of not less than one million dollars (\$1,000,000) per occurrence, and the sum of two million dollars (\$2,000,000) in the aggregate, for all occurrences within one (1) year, either in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or a combination of a bond issued by an authorized corporate surety and a deposit. The policy, bond, deposit, or combination of a bond or deposit shall not be terminated unless at least thirty (30) days' prior written notice is given to the licensee and the *commissioner*~~[executive director]~~; and
 - (b) A bond in favor of the State of Kentucky in the penal sum of fifty thousand dollars (\$50,000), with an authorized corporate surety guaranteeing that he or she will conduct business under the license in accordance with the provisions of this subtitle and that he or she will promptly remit the taxes required by KRS 304.10-180. The aggregate liability of the surety for any and all claims on any bond shall in no event exceed the penal sum. No bond shall be terminated unless not less than thirty (30) days' prior written notice is given to the licensee and filed with the *commissioner*~~[executive director]~~.
- (2) An insurer issuing coverage under subsection (1)(a) or (b) of this section may offer, as a part of the policy or as an optional endorsement to the policy, deductibles optional to the surplus lines broker applicant or licensee for the payment of claims. Deductible amounts offered in accordance with this section shall be fully disclosed to the applicant or licensee in writing. If the applicant or licensee chooses a deductible policy, the insurer shall pay the deductible amount initially and the licensee shall be liable to the insurer, at the time and in the manner prescribed in the policy, for the amount of the deductible. If the licensee fails to reimburse the insurer as required by this subsection, his or her surplus lines broker license and all other licenses issued by the *commissioner*~~[executive director]~~ are revoked and shall be promptly surrendered to the *commissioner*~~[executive director]~~ without demand. Nothing contained in this subsection is intended to or shall in any manner alter or affect the rights of the insurer to collect the reimbursement for the deductible from the surplus lines broker.

➔Section 1097. KRS 304.10-160 is amended to read as follows:

- (1) Each broker shall keep in his or her office a full and true record of each surplus lines coverage procured by him or her, including a copy of each daily report, if any, a copy of each certificate of insurance issued by him or her, and of the following items as may be applicable:
- (a) Amount of the insurance;
 - (b) Gross premium charged;
 - (c) Return premium paid, if any;
 - (d) Rate of premium charged upon the several items of property;
 - (e) Effective date of the contract, and the terms thereof;
 - (f) Name and address of each insurer on the direct risk and the proportion of the entire risk assumed by the insurer if less than the entire risk;
 - (g) Name and address of the insured;
 - (h) Brief general description of the property or risk insured and where located or to be performed; and
 - (i) Other information as may be required by the *commissioner*~~[executive director]~~.
- (2) The record shall be open to examination by the *commissioner*~~[executive director]~~ at all times within five (5) years after issuance of the coverage to which it relates.

➔Section 1098. KRS 304.10-170 is amended to read as follows:

- (1) Each broker shall, within thirty (30) days of the end of each calendar quarter, file with the **commissioner**~~[executive director]~~ a verified statement of all surplus lines insurance transacted by him during the preceding calendar quarter.
- (2) The statement shall be on forms as prescribed by the **commissioner**~~[executive director]~~ and shall show:
 - (a) Gross amount of each kind of insurance transacted;
 - (b) Aggregate of gross premiums charged;
 - (c) Aggregate of returned premiums paid insureds;
 - (d) Aggregate of net premiums; and
 - (e) Additional information as required by the **commissioner**~~[executive director]~~.

➔Section 1099. KRS 304.10-180 is amended to read as follows:

- (1) Each broker shall pay the following taxes:
 - (a) A tax at the rate of three percent (3%) on the premiums, assessments, fees, charges, or other consideration deemed part of the premium as defined in KRS 304.14-030, on surplus lines insurance subject to tax transacted by him or her with unauthorized insurers during the preceding calendar quarter as shown by his or her quarterly statement filed with the **commissioner**~~[executive director]~~ in accordance with KRS 304.10-170. The tax shall not be assessed on the premium surcharge tax, the local government premium tax, or any other state or federal tax. The tax shall be remitted to the **commissioner**~~[executive director]~~ within thirty (30) days of the end of each calendar quarter. When collected the tax shall be credited to the insurance regulatory trust fund, as established by KRS 304.2-400;
 - (b) The premium surcharge tax, to be remitted to the Kentucky Department of Revenue, in accordance with KRS 136.392; and
 - (c) The local government premium tax, to be remitted to the appropriate city, county, or urban-county government taxing authority, in accordance with KRS 91A.080. Each broker shall be subject to the provisions of this section and KRS 91A.080 and 91A.0802 to 91A.0808 as an insurance company.
- (2) If a surplus lines policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

➔Section 1100. KRS 304.10-210 is amended to read as follows:

The **commissioner**~~[executive director]~~ shall make or may approve and adopt reasonable rules and regulations, consistent with this subtitle, for any and all of the following purposes:

- (1) Effectuation of the Surplus Lines Law; and
- (2) Establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for export.

➔Section 1101. KRS 304.11-020 is amended to read as follows:

- (1) Other than KRS 304.11-050, the provisions of KRS 304.11-020 to 304.11-050, shall not apply to any insurance company or underwriter issuing contracts of insurance to industrial insureds, government entity insureds, and exempt commercial policyholders, nor to any contract of insurance issued to any one (1) or more industrial insureds.
- (2) For the purpose of this section:
 - (a) An "industrial insured" is:
 1. An insured who procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant; and

2. An insured whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars (\$25,000); and
 3. An insured having at least twenty-five (25) full-time employees; and
 4. All entities that have qualified as industrial insureds as of July 1, 1999.
- (b) A "government entity insured" is an insured:
1. That is a government entity, municipal corporation, or public agency located in a city or county having a population of less than fifty thousand (50,000); and
 2. That procures the insurance of any risk or risks, other than life and annuity contracts, by use of the services of a full-time employee acting as an insurance manager or buyer, or by the use of the services of a regularly and continuously retained qualified insurance consultant; and
 3. Whose aggregate annual premiums for insurance on all risks total at least one hundred thousand dollars (\$100,000), exclusive of life, health, medical, or annuity premiums; and
 4. That has at least fifty (50) full-time employees; and
 5. That satisfies the criteria the *commissioner*~~executive director~~ promulgates by administrative regulation.
- (c) 1. An "exempt commercial policyholder" means an insured that employs the services of an insurance agent or broker, procures commercial insurance with the services of a full-time risk manager, or a licensed insurance consultant, pursuant to Subtitle 9 of this chapter and:
- a. Is a city, county, or urban-county with a population of at least fifty thousand (50,000) persons, or the Commonwealth, or a not-for-profit organization or a public entity with an annual budget of at least twenty-five million dollars (\$25,000,000) or assets of at least twenty-five million dollars (\$25,000,000) in the preceding fiscal year; or
 - b. Certifies that it meets all four (4) of the following criteria:
 - i. Possesses a net worth of more than twenty-five million dollars (\$25,000,000) at the time the policy of insurance is issued;
 - ii. Generated net revenue or sales of more than fifty million dollars (\$50,000,000) in the preceding fiscal year;
 - iii. Employs more than one hundred (100) employees per individual company or two hundred (200) employees per holding company aggregate at the time the policy of insurance is issued; and
 - iv. Paid annual aggregate insurance premiums of more than five hundred thousand dollars (\$500,000) in the preceding fiscal year.
2. As used in this subsection, "risk manager" means a person qualified to assess an exempt commercial policyholder's insurance needs and analyze and negotiate a policy of insurance on behalf of an exempt commercial policyholder. A risk manager shall be:
- a. A full-time employee of an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder; or
 - b. A person retained by an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder.
- (d) The requirements of this section shall not apply to a policy of insurance sold to an exempt commercial policyholder.
- (e) Policies issued to an exempt commercial policyholder shall contain a disclaimer in language similar to the following: "The rate provided for in this policy is exempt from the filing and approval requirements of this section."

- (f) The exemption of commercial policyholders under this section shall not apply to Subtitle 39 of this chapter, KRS Chapter 342, sections in Subtitle 13 of this chapter that pertain to workers' compensation insurance, and KRS 304.12-230.
- (3) Policies issued to industrial insureds, government entity insureds, and exempt commercial policyholders are exempt from the rate and policy form requirements of this chapter.
- (4) All industrial insureds, government entity insureds, and exempt commercial policyholders shall reapply to the **commissioner**~~executive director~~ for their respective insured status every three (3) years, on a form the **commissioner**~~executive director~~ shall promulgate by administrative regulation.
- (5) KRS 304.11-020 to 304.11-050, inclusive, shall not apply to any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts directly from the home office of the company and without agents or representatives in this state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions, nor to any policy or contract which it issues; but this exemption shall be conditioned upon any such company complying with the following requirements:
- (a) Payment of an annual registration fee;
 - (b) Filing a copy of any policy or contract issued to Kentucky residents with the **commissioner**~~executive director~~;
 - (c) Filing a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, with the **commissioner**~~executive director~~; and
 - (d) Providing, in such form as may be acceptable for the appointment of the Secretary of State as its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against such company arising out of any policy or contract it has issued to, or which is currently held by, a Kentucky citizen and process so served against such company shall have the same force and validity as if served upon the company.

➔Section 1102. KRS 304.11-030 is amended to read as follows:

- (1) It shall be unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this state, as set forth in subsection (2) of this section without a certificate of authority from the **commissioner**~~executive director~~; provided, that this subsection shall not apply to:
- (a) The lawful transaction of surplus lines insurance.
 - (b) The lawful transaction of reinsurance by insurers.
 - (c) Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.
 - (d) Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid.
 - (e) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.
 - (f) Transactions in this state involving group life and group health or blanket health insurance or group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business.
 - (g) Transactions in this state involving any policy of insurance issued prior to July 1, 1968.
 - (h) Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
- (2) Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section

includes all corporations, associations, partnerships and individuals, engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

- (a) The making of or proposing to make, as an insurer, an insurance contract.
 - (b) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
 - (c) The taking or receiving of any application for insurance.
 - (d) The receiving or collection of any premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof.
 - (e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.
 - (f) Directly or indirectly acting as an agent for, or otherwise representing or aiding on behalf of another, any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, or fixing of rates or investigation or adjustment of claims or losses, or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subsection shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.
 - (g) The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.
 - (h) The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this code.
 - (i) Any other transactions of business in this state by an insurer.
- (3) (a) The failure of a company transacting insurance business in Kentucky to obtain a certificate of authority shall not impair the validity of any act or contract of such company and shall not prevent such company from defending any action at law or suit in equity in any court of this state.
 - (b) In event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.
- (4) Whenever the **commissioner**~~executive director~~ believes, from evidence satisfactory to him **or her**, that any company is violating or about to violate the provisions of these sections, the **commissioner**~~executive director~~ may, through the Attorney General of this state, cause a complaint to be filed in the Circuit Court of Franklin County to enjoin and restrain such company from continuing such violation or engaging therein or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.

➔Section 1103. KRS 304.11-040 is amended to read as follows:

- (1) No person or insurer shall directly or indirectly perform any of the acts of doing an insurance business as defined in KRS 304.11-020 to 304.11-050, inclusive, except as provided by and in accordance with the specific authorization by statute. However, should any unauthorized person or insurer perform any act of doing an insurance business as set forth in KRS 304.11-020 to 304.11-050, inclusive, it shall be equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon **the person or insurer**~~him~~, his **or her** executor or administrator, or successor in interest if a corporation, of the Secretary of State or his **or her** successor in office to be the true and lawful attorney upon whom may be served all lawful process in any action, suit, administrative hearing or proceeding in any court arising out of doing an insurance business in this state or instituted by or on behalf of an insured or beneficiary arising out of any such acts of doing an insurance business. Any act of doing an insurance business by any unauthorized person or insurer shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such person or insurer.

- (2) Service of process in any action may be made by service upon the Secretary of State as provided in KRS 304.3-230.
- (3) Service of process in any such action, suit, or proceeding shall in addition to the manner as provided in KRS 304.11-020 to 304.11-050, inclusive, be valid if served upon any person within this state who, in this state on behalf of such insurer, is soliciting insurance, making, issuing, or delivering any contract of insurance, or collecting or receiving any premium, membership fee, assessment, or other consideration for insurance, and if:
 - (a) A copy of such process is sent within ten (10) days thereafter by certified mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant.
 - (b) The defendant's receipt, or the receipt issued by the post office showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and an affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.
- (4) No plaintiff shall be entitled to a judgment by default under KRS 304.11-020 to 304.11-050, inclusive, until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.
- (5) Nothing in subsections (1) to (5), inclusive, of this section shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.
- (6) The Attorney General upon request of the *commissioner*~~{executive director}~~ may proceed in the courts of this state or any other state or in any federal court or agency to enforce an order or decision in any court proceeding or in any administrative proceeding before the *commissioner*~~{executive director}~~.
- (7) Before any unauthorized person or insurer files or causes to be filed in any pleading in any court action, suit or proceeding or in any notice, order, pleading, or process in such administrative proceeding before the *commissioner*~~{executive director}~~ instituted against such person or insurer, by services made as provided in subsections (1) to (5), inclusive, of this section such person or insurer shall either:
 - (a) Deposit with the clerk of the court in which such action, suit, or proceeding is pending, or with the *commissioner*~~{executive director}~~ in administrative proceedings before the *commissioner*~~{executive director}~~, cash or securities, or file with such clerk or *commissioner*~~{executive director}~~ a bond with good and sufficient sureties, to be approved by the clerk or *commissioner*~~{executive director}~~ in an amount to be fixed by the court or *commissioner*~~{executive director}~~ sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding.
 - (b) Procure a certificate of authority to transact the business of insurance in this state.
- (8) The court in any action, suit, or proceeding in which service is made as provided in subsections (1) to (5), inclusive, of this section may in ~~his or~~ its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (7) of this section and to defend such action.
- (9) Nothing in subsection (7) of this section shall be construed to prevent an unauthorized person or foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subsections (1) to (5), inclusive, of this section on the ground that such unauthorized person or insurer has not done any of the acts enumerated in subsections (1) to (3), inclusive, of KRS 304.11-030.
- (10) In an action against an unauthorized person or insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the person or insurer has failed for thirty (30) days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Failure of the person or insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was without reasonable cause.
- (11) Whenever the *commissioner*~~{executive director}~~ has reason to believe that insurance has been effectuated by or for any person in this state with an unauthorized insurer the *commissioner*~~{executive director}~~ shall in writing order such person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the *commissioner*~~{executive director}~~

~~director~~] the amount of insurance, name and address of each insurer, gross amount of premium paid or to be paid and the name and address of the person or persons assisting or aiding in the solicitation, negotiation, or effectuation of such insurance.

- (12) Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the **commissioner**~~[executive director]~~ every insurance policy or contract which has been entered into by an insurer not authorized to transact such insurance in this state.

➔Section 1104. KRS 304.11-045 is amended to read as follows:

- (1) The purpose of this section is to give Kentucky jurisdiction over providers of health care benefits; to indicate how each provider of health care benefits may show under what jurisdiction it falls; to allow for examination by Kentucky if the provider of health care benefits is unable to show it is subject to another jurisdiction; to make such a provider of health care benefits subject to the laws of Kentucky if it cannot show that it is subject to another jurisdiction; and to disclose to purchasers of such health care benefits whether or not the plans are fully insured.
- (2) Notwithstanding any other provision of law, and except as provided herein, any person or other entity which provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the **department**~~[office]~~, unless the person or other entity shows that while providing such services it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government.
- (3) If a person or entity wishes to show that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, such showing shall be made by providing to the **commissioner**~~[executive director]~~ the appropriate certificate, license, or other document issued by other governmental agency which permits or qualifies it to provide those services.
- (4) Any person or entity which is unable to show under subsection (3) that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, shall submit to an examination by the **commissioner**~~[executive director]~~ to determine the organization and solvency of the person or the entity, and to determine whether or not such person or entity complies with the applicable provisions of this chapter.
- (5) Any person or entity unable to show that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, shall be subject to all appropriate provisions of this code regarding the conduct of its business.
- (6) Any production agency or administrator which advertises, sells, transacts, or administers the coverage in this state described in subsection (2) of this section and which is required to submit to an examination by the **commissioner**~~[executive director]~~ under subsection (4) of this section shall, if said coverage is not fully insured or otherwise fully covered by an authorized life or health insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, health maintenance organization, or prepaid dental plan organization, advise every purchaser, prospective purchaser, and covered person of such lack of insurance or other coverage. Any administrator which advertises or administers the coverage in this state described in subsection (2) of this section which is required to submit to an examination by the **commissioner**~~[executive director]~~ under subsection (4) of this section shall advise any production agency of the elements of the coverage, including the amount of "stop loss" insurance in effect.

➔Section 1105. KRS 304.12-013 is amended to read as follows:

- (1) The purpose of this section is to prohibit unfair or deceptive practices in the transaction of life and health insurance with respect to the human immunodeficiency virus infection and related matters. This section applies to all life and health insurance contracts which are delivered or issued for delivery in Kentucky on or after July 13, 1990.
- (2) This section shall not prohibit an insurer from contesting the validity of an insurance contract or whether a claim is covered under an insurance contract to the extent allowed by law.
- (3) As used in this section:
 - (a) "Human immunodeficiency virus" (HIV) means the causative agent of acquired immunodeficiency syndrome (AIDS) or any other type of immunosuppression caused by the human immunodeficiency virus;

- (b) "Insurance contract" means a contract issued by an insurer as defined in this section; and
 - (c) "Insurer" means an insurer, a nonprofit hospital, medical-surgical, dental, and health service corporation, a health maintenance organization, or a prepaid dental plan organization.
- (4) (a) In the underwriting of an insurance contract regarding human immunodeficiency virus infection and health conditions derived from such infection, the insurer shall utilize medical tests which are reliable predictors of risk. Only a test which is recommended by the Centers for Disease Control or by the Food and Drug Administration is deemed to be reliable for the purposes of this section. If a specific Centers for Disease Control or Food and Drug Administration-recommended test indicates the existence or possible existence of human immunodeficiency virus infection or a health condition related to the human immunodeficiency virus infection, before relying on a single test to deny issuance of an insurance contract, limit coverage under an insurance contract, or to establish the premium for an insurance contract, the insurer shall follow the applicable Centers for Disease Control or Food and Drug Administration-recommended test protocol and shall utilize any applicable Centers for Disease Control or Food and Drug Administration-recommended follow-up tests or series of tests to confirm the indication.
- (b) Prior to testing, the insurer shall disclose in writing its intent to test the applicant for the human immunodeficiency virus infection or for a specific health condition derived therefrom and shall obtain the applicant's written informed consent to administer the test. Written informed consent shall include a fair explanation of the test, including its purpose, potential uses and limitations, the meaning of its results, and the right to confidential treatment of information. Use of a form prescribed by the ~~department~~~~office~~ shall raise a conclusive presumption of informed consent.
 - (c) An applicant shall be notified of a positive test result by a physician designated by the applicant, or, in the absence of such designation, by the Cabinet for Health and Family Services. The notification shall include:
 1. Face-to-face post-test counseling on the meaning of the test results, the possible need for additional testing, and the need to eliminate behavior which might spread the disease to others;
 2. The availability in the geographic area of any appropriate health-care services, including mental health care, and appropriate social and support services;
 3. The benefits of locating and counseling any person by whom the infected person may have been exposed to human immunodeficiency virus and any person whom the infected person may have exposed to the virus; and
 4. The availability, if any, of the services of public health authorities with respect to locating and counseling any person described in subparagraph 3. of this paragraph.
 - (d) A medical test for human immunodeficiency virus infection or for a health condition derived from the infection shall only be required or given to an applicant for an insurance contract on the basis of the applicant's health condition or health history, on the basis of the amount of insurance applied for, or if the test is required of all applicants.
 - (e) An insurer may ask whether an applicant for an insurance contract has been tested positive for human immunodeficiency virus infection or other health conditions derived from such infection. Insurers shall not inquire whether the applicant has been tested for or has received a negative result from a specific test for human immunodeficiency virus infection or for a health condition derived from such infection.
 - (f) Insurers shall maintain strict confidentiality of the results of tests for human immunodeficiency virus infection or a specific health condition derived from human immunodeficiency virus infection. Information regarding specific test results shall be disclosed only as required by law or pursuant to a written request or authorization by the applicant. Insurers may disclose results pursuant to a specific written request only to the following persons:
 1. The applicant;
 2. A licensed physician or other person designated by the applicant;

3. An insurance medical-information exchange under procedures that are used to assure confidentiality, such as the use of general codes that also cover results of tests for other diseases or conditions not related to human immunodeficiency virus infection;
 4. For the preparation of statistical reports that do not disclose the identity of any particular applicant;
 5. Reinsurers, contractually retained medical personnel, and insurer affiliates if these entities are involved solely in the underwriting process and under procedures that are designed to assure confidentiality;
 6. To insurer personnel who have the responsibility to make underwriting decisions; and
 7. To outside legal counsel who needs the information to represent the insurer effectively in regard to matters concerning the applicant.
- (g) Insurers shall use for the processing of human immunodeficiency virus-related tests only those laboratories that are certified by the United States Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1967, which permit testing of specimens in interstate commerce, and which subject themselves to ongoing proficiency testing by the College of American Pathologists, the American Association of Bioanalysts, or an equivalent program approved by the Centers for Disease Control.
- (5) (a) An insurance contract shall not exclude coverage for human immunodeficiency virus infection. An insurance contract shall not contain benefit provisions, terms, or conditions which apply to human immunodeficiency virus infection in a different manner than those which apply to any other health condition. Insurance contracts which violate this paragraph shall be disapproved by the **commissioner**~~executive director~~ pursuant to KRS 304.14-130(1)(a), 304.32-160, and 304.38-050.
- (b) A health insurance contract shall not be canceled or nonrenewed solely because a person or persons covered by the contract has been diagnosed as having or has been treated for human immunodeficiency virus infection.
- (c) Sexual orientation shall not be used in the underwriting process or in the determination of which applicants shall be tested for exposure to the human immunodeficiency virus infection. Neither the marital status, the living arrangements, the occupation, the gender, the beneficiary designation, nor the zip code or other territorial classification of an applicant's sexual orientation.
- (d) This subsection does not prohibit the issuance of accident only or specified disease insurance contracts.

➔Section 1106. KRS 304.12-030 is amended to read as follows:

- (1) As used in this section:
- (a) "Replacement" means any transaction in which a new life insurance policy or annuity contract is to be purchased and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing life insurance policy or annuity contract has been or is to be:
 1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;
 2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
 3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
 4. Reissued with any reduction in cash value; or
 5. Used in a financed purchase;
 - (b) "Existing insurer" means the insurance company whose existing life insurance policy or annuity contract is or will be changed or affected in a manner described within the definition of replacement transaction;
 - (c) "Replacing insurer" means the insurance company that issues or proposes to issue a new life insurance policy or annuity contract that replaces an existing policy or contract or is a financed purchase;

- (d) "Existing life insurance policy or annuity contract" means any individual life insurance policy or annuity in force, including a life insurance policy under a binding or conditional receipt or a life insurance policy or annuity contract that is within an unconditional refund period;
 - (e) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of, an existing policy to pay all or part of any premium due on the new policy. If a withdrawal, surrender, or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four (4) months before or thirteen (13) months after the effective date of the new policy, it is prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard does not affect the monitoring obligations of the existing insurer; and
 - (f) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individual solely through mails, telephone, the Internet, or mass communication media.
- (2) No replacing insurer shall issue any life insurance policy or annuity contract in a replacement transaction to replace an existing life insurance policy or annuity contract unless the replacing insurer shall agree in writing with the insured that:
- (a) The new life insurance policy or annuity contract issued by the replacing insurer will not be contestable by it in the event of such insured's death to any greater extent than the existing life insurance policy or annuity contract would have been contestable by the existing insurer had such replacement not taken place provided, however, that this paragraph shall not apply to that amount of insurance written and issued which exceeds the amount of the existing life insurance; and
 - (b) The policy or contract owner shall have the right to return the policy or contract within thirty (30) days of the delivery of the policy or contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges, or in the case of a variable or market adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract.
- (3) Unless otherwise specifically included, subsection (2) of this section shall not apply to:
- (a) Credit life insurance;
 - (b) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single annuity provider in connection with enrolling that individual. The ~~commissioner~~~~executive director~~ shall promulgate administrative regulations for group life insurance or group annuity certificates marketed through direct response solicitation;
 - (c) Group life insurance and annuities used to fund prearranged funeral contracts;
 - (d) An application to the existing insurer that issued the existing policy or contract when a contractual policy change or conversion privilege is being exercised, or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the ~~commissioner~~~~executive director~~;
 - (e) Existing life insurance that is a nonconvertible term life insurance policy which will expire in five (5) years or less and cannot be renewed; or
 - (f) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
 - (g) Policies or contracts used to fund:
 1. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

2. A plan described by Sections 402(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
3. A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or
4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

Notwithstanding the provisions of this paragraph, subsection (2) of this section shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two (2) or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this paragraph, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

- (h) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
 - (i) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this section; or
 - (j) Structured settlements.
- (4) No person shall make or issue, or cause to be made or issued, any written or oral statement of a material fact which is untrue or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they were made, not misleading with respect to comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing or attempting or tending to induce the policyholder to lapse, forfeit, borrow against, surrender, retain, exchange, modify, convert, or otherwise affect or dispose of any insurance policy.

➔Section 1107. KRS 304.12-040 is amended to read as follows:

- (1) No person shall file with any public official or make or disseminate any false statement of financial condition of any insurer with intent to deceive.
- (2) No person shall make any false entry in any record, report or statement of any insurer or other person required to have records under this code, with intent to deceive the **commissioner**~~executive director~~ or any examiner lawfully appointed to examine into its affairs, or with like intent willfully omit to make a true entry of any material fact pertaining to its business.

➔Section 1108. KRS 304.12-090 is amended to read as follows:

- (1) No insurer or employee or representative thereof shall knowingly charge, demand, or receive a premium for any insurance policy except in accordance with the applicable filing on file with the **commissioner**~~executive director~~. No such insurer, employee, or representative shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducements whatever, or give, sell, or purchase, or offer to give, sell, or purchase anything of value whatsoever not specified in the policy, except to the extent provided for in such applicable filing.
- (2) No insured named in a policy, nor any employee or representative thereof shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement or reduction of premium, or any special favor or advantage or valuable consideration or inducement.
- (3) Subsection (1) and (2) of this section shall not apply as to life insurance and health insurance. Except as expressly provided by law no insurer, employee, or representative shall knowingly permit or offer to make or make any contract of life insurance, life annuity or health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or pay or allow, or give or offer to pay, allow or give,

directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not expressed in the contract.

➔Section 1109. KRS 304.12-120 is amended to read as follows:

- (1) If, after a hearing conducted in accordance with KRS Chapter 13B, the *commissioner*~~[executive director]~~ finds that any person in this state has engaged or is engaging in any act or practice defined in or prohibited under this subtitle, the *commissioner*~~[executive director]~~ shall order the person to desist from the act or practice.
- (2) A desist order shall become final upon expiration of the time allowed for appeals from the *commissioner's*~~[executive director's]~~ final order, if no appeal is taken, or, in the event of an appeal, upon final decision of the court if the court affirms the *commissioner's*~~[executive director's]~~ final order or dismisses the appeal. An intervenor in such hearing shall have the right to appeal as provided in subsection (3) of KRS 304.12-130.
- (3) In an appeal, to the extent that the *commissioner's*~~[executive director's]~~ final order is affirmed, the court shall issue its own order commanding obedience to the terms of the *commissioner's*~~[executive director's]~~ final order.
- (4) No final order of the *commissioner*~~[executive director]~~ pursuant to this section or order of court to enforce it shall in any way relieve or absolve any person affected by the order from any other liability, penalty, or forfeiture under law.

➔Section 1110. KRS 304.12-130 is amended to read as follows:

- (1) If the *commissioner*~~[executive director]~~ believes that any person engaged in the insurance business is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in this subtitle but that such method of competition is unfair, deceptive, or not in the public interest, or that such act or practice is unfair or deceptive and that a proceeding by *the commissioner*~~[him]~~ in respect thereto would be in the public interest, *the commissioner*~~[he]~~ shall, after a hearing of which notice of the hearing and of the charges against *the person*~~[him]~~ are given such person, make a written report of his *or her* findings of fact relative to such charges and serve a copy thereof upon such person and any intervenor at the hearing.
- (2) If such report charges a violation of this subtitle and if such method of competition, act or practice has not been discontinued, the *commissioner*~~[executive director]~~ may, or through the Attorney General, at any time after the service of such report, cause an action to be instituted to enjoin and restrain such person from engaging in such method, act, or practice. In such action the court may grant a restraining order or injunction upon such terms as may be just; but the people of this Commonwealth shall not be required to give security before the issuance of any such order or injunction. If a stenographic record of the proceedings in the hearing before the *commissioner*~~[executive director]~~ was made, a certified transcript thereof including all evidence taken and the report and findings shall be received in evidence in such action.
- (3) If the *commissioner's*~~[executive director's]~~ report made pursuant to subsection (1) of this section or order on hearing made pursuant to KRS 304.12-120 does not charge a violation of this subtitle, then any intervenor in the proceedings may appeal therefrom within the time and in the manner provided in this code for appeals from the *commissioner*~~[executive director]~~ generally.

➔Section 1111. KRS 304.12-150 is amended to read as follows:

Every debtor, borrower, or purchaser of property with respect to which insurance of any kind is required in connection with a debt or loan on the property shall be informed by the creditor or lender of his *or her* right of free choice in the selection of the agent and insurer through or by which such insurance is to be placed. There shall be no interference either directly or indirectly with the borrower's, debtor's, or purchaser's free choice of an agent and of an insurer, the creditor or lender shall not collect a separate charge for the handling of insurance required in connection with a loan or extension of credit based on the consumer's choice of agent or insurer, and the creditor or lender shall not refuse an adequate policy so tendered by the borrower, debtor, or purchaser. Upon notice of any refusal of an adequate policy, the *commissioner*~~[executive director]~~ shall order the creditor or lender to accept the tendered policy, if he *or she* determines that such refusal is not in accordance with the requirements set out in subsection (2) of KRS 304.12-140. Failure to comply with the order of the *commissioner*~~[executive director]~~ shall be deemed a violation of this section.

➔Section 1112. KRS 304.12-240 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Preneed funeral contract or prearrangement" means an agreement by or for an individual before that individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services; and
 - (b) "Agent" has the meaning provided in KRS 367.932.
- (2) The **commissioner**~~executive director~~ shall adopt regulations requiring life insurers to provide disclosure to consumers when life insurance or annuities are used to fund preneed funeral contracts or prearrangements.
- (3) Life insurance and annuity benefits used to fund preneed funeral contracts or prearrangements shall not be paid by a life insurer until the agent has proven the death of the person for whose service the premiums were paid by furnishing the life insurer with a verified or certified copy of a record verifying the death, issued by the state registrar of the Vital Statistics Branch or its successor agency as authorized by KRS Chapter 213, or a provisional certificate of death as described in KRS 213.076.

➔Section 1113. KRS 304.12-257 is amended to read as follows:

The **commissioner**~~executive director~~ shall have the authority to promulgate regulations to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair in accordance with the Military Personnel Financial Services Protection Act of 2006, Pub. L. No. 109-290.

➔Section 1114. KRS 304.13-011 is amended to read as follows:

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

- (1) A "market" is the interaction between buyers and sellers consisting of a product market component and a geographic market component. A product market component consists of identical or readily substitutable products including but not limited to consideration of coverage, policy terms, rate classifications, and underwriting. A geographic market component is a geographical area in which buyers have a reasonable degree of access to insurance sales outlets. Determination of a geographic market component shall consider existing market patterns.
- (2) "Supplementary rating information" includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fees, rating rules, or any other similar information needed to determine the applicable rate or premium. This shall include underwriting rules, but only to the extent necessary to determine the rate or premium that will be applicable to a risk should the insurer decide to provide coverage. This does not include guidelines that relate to the selection of those risks that are acceptable to an insurer.
- (3) "Supporting information" is the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any other data relied on by the filer, descriptions of methods used in making the rates, and any other information required to be filed by the **commissioner**~~executive director~~.
- (4) "Personal risks" means homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs.
- (5) "Commercial risks" are any kinds of risks that are not personal risks.
- (6) "Joint underwriting" is a voluntary arrangement established to provide insurance coverage for a risk pursuant to which two (2) or more insurers jointly contract with the insured at a price and under policy terms agreed on between the insurers.
- (7) A "pool" is a voluntary arrangement, other than by a contract of reinsurance, established on a general and continuing basis pursuant to which two (2) or more insurers participate in the sharing of risks on a predetermined basis. A pool may operate through an association, syndicate or other pooling agreement.
- (8) A "residual market mechanism" is an agreement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance that may be afforded applicants who are unable to obtain insurance through ordinary methods.
- (9) An "advisory organization" is any entity, including its affiliates or subsidiaries, which either has two (2) or more member insurers or is controlled either directly or indirectly by two (2) or more insurers and which

assists insurers in ratemaking related activities. Two (2) or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer for purposes of this definition.

- (10) A "competitive market" is a market that has not been found to be noncompetitive pursuant to KRS 304.13-041 and for which no such order is in effect.
- (11) A "noncompetitive market" is a market for which there is an order in effect pursuant to KRS 304.13-041 that a reasonable degree of competition does not exist.
- (12) "Trending" is any procedure for projecting developed losses to the average date of loss, or premiums or exposures to the average date of writing, for the period during which the policies are to be effective.
- (13) "Expenses" are those portions of any rate attributable to acquisition, field supervision, and collection expenses, general expenses, and premium taxes, licenses, and fees.
- (14) "Profit" is the portion of any rate attributable to funds needed for growth, contingencies, and return to stockholders.
- (15) "Pure premium" means the loss cost per unit of exposure excluding all loss adjustment expenses.
- (16) "Classification system" or "classification" means the process of grouping risks with similar risk characteristics so that differences in cost may be recognized.
- (17) "Developed losses" means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to their ultimate anticipated value.
- (18) "Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.
- (19) "Form provider" means a person who prepares, files, and distributes policy contract forms and endorsements and consults with members, subscribers, customers, or others relative to their use and application, but is not an advisory organization as defined in this subtitle.
- (20) "Loss adjustment expenses" means the expenses incurred by the insurer in the course of settling claims.
- (21) "Prospective loss costs" means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses or output from simulation models and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time. Loss costs, derived in part or entirely upon output from simulation models, must be approved by the *commissioner*~~executive director~~ before they become effective.
- (22) "Rate" means the expected value of the future cost of insurance per exposure unit which accounts for the treatment of losses, expenses, and profit prior to any application of individual risk variations based on loss or expense considerations, but does not include minimum premium.
- (23) "Special assessments" means guaranty fund assessments, residual market mechanism assessments, and other similar assessments which are included in ratemaking. Special assessments shall not be considered as either expenses or losses. Additional charges collected by the insurer and returned to a governmental agency on behalf of an insured are not special assessments. Examples of these additional charges include, but are not limited to, the special fund charge for workers' compensation imposed by KRS Chapter 342, local government premium tax imposed by KRS 91A.080, and the Department of Revenue surcharge imposed by KRS Chapter 136.
- (24) "Statistical agent" means an entity that has been licensed by the *commissioner*~~executive director~~ to collect statistics from insurers and provide reports developed from these statistics to the *commissioner*~~executive director~~ for the purpose of fulfilling the statistical reporting obligations of those insurers under this chapter.

➔Section 1115. KRS 304.13-041 is amended to read as follows:

- (1) A competitive market for any line of insurance is presumed to exist unless the *commissioner*~~executive director~~, after a hearing, determines that a reasonable degree of competition does not exist in the market for such line and issues an order to that effect. Such an order shall expire no later than one (1) year after it is issued. In determining whether a reasonable degree of competition exists, the *commissioner*~~executive director~~

~~director~~ shall consider all relevant information pertaining to the market and the opportunities available to consumers in the market to acquire pricing and other consumer information, and to compare and obtain insurance from competing insurers.

- (2) The **commissioner**~~{executive director}~~ shall monitor the degree of competition in this Commonwealth. In doing so, **the commissioner**~~{he}~~ may utilize existing relevant information or ~~{he}~~ may develop new relevant information. The activities may be conducted internally within the **Department**~~{Office}~~ of Insurance, in cooperation with other state insurance departments, through outside contractors, or in any other appropriate manner. The relevant information in determining the competitiveness of a specific market may include the number of insurers actively engaged in providing coverage, market shares, and changes in market shares and ease of entry.

➔Section 1116. KRS 304.13-051 is amended to read as follows:

- (1) In a competitive market, every insurer shall file with the **commissioner**~~{executive director}~~ rates and supplementary information to be used in this state for commercial risks as designated by the **commissioner**~~{executive director}~~ and for all personal risks. The rates and supplementary rate information shall be filed not later than fifteen (15) days after the date of first use of the rates, unless the **commissioner**~~{executive director}~~ finds after a hearing that an insurer's rates require closer supervision because of the insurer's financial condition. On a finding, rates for both personal and commercial risks, supplementary rate information, and supporting information shall be filed with the **commissioner**~~{executive director}~~ at least thirty (30) days before the effective date of the rates. An order shall expire no later than one (1) year after it is issued.
- (2) In a noncompetitive market, every insurer shall file with the **commissioner**~~{executive director}~~ all rates for that market, supplementary rate information, and supporting information at least thirty (30) days before the proposed effective date of the rates. On application of the filer, the **commissioner**~~{executive director}~~ may authorize an earlier effective date.
- (3) Any rate filing in effect at the time the **commissioner**~~{executive director}~~ determines that competition does not exist pursuant to KRS 304.13-041 shall be deemed to be effective until disapproved pursuant to the procedures and rating standards of this chapter.
- (4) Every insurer shall file with the **commissioner**~~{executive director}~~ all rating manuals and underwriting rules that it uses in this state not later than fifteen (15) days after they become effective. Manuals, rules, and guidelines must be adhered to until amended. The **commissioner**~~{executive director}~~ may exempt an insurer from filing supporting information if it files by reference, with or without deviation, to a filing which is in effect for another insurer or an advisory organization.
- (5) (a) No insurer shall place into effect any rates, manuals, or underwriting rules which it proposes to use pursuant to subsection (1) or (4) of this section if the rates, manuals or underwriting rules will result in an increase or decrease of more than twenty-five percent (25%) from the insurer's then existing rates for any classification of risks in any of its rating territories within a twelve (12) month period of time.
- (b) Any insurer which proposes to change its then existing rates, manuals, or underwriting rules so as to effectively increase or decrease the rates of any classification of risks within any rating territory more than twenty-five percent (25%) within a twelve (12) month period shall file all the rates and supplemental rating information which shall not become effective until approved by the **commissioner**~~{executive director}~~.
- (6) Rates and supplemental rating information for a residual market mechanism shall not become effective until approved by the **commissioner**~~{executive director}~~.
- (7) The **commissioner**~~{executive director}~~ shall review filings made in accordance with subsections (2), (5)(b) and (6) of this section as soon as reasonably possible after they have been made in order to determine whether they meet the applicable requirements of this chapter. Each filing shall be on file for a waiting period of thirty (30) days before it becomes effective, which period may be extended by the **commissioner**~~{executive director}~~ for an additional period not to exceed thirty (30) days if he **or she** gives written notice within the waiting period to the insurer which made the filing that additional time is needed for consideration of the filing. The **commissioner**~~{executive director}~~ may, when he **or she** deems it to be in the public interest, hold a public hearing on any filing before the filing becomes effective to determine whether the filing meets the requirements of this subtitle. In the event that a hearing is held under the provisions of this subsection, the waiting periods specified in this subsection shall not begin to run until thirty (30) days after the close of the hearing. The

burden of establishing that the filing under consideration meets the requirements of this subtitle is on the insurer which makes the filing. A filing shall be deemed to meet the requirements of this subtitle unless disapproved by the **commissioner**~~[executive director]~~ within the waiting period or any extension thereof.

- (8) At any hearing concerning an increase in worker's compensation rates conducted pursuant to subsection (7), the **commissioner**~~[executive director]~~ may approve a rate other than one that has been proposed by the filer if it is justified by the evidence presented at the hearing.

➔Section 1117. KRS 304.13-053 is amended to read as follows:

- (1) Within sixty (60) days of December 12, 1996, the licensed workers' compensation advisory organizations shall file with the **commissioner**~~[executive director]~~ an estimate of changes in prospective workers' compensation losses attributable to any net savings under 1996 (1st Extra. Sess.) Ky. Acts ch. 1. Within sixty (60) days of receipt of the workers' compensation filing, the **commissioner**~~[executive director]~~ shall approve or disapprove the filing. Insurers may incorporate these approved estimates in the filings made pursuant to subsection (2) of this section.
- (2) Insurers shall file workers' compensation rates incorporating an actuarially-justified estimate of changes in prospective losses attributable to any net savings under 1996 (1st Extra. Sess.) Ky. Acts ch. 1 for use with workers' compensation policies issued or renewed after May 1, 1997. Workers' compensation rates shall be filed with and approved by the **commissioner**~~[executive director]~~ as provided in KRS 304.13-051(2).
- (3) Unless the **commissioner**~~[executive director]~~ enters an order pursuant to KRS 304.13-041 declaring workers' compensation to be a noncompetitive market, rates filed for use after December 31, 1998, shall be filed pursuant to KRS 304.13-051(1).
- (4) Notwithstanding the provisions of KRS 304.13-051 to the contrary, after December 31, 1998, no insurer providing workers' compensation insurance shall place into effect any rates, manuals, or underwriting rules for workers' compensation insurance which it proposes to use pursuant to KRS 304.13-051(1) or (4) if the rates, manuals, or underwriting rules will result in an increase or decrease of more than fifteen percent (15%) from the workers' compensation insurer's then-existing workers' compensation insurance rates for any classification of risks within a twelve (12) month period of time.
- (5) After December 31, 1998, any workers' compensation insurer which proposes to change its then-existing rates, manuals, or underwriting rules so as to effectively increase or decrease the rates of any classification of risks more than fifteen percent (15%) within a twelve (12) month period shall file all the rates and supplemental rating information which shall not become effective until approved by the **commissioner**~~[executive director]~~ pursuant to the provisions of KRS 304.13-051.

➔Section 1118. KRS 304.13-055 is amended to read as follows:

With respect to any filing which, if approved, would result in a reduction of rates, the **commissioner**~~[executive director]~~ shall immediately order the proposed rates to be effective. If upon the **commissioner's**~~[executive director's]~~ review of the filing or as a result of a public hearing it appears that the proposed rates should be further reduced, the **commissioner**~~[executive director]~~ may order the insurer or rating organization to show cause within thirty (30) days why such rates should not be further reduced in accordance with the order.

➔Section 1119. KRS 304.13-057 is amended to read as follows:

- (1) Every insurer shall provide to the **commissioner**~~[executive director]~~ information to demonstrate to what extent the insurer's rates are based upon its Kentucky experience.
- (2) Every insurer shall provide to the **commissioner**~~[executive director]~~ information to demonstrate its compliance with the requirements contained in KRS 304.13-410 which requires workers' compensation rates to be based on the net experience of an employer policyholder who has selected a deductible policy as authorized by KRS 304.13-400.

➔Section 1120. KRS 304.13-061 is amended to read as follows:

- (1) The information furnished in support of a filing may include:
 - (a) The experience or judgment of the insurer;
 - (b) The insurer's interpretation of any statistical data it relies on;

- (c) The experience of other insurers; and
 - (d) Any other relevant factors.
- (2) The **commissioner**~~{executive director}~~ may adopt reasonable administrative regulations for use by insurers to record and report to the **commissioner**~~{executive director}~~ their rates and other information determined by the **commissioner**~~{executive director}~~ to be necessary or appropriate for the administration of KRS 304.13-011 to 304.13-161, and the effectuation of its purposes. The **commissioner**~~{executive director}~~ may adopt reasonable administrative regulations to assure that the experience of all insurers is made available at least annually in such form and detail as is necessary to aid in determining whether rating systems comply with the standards set forth in this subtitle. The **commissioner**~~{executive director}~~ may designate one (1) or more advisory organizations or statistical agents to assist him *or her* in gathering, compiling, and reporting such information, which shall be a matter of public record. The scope of these rules may include the data which must be reported by insurers, definitions of data elements, the timing and frequency of statistical reporting by insurers, data quality standards, data edit and audit requirements, data retention requirements, reports to be generated by advisory organizations or statistical agents to fulfill the requirements of this section, and the timing of such reports.
 - (3) The **commissioner**~~{executive director}~~ may promulgate administrative regulations for the interchange of data necessary for the application of rating plans.
 - (4) In order to further uniform administration of rate regulatory laws, the **commissioner**~~{executive director}~~ and every insurer, advisory organization, and statistical agent may exchange information and experience data with insurance supervisory officials, insurers, and advisory organizations in other states and may consult with them with respect to the application of rating systems and the collection of statistical data.

➔Section 1121. KRS 304.13-063 is amended to read as follows:

- (1) Any schedule of rates or rating plan for automobile liability and physical damage insurance filed with the **commissioner**~~{executive director}~~ shall provide for an appropriate reduction in premium charges for a period of at least three (3) years and up to five (5) years for those insureds fifty-five (55) years of age and older who successfully complete a motor vehicle accident prevention course meeting standards set by the Transportation Cabinet or insureds of any age who complete a defensive driving course provided by the United States Armed Forces to members of the United States Armed Forces. The reduction in premium charges for members of the United States Armed Forces who complete a defensive driving course provided by the United States Armed Forces shall be actuarially sound. There shall, however, be no reduction in premiums for a self-instructed course or for a course which does not provide for classroom or field driving instruction for a minimum number of hours, to be determined by the Transportation Cabinet.
- (2) All insurance companies writing automobile liability and physical damage insurance in Kentucky shall allow an appropriate reduction in premium charges to all eligible persons subject to this section.
- (3) Upon successfully completing the approved course, each participant shall be issued by the course's sponsoring agency a certificate which shall be the basis of qualification for the discount on insurance.
- (4) Each participant shall take an approved course each five (5) years to continue to be eligible for the discount on insurance.
- (5) The Transportation Cabinet is hereby empowered to promulgate regulations setting standards for the motor vehicle accident prevention course described in subsection (1) of this section.
- (6) No discount shall be available under this section to those completing the prescribed motor vehicle accident prevention course under a court order as a result of a motor vehicle conviction.

➔Section 1122. KRS 304.13-065 is amended to read as follows:

For motor vehicle insurance rates, whether in a competitive market or a noncompetitive market, appropriate reductions in premium charges for comprehensive coverage shall be applied to those motor vehicles equipped with an antitheft device as provided in KRS 304.20-410 to 304.20-440 which has been approved by the **commissioner**~~{executive director}~~.

➔Section 1123. KRS 304.13-071 is amended to read as follows:

- (1) Existing rates in a noncompetitive market may be disapproved pursuant to the rating standards of this chapter after a hearing. Rates that have been filed in a noncompetitive market but that have not become effective may

be disapproved pursuant to the rating standards of this chapter without a hearing. However, any insurer whose rates have been disapproved without a hearing shall be given a hearing on a written request made within thirty (30) days after the disapproval order. Hearings conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B. If a rate is disapproved, the **commissioner**~~{executive director}~~ shall issue a final order specifying the reasons for disapproval. Any party aggrieved by the final order of the **commissioner**~~{executive director}~~ may appeal as provided in KRS 304.2-370. The effect of a final order shall be stayed during the pendency of the appeal and the existing rate shall remain in effect until the final conclusion thereof.

- (2) At any hearing concerning an increase in worker's compensation rates conducted pursuant to subsection (1), the **commissioner**~~{executive director}~~ may approve a rate other than one that has been proposed by the filer if it is justified by the evidence presented at the hearing.

➔Section 1124. KRS 304.13-081 is amended to read as follows:

- (1) All rates, supplementary rate information, and supporting information filed under KRS 304.13-011 to 304.13-161 shall be open to public inspection at any reasonable time. Copies may be obtained by any person on request and on payment of a charge specified in Subtitle 4 of this chapter.
- (2) The **commissioner**~~{executive director}~~ shall utilize, develop, or cause to be developed a consumer information system that will provide and disseminate price and other relevant information on a readily available basis to purchasers of homeowners or private passenger insurance. The **commissioner**~~{executive director}~~ may utilize, develop, or cause to be developed a consumer information system which will provide and disseminate price and other relevant information on a readily available basis to purchasers of insurance for commercial risks and personal risks not otherwise specified in this section. Such activity may be conducted internally within the **department**~~{office}~~, in cooperation with other state insurance departments, through outside contractors, or in any other appropriate manner. To the extent the **commissioner**~~{executive director}~~ considers necessary and appropriate, insurers, advisory organizations, statistical agents, and other persons or organizations involved in conducting the business of insurance in this state, to which this section applies, shall cooperate with the **commissioner**~~{executive director}~~ in the development and utilization of a consumer information system. The reasonable cost of developing a consumer information system shall be assessed against insurers subject to this chapter on an equitable basis.

➔Section 1125. KRS 304.13-091 is amended to read as follows:

- (1) No advisory organization, statistical agent, or form provider shall provide any otherwise permitted service, and no insurer shall utilize the services unless the organization has obtained a license pursuant to subsection (3) of this section.
- (2) No advisory organization, statistical agent, or form provider shall refuse to supply any services for which it is licensed in Kentucky to any insurer authorized to do business in Kentucky and offering to pay the fair and usual compensation for the services.
- (3) An advisory organization, statistical agent, or form provider applying for a license shall include with its application:
- (a) A copy of its constitution, charter, articles of organization, agreement, association or incorporation, bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;
 - (b) A list of its members, subscribers, and customers;
 - (c) The name and address of one (1) or more residents of Kentucky upon whom notices, process affecting it, or orders of the **commissioner**~~{executive director}~~ may be served;
 - (d) A statement showing its technical qualifications for acting in the capacity for which it seeks a license;
 - (e) A biography of the ownership and management of the organization; and
 - (f) Any other relevant information and documents that the **commissioner**~~{executive director}~~ may require.
- (4) Every organization which has applied for a license shall notify the **commissioner**~~{executive director}~~ of every material change in the facts or in the documents on which its application was based. Any amendment to a document filed under this section shall be filed at least thirty (30) days before it becomes effective.

- (5) If the **commissioner**~~[executive director]~~ finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of the law are met, he or she shall issue a license specifying the authorized activity of the applicant. The **commissioner**~~[executive director]~~ shall not issue a license if the proposed activity would tend to create a monopoly or to substantially lessen the competition in any market. At the request of the licensee, licenses issued under this section may be renewed on an annual basis.
- (6) Licenses issued pursuant to this section shall remain in effect for one (1) year unless:
- The licensee fails to pay fees required by law for the continuance or renewal of its license;
 - The licensee withdraws from the state; or
 - The license is suspended or revoked.

The **commissioner**~~[executive director]~~ may at any time, after a hearing to be conducted in accordance with the provisions of this chapter and KRS 304.2-310, revoke or suspend the license of an advisory organization, statistical agent, or form provider which does not comply with the requirements and standards of this chapter.

- (7) The **commissioner**~~[executive director]~~ shall by administrative regulation establish a written summary of information that shall be included in an application for licenses issued under this section.
- (8) Advisory organizations wishing to operate as statistical agents or form providers may be so authorized under their license as an advisory organization. A separate license is not required.
- (9) Each advisory organization, statistical agent, and form provider shall pay fees as required by KRS 304.4-010 for the application, continuance, or renewal of its license.

➔Section 1126. KRS 304.13-100 is amended to read as follows:

Upon the written application of the insured, stating his *or her* reasons therefor, filed with and approved by the **commissioner**~~[executive director]~~, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

➔Section 1127. KRS 304.13-121 is amended to read as follows:

Any advisory organization in addition to other activities not prohibited, is authorized, on behalf of its members and subscribers, to:

- Collect statistical data from members, subscribers, or any other source;
- Develop statistical plans including territorial and class definitions;
- Prepare, file, and distribute prospective loss costs which may include provisions for special assessments. Loss costs, derived in part or entirely upon output from simulation models, must be approved by the **commissioner**~~[executive director]~~ before they become effective;
- Prepare, file, and distribute manuals of rating rules, rating schedules, and other supplementary rating information that do not include final rates, expense provisions, profit provisions, or minimum premiums;
- Prepare, file, and distribute factors, calculations, or formulas pertaining to classification, territory, increased limits, and other variables;
- Distribute information that is required or directed to be filed with the **commissioner**~~[executive director]~~;
- Conduct research and on-site inspections in order to prepare classifications of public fire defenses, and to consult with public officials regarding public fire protection as it would affect members, subscribers and others;
- Conduct research in order to discover, identify, and classify information relating to causes or prevention of losses;
- Conduct research relating to the impact of statutory changes upon prospective loss costs and special assessments;
- Prepare, file, and distribute policy forms and endorsements and consult with members, subscribers, and others relative to their use and application;

- (11) Conduct research and on-site inspections for the purpose of providing risk information relating to individual structures;
- (12) Conduct on-site inspections to determine rating classifications for individual insureds;
- (13) For workers' compensation insurance, establish a committee which may include insurance company representatives to review the determination of the rating classification for individual insureds and suggest modifications to the classification system, pursuant to KRS 304.13-167(1);
- (14) Collect, compile, and publish past and current prices of individual insurers, if such information is also made available to the public at a reasonable cost;
- (15) Collect and compile exposure and loss experience for the purpose of individual risk experience ratings;
- (16) File final rates, at the direction of the *commissioner*~~[executive director]~~, for residual market mechanisms; and
- (17) Furnish any other services, as approved or directed by the *commissioner*~~[executive director]~~, related to those enumerated in this section.

➔Section 1128. KRS 304.13-131 is amended to read as follows:

- (1) No insurer or advisory organization shall make any arrangement with any other insurer, advisory organization, or other person that has the purpose or effect of unreasonably restraining trade or unreasonably lessening competition in the business of insurance.
- (2) No insurer or advisory organization shall:
 - (a) Attempt to monopolize, or combine, or conspire with any other person to monopolize an insurance market; or
 - (b) Engage in a boycott, on a concerted basis, of an insurance market.
- (3) No insurer shall agree with any other insurer or with an advisory organization to mandate adherence to, or to mandate use of, any rate, prospective loss cost, rating plan, rating schedule, rating rule, policy or bond form, rate classification, rate territory, underwriting rule, survey, inspection or similar material, except as needed to facilitate the reporting of statistics to advisory organizations, statistical agents, or the *commissioner*~~[executive director]~~. The fact that two (2) or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently the same rates, prospective loss cost, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.
- (4) Two (2) or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this chapter as if they constituted a single insurer.

➔Section 1129. KRS 304.13-141 is amended to read as follows:

- (1) The *commissioner*~~[executive director]~~ may examine any insurer, pool, advisory organization, statistical agent, form provider, or residual market or joint underwriting mechanism as deemed necessary to ascertain compliance with this chapter. Any examination made by the *commissioner*~~[executive director]~~ or by examiners designated by *the commissioner*~~[him]~~ shall be at the expense of the organization examined as specified in Subtitle 2 of KRS Chapter 304.
- (2) Every insurer, pool, advisory organization, statistical agent, and residual market or joint underwriting mechanism shall maintain reasonable records, adapted to its method of operation, containing its experience or the experience of its members. Records shall include the statistics and other information used by it in its activities. The records shall be available at all reasonable times and at a reasonable location to enable the *commissioner*~~[executive director]~~ to determine whether the activities of an insurer, pool, advisory organization, statistical agent, residual market or joint underwriting mechanism are in compliance with this chapter.
- (3) In lieu of an examination, the *commissioner*~~[executive director]~~ may accept the report of an examination by the insurance supervisory official of another state, if the report is made pursuant to the laws of that state.

➔Section 1130. KRS 304.13-151 is amended to read as follows:

- (1) Notwithstanding KRS 304.13-131(2)(a), insurers participating in joint underwriting, joint reinsurance pools, or residual market mechanisms may, in connection with such activity, cooperate with each other in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss and expense statistics or other information, or carrying on research. Joint underwriting, joint reinsurance pools, and residual market mechanisms shall not be deemed advisory organizations.
- (2) Except to the extent modified by this section, insurers, joint underwriting, joint reinsurance pool and residual market mechanism activities are subject to the provisions of this chapter.
- (3) Every pool shall file with the **commissioner**~~{executive director}~~ a copy of its constitution, bylaws, rules, and regulations governing its activities, and articles of incorporation, agreement, or association. It shall also file with the **commissioner**~~{executive director}~~ a list of its members and the name and address of a resident of this state on whom notices or orders of the **commissioner**~~{executive director}~~ or process may be served, and any changes in amendments or changes in the foregoing.
- (4) Any residual market mechanism, plan, or agreement to implement a residual market mechanism, and any changes or amendments in the plan shall be submitted in writing to the **commissioner**~~{executive director}~~ for consideration and approval, together with any other information as may be reasonably required. The **commissioner**~~{executive director}~~ shall approve only those agreements that he or she finds contemplates both the use of rates which meet the standards of this chapter and activities and practices, that are not unfair, unreasonable, or otherwise inconsistent with the provisions of this chapter. At any time after any agreements are in effect, the **commissioner**~~{executive director}~~ may review the practices and activities of the adherents to these agreements and if, after a hearing, the **commissioner**~~{executive director}~~ finds that any practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this chapter, the **commissioner**~~{executive director}~~ may issue a written order to the parties and either require the discontinuance of these acts or revoke approval of any such agreement.
- (5) If the **commissioner**~~{executive director}~~ finds after a hearing that any activity or practice of an insurer participating in joint underwriting or a pool is unfair, is unreasonable, will tend to lessen competition in any market, or is otherwise inconsistent with the provisions or purposes of this chapter, an order may be issued requiring the discontinuance of the activity or practice.
- (6) As a condition of its authority under this chapter to transact casualty insurance (as defined in KRS 304.5-070) in this state, every insurer so authorized shall become and remain a signatory to the "Kentucky automobile insurance plan" as it is presently formulated or as it is hereafter amended with the approval of the **commissioner**~~{executive director}~~. The "Kentucky automobile insurance plan" shall be deemed to be a mandated "residual market mechanism" as defined in KRS 304.13-011(8).

➔Section 1131. KRS 304.13-161 is amended to read as follows:

- (1) Every insurer or advisory organization shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard on written request to review the manner in which the rating system has been applied. If the insurer or advisory organization grants the request, the review shall be conducted within ninety (90) days of receiving the request. If the insurer or advisory organization fails to grant or rejects a request within thirty (30) days, the aggrieved person may proceed in the same manner as if the review produced no change in the application of the rate.
- (2) Any party affected by the action made on the request for review may within thirty (30) days of written notice of action appeal to the **commissioner**~~{executive director}~~ for further review of the application of the rating system. The **commissioner**~~{executive director}~~ shall hold a hearing in accordance with KRS Chapter 13B on a showing of good cause. The **commissioner**~~{executive director}~~ may after the hearing issue a final order affirming, modifying, or reversing the action of the insurer or advisory organization.
- (3) For workers' compensation coverage, each insurer or agent shall notify in writing each insured at the time a workers' compensation insurance policy is issued or renewed on or after May 1, 1997, of the insured's rights afforded by this section. The written notice required in this subsection shall apply only to workers' compensation insurers and shall be provided in the manner and format prescribed through administrative regulations promulgated by the **commissioner**~~{executive director}~~.

➔Section 1132. KRS 304.13-163 is amended to read as follows:

In addition to other activities not prohibited, any statistical agent is authorized, on behalf of its members and subscribers, to:

- (1) Develop statistical plans including territorial and class definitions;
- (2) Collect historical data from members, subscribers, or any other source;
- (3) Distribute information that is required or directed to be filed with the *commissioner*~~{executive director}~~;
- (4) Collect, compile, and distribute past and current prices of individual insurers and publish such information;
- (5) Collect and compile exposure and loss experience for the purpose of individual risk experience ratings; and
- (6) Furnish any other services, as approved or directed by the *commissioner*~~{executive director}~~, related to those enumerated in this section.

➔Section 1133. KRS 304.13-165 is amended to read as follows:

- (1) Every advisory organization shall file with the *commissioner*~~{executive director}~~ every statistical plan, all prospective loss costs, provisions for special assessments, and all supplementary rating information, and every change or amendment or modification of any of the foregoing proposed for use in Kentucky. Each filing shall be filed thirty (30) days before it becomes effective, which period may be extended by the *commissioner*~~{executive director}~~ for an additional period not to exceed thirty (30) days, if written notice is given within the initial thirty (30) day period to the advisory organization that additional time is needed for the consideration of the filing. The *commissioner*~~{executive director}~~ may, upon giving written notice to the advisory organization, request additional information that is needed to complete the review of the filing. If the *commissioner*~~{executive director}~~ requests such additional information prior to the filing becoming effective, the filing shall become effective thirty (30) days after the additional information is provided to the *commissioner*~~{executive director}~~.
- (2) Upon written application by the advisory organization, the *commissioner*~~{executive director}~~ may authorize an earlier effective date.
- (3) All filings shall be subject to the provisions of KRS 304.13-081 and all other provisions of this chapter relating to filings made by insurers.

➔Section 1134. KRS 304.13-167 is amended to read as follows:

- (1) Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the *commissioner*~~{executive director}~~ by an advisory organization designated by the *commissioner*~~{executive director}~~.
- (2) Every workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by an advisory organization designated by the *commissioner*~~{executive director}~~.
- (3) A workers' compensation insurer may develop subclassifications of the uniform classification system upon which rates may be made. These subclassifications and their filing shall be subject to the provisions of this chapter applicable to filings generally.
- (4) A workers' compensation insurer may develop rating plans which identify loss experience as a factor to be used. These rating plans and their filing shall be subject to the provisions of this chapter applicable to filings generally.
- (5) The *commissioner*~~{executive director}~~ shall disapprove subclassifications, rating plans, or other variations from manual rules filed by a workers' compensation insurer if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform classification system and experience rating system and in such a fashion so as to allow for the application of experience rating filed by the advisory organization.
- (6) The *commissioner*~~{executive director}~~ shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers who implement a drug-free workplace program pursuant to administrative regulations adopted by the *Department*~~{Office}~~ of Workers' Claims in the ~~{Department of}~~ Labor *Cabinet*. The plans shall take effect January 1, 2008, shall be actuarially sound, and shall state the savings anticipated to result from such drug-free workplace programs. The credit shall be at least five percent (5%) unless the *commissioner*~~{executive director}~~ determines that five percent (5%) is actuarially unsound. The *commissioner*~~{executive director}~~ is also authorized to develop a schedule of

premium credits for workers' compensation insurance for employers who have safety programs that contain certain criteria for safety programs. The *commissioner*~~{executive director}~~ shall consult with the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Workers' Claims in the ~~{Department of}~~ Labor *Cabinet* in setting such criteria. A drug-free workplace credit under this subsection shall not be available to employers who receive a credit under KRS 304.13-412 or KRS Chapter 351.

➔Section 1135. KRS 304.13-169 is amended to read as follows:

No person shall willfully withhold information which will affect the rates or premiums chargeable under this subtitle from, or knowingly give false or misleading information to, the *commissioner*~~{executive director}~~, any statistical agent, any advisory organization, or any insurer.

➔Section 1136. KRS 304.13-171 is amended to read as follows:

- (1) Any policy fee as related to underwriting expenses for a property or casualty insurance contract, issued or renewed on or after July 14, 2000, by an agent licensed under KRS 304.9-085, shall be deemed fully earned. The fee shall only be collected if coverage is provided.
- (2) All fees referred to in subsection (1) of this section shall be submitted to the *commissioner*~~{executive director}~~ for prior approval.

➔Section 1137. KRS 304.13-320 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ may suspend the license of any advisory organization or insurer which fails to comply with an order of the *commissioner*~~{executive director}~~ within the time limited by the order, or any extension thereof which the *commissioner*~~{executive director}~~ may grant. The *commissioner*~~{executive director}~~ shall not suspend the license of any advisory organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until the order has been affirmed. The *commissioner*~~{executive director}~~ may modify or rescind a suspension at any time.
- (2) No penalty shall be imposed and no license shall be suspended or revoked except upon a final order of the *commissioner*~~{executive director}~~, stating his *or her* findings made after a hearing conducted in accordance with KRS Chapter 13B.

➔Section 1138. KRS 304.13-340 is amended to read as follows:

The Workers' Compensation Insurance Plan (KWCIP), a workers' compensation residual market mechanism, in existence by virtue of this subtitle, shall not write new policies or renew policies after September 1, 1995. The board of directors of the Employers' Mutual Insurance Authority, the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Workers' Claims, and the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance shall develop a plan, which shall be reviewed by the Labor and Industry Committee and the Banking and Insurance Committee of the General Assembly, for the orderly and equitable phase-out of the KWCIP. All claims on workers' compensation assigned risk policies in effect or issued prior to September 1, 1995, shall be paid by the KWCIP. The plan developed shall include procedures for application and transfer of the insureds in the KWCIP to the authority, who shall be subject to the qualifications and conditions of coverage required in KRS 342.801 to 342.843 and this section. The authority shall not be liable for any liabilities or deficits incurred on assigned risk policies in effect or issued prior to September 1, 1995.

➔Section 1139. KRS 304.13-350 is amended to read as follows:

The *commissioner*~~{executive director}~~ shall review, approve, and hear appeals on the assignment, reassignment, or modification of any fire protection classification of any fire protection district, municipality, or locality in the state which is made by any lawful insurer, advisory organization, or agency operating in the Commonwealth.

➔Section 1140. KRS 304.13-355 is amended to read as follows:

Any fire protection district, municipality, or locality in the state which is assigned a fire protection classification by any lawful advisory organization or insurer which makes its own rates, operating in the Commonwealth, may appeal to the *commissioner*~~{executive director}~~ for modification or reassignment of the classification within thirty (30) days of receipt of the classification. The *commissioner*~~{executive director}~~ shall determine the manner in which an appeal may be filed.

➔Section 1141. KRS 304.13-360 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall make such investigation as he *or she* deems necessary or convenient for proper determination regarding an appeal.
- (2) The books, accounts, papers and records of every fire protection classification advisory organization or insurer which makes its own rates, operating in the Commonwealth, shall be available to the **commissioner**~~{executive director}~~ for inspection and examination. By notice and order, the **commissioner**~~{executive director}~~ may require their production or the production of verified copies at such time and place as he *or she* designates, any expense incurred to be borne by the rating organization or insurer so ordered.

➔Section 1142. KRS 304.13-365 is amended to read as follows:

- (1) Within thirty (30) days of the filing of an appeal, the **commissioner**~~{executive director}~~ shall hold an administrative hearing to be conducted in accordance with KRS 304.2-310. Whenever the **commissioner**~~{executive director}~~ determines that a fire protection classification is unreasonable, he *or she* shall by final order prescribe a reasonable classification to be followed for a period not to exceed one (1) year. A subsequent evaluation by the advisory organization or insurer shall not be permitted until the expiration of the period set by the **commissioner**~~{executive director}~~.
- (2) The **commissioner**~~{executive director}~~ may compel obedience to its final orders by proper proceedings in the Franklin Circuit Court or any other court of competent jurisdiction, and these proceedings shall have priority over all pending cases.

➔Section 1143. KRS 304.13-370 is amended to read as follows:

- (1) No insurer may increase premiums for fire insurance based on a fire protection classification until the expiration of the thirty (30) day period for appeal by the fire protection district, municipality or locality, as provided in KRS 304.13-355. If an appeal is filed, no insurer may increase such premiums until approval of the fire protection classification by the **commissioner**~~{executive director}~~.
- (2) If the **commissioner's**~~{executive director's}~~ reassignment or modification of a fire protection classification results in lower fire insurance premiums, the appropriate insurers shall make any refunds of paid premiums due to customers within the affected fire protection district, municipality or locality. Such refunds shall be determined from the date the advisory organization or insurer last assigned or reassigned the classification appealed.

➔Section 1144. KRS 304.13-380 is amended to read as follows:

- (1) Each fire department operating within the Commonwealth, whether paid or volunteer, shall complete a report each time it responds to a fire call. The report shall be made on a form, similar to the National Fire Protection Association's standard fire reporting form, to be distributed by the Commission on Fire Protection Personnel Standards and Education and shall include but not be limited to the following information:
 - (a) Date of the fire call;
 - (b) Time of day of the fire response;
 - (c) Number of pieces of fire equipment responding to each call;
 - (d) Number of firefighters responding to each call;
 - (e) Description of the estimated fire damages; and
 - (f) Cause of the fire, if known, or the suspected cause of the fire.
- (2) Each fire department operating within the Commonwealth, whether paid or volunteer, shall file a monthly summary of the reports required to be completed in subsection (1) of this section with the commission's office. The commission shall transmit a copy of each fire department's monthly summary to the **commissioner**~~{executive director}~~. Monthly summaries shall be made on a form, similar to the National Fire Protection Association's fire reporting action summary form, to be distributed by the commission.

➔Section 1145. KRS 304.13-390 is amended to read as follows:

If the state fire marshal gives notice to the **Department**~~{Office}~~ of Insurance that any authorized insurer has failed to comply with the provisions of KRS 227.250, the **commissioner**~~{executive director}~~ may take appropriate action up to and including revoking or suspending the insurer's certificate of authority.

➔Section 1146. KRS 304.13-410 is amended to read as follows:

- (1) An employer policyholder who selects a deductible workers' compensation policy shall be granted a premium reduction by the insurer. The premium reduction shall be calculated by the insurer in accordance with administrative regulations promulgated by the *commissioner*~~{executive director}~~ and shall be fully disclosed to the employer policyholder in writing.
- (2) For ratemaking purposes, the premium reduction granted to an employer policyholder in accordance with the provisions of subsection (1) of this section shall be applied and considered prior to the application of experience modification adjustments, premium surcharges, or premium discounts.
- (3) In addition to the provisions contained in subsection (2) of this section, only the net experience of an employer policyholder, which results after application of the deductible amount, rather than the gross experience of the employer policyholder, shall be used by the insurer or advisory organization in the calculation and preparation of workers' compensation rates. Violation of the provisions of this subsection shall constitute grounds for the suspension or revocation of the license of an insurer or advisory organization in the manner prescribed in KRS Chapter 304.13-320.

➔Section 1147. KRS 304.13-412 is amended to read as follows:

- (1) Any employer who is also a licensee of a coal mine that has implemented a drug-free workplace program, including an employee assistance program, certified by the Office of Mine Safety and Licensing shall be eligible to obtain a credit on the licensee's premium for workers' compensation insurance.
- (2) Each insurer authorized to write workers' compensation insurance policies shall provide the credit on the workers' compensation premium to any employer who is also a licensee of a coal mine for which the insurer has written a workers' compensation policy. The credit on the workers' compensation premium shall not:
 - (a) Be available to those employers that are also licensees who do not maintain their drug-free workplace program for the entire workers' compensation policy period; or
 - (b) Apply to minimum premium policies.
- (3) The *Department*~~{Office}~~ of Insurance shall approve workers' compensation rating plans that give a credit on the premium for a certified drug-free workplace so long as the credit is actuarially sound. The credit shall be at least five percent (5%) unless the *Department*~~{Office}~~ of Insurance determines that five percent (5%) is actuarially unsound.
- (4) The credit on the workers' compensation premium may be applied by the insurer at the final audit.

➔Section 1148. KRS 304.13-415 is amended to read as follows:

- (1) Every employer that is assigned an experience modification factor for workers' compensation in order to determine its workers' compensation premium shall be furnished without charge a complete copy of the data and calculations of the experience modification by the insurance company or any entity to which the insurance company may delegate the duty of calculating and promulgating the experience modification or, if applicable, by any self-insurance group of which the employer is a member.
- (2) Experience modification shall be based upon all payrolls and claims experience for the applicable period regardless of whether the employer was insured by an insurance company, was a member of a self-insurance group, or was a member of the Kentucky Workers' Compensation Assigned Risk Plan for part or all of the period.
- (3) For each workers' compensation insurance policy issued or renewed on or after May 1, 1997, the workers' compensation insurer or the licensed advisory organization shall provide, in accordance with subsection (1) of this section, the policyholder with a written explanation of the policyholder's experience modification factor and the data and methodology utilized in the calculation of the factor.
- (4) The *commissioner*~~{executive director}~~ shall promulgate administrative regulations to establish the guidelines for application of the experience modification factors.

➔Section 1149. KRS 304.13-420 is amended to read as follows:

No insurer shall be required to offer a deductible to an employer policyholder, as provided in KRS 304.13-400, if the insurer determines, subject to review by the *commissioner*~~{executive director}~~, that the prospective employer

policyholder is not financially able to comply with the terms and conditions of a deductible workers' compensation policy.

➔Section 1150. KRS 304.14-120 is amended to read as follows:

- (1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or indorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with and approved by the **commissioner**~~{executive director}~~. This provision shall not apply to any rates filed under Subtitle 17A of this chapter, surety bonds, or to specially rated inland marine risks, or to policies, riders, indorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner or distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies issued and delivered to an association outside this state but covering persons resident in this state, all or substantially all of the premiums for which are payable by the insured members, the group certificates to be delivered or issued for delivery in this state shall be filed with and approved by the **commissioner**~~{executive director}~~.
 - (a) As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages (other than accident and health) the filing required by this subsection may be made by advisory organizations or form providers on behalf of their members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.
 - (b) Every advisory organization and form provider shall file with the **commissioner**~~{executive director}~~ for approval every property and casualty policy form and endorsement before distribution to members, subscribers, customers, or others.
 - (c) Every property and casualty insurer shall file with the **commissioner**~~{executive director}~~ notice of adoption before use of any approved form filed by an advisory organization or form provider or filed by the insurer pursuant to paragraph (a) of this subsection.
- (2) Every such filing shall be made not less than sixty (60) days in advance of any such delivery. At the expiration of such sixty (60) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the **commissioner**~~{executive director}~~. Approval of any such form by the **commissioner**~~{executive director}~~ shall constitute a waiver of any unexpired portion of such waiting period. The **commissioner**~~{executive director}~~ may extend by not more than a thirty (30) day period within which he **or she** may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial sixty (60) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The **commissioner**~~{executive director}~~ may at any time, after notice and for cause shown, withdraw any such approval.
- (3) Any order of the **commissioner**~~{executive director}~~ disapproving any such form or any notice of the **commissioner**~~{executive director}~~ withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the **commissioner**~~{executive director}~~ shall in such notice prescribe.
- (4) The **commissioner**~~{executive director}~~ may, by order, exempt from the requirements of this section for so long as he **or she** deems proper any insurance document or form or type thereof as specified in such order to which, in his **or her** opinion, this section may not practicably be applied, or the filing and approval of which are, in his **or her** opinion, not desirable or necessary for the protection of the public.
- (5) Appeals from orders of the **commissioner**~~{executive director}~~ disapproving any such form or withdrawing a previous approval shall be taken as provided in Subtitle 2 of this chapter.
- (6) For the purposes of this section, unless the context requires otherwise:
 - (a) "Advisory organization" has the meaning provided in KRS 304.13-011; and
 - (b) "Form provider" has the meaning provided in KRS 304.13-011.

➔Section 1151. KRS 304.14-130 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall disapprove any form filed under KRS 304.14-120, or withdraw any previous approval thereof, only on one (1) or more of the following grounds:
 - (a) If it is in any respect in violation of, or does not comply with, this code.
 - (b) If it contains or incorporates by reference, where the incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.
 - (c) If it has any title, heading, or other indication of its provisions which is misleading, or is printed in a size of type or manner of reproduction so as to be substantially illegible.
 - (d) As to an individual, group, or blanket health insurance policy, if the benefits provided therein are unreasonable in relation to the premium charged.
 - (e) If it excludes coverage for human immunodeficiency virus infection or acquired immunodeficiency syndrome or contains limitations in the benefits payable, or in the terms or conditions of the contract, for human immunodeficiency virus infection or acquired immunodeficiency syndrome which are different than those which apply to any other sickness or medical condition.
- (2) The insurer shall not use in this state any form after disapproval or withdrawal of approval.

➔Section 1152. KRS 304.14-135 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall prescribe the following uniform health insurance claim forms which shall be used by all insurers transacting health insurance in this state and by all state agencies that require health insurance claim forms for their records as the sole instrument for reimbursement:
 - (a) The uniform health insurance claim form for an institutional provider shall consist of the UB-92 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Billing Committee;
 - (b) The uniform health insurance claim form for a dentist shall consist of a data set and form approved by the American Dental Association;
 - (c) The uniform health insurance claim form for all other health care providers shall consist of the HCFA 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claims Committee; and
 - (d) A clean claim for pharmacists shall consist of a universal claim form or data set approved by the National Council on Prescription Drug Program.
- (2) An insurer shall not require a provider to:
 - (a) Use a claim form that is different than the uniform claim form for the provider type as set out in subsection (1) of this section;
 - (b) Modify the uniform claims form or its content; or
 - (c) Submit additional claims forms.

➔Section 1153. KRS 304.14-140 is amended to read as follows:

- (1) Insurance contracts shall contain such standard or uniform provisions as are required by the applicable provisions of this code pertaining to contracts of particular kinds of insurance. The **commissioner**~~[executive director]~~ may waive the required use of a particular provision in a particular insurance policy form if:
 - (a) **The commissioner**~~[He]~~ finds such provision unnecessary for or unrelated to the protection of the insured and inconsistent with the purposes of the policy, and
 - (b) The policy is otherwise approved by **the commissioner**~~[him]~~.
- (2) No policy shall contain any provision inconsistent with or contradictory to any standard or uniform provision used or required to be used, but the **commissioner**~~[executive director]~~ may approve any substitute provision which is, in his **or her** opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

(3) In lieu of the provisions required by this code for contracts for particular kinds of insurance, substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the *commissioner*~~{executive director}~~.

(4) A policy issued by a domestic insurer for delivery in another jurisdiction may contain any provision required or permitted by the laws of such jurisdiction.

➔Section 1154. KRS 304.14-220 is amended to read as follows:

(1) Binders or other contracts for temporary insurance may be made orally or in writing, and shall be deemed to include all the usual terms of the policy as to which the binder was given together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder.

(2) No binder shall be valid beyond the issuance of the policy with respect to which it was given, or beyond ninety (90) days from its effective date, whichever period is the shorter.

(3) If the policy has not been issued a binder may be extended or renewed beyond such ninety (90) days with the written approval of the *commissioner*~~{executive director}~~, or in accordance with such rules and regulations relative thereto as the *commissioner*~~{executive director}~~ may promulgate.

(4) This section shall not apply to life or health insurance or title insurance.

➔Section 1155. KRS 304.14-420 is amended to read as follows:

(1) No insurance policy for homeowners, dwelling fire, automobile, accident and health, life or other forms of personal insurance shall be delivered, issued for delivery, amended or renewed in this state after the effective date set out in subsection (2) of this section unless the policy is in compliance with the provisions of this section and KRS 304.14-430 to 304.14-450.

(2) The *commissioner*~~{executive director}~~ shall, within one (1) year from July 15, 1988, promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to carry out the provisions of this section and KRS 304.14-430 to 304.14-450 and to establish minimum standards for the readability and intelligibility of insurance contracts. Within one (1) year of the effective date of the administrative regulations all insurers licensed to transact business shall comply with the standards set out by this section and KRS 304.14-430 to 304.14-450 and promulgated by the *commissioner*~~{executive director}~~.

➔Section 1156. KRS 304.14-430 is amended to read as follows:

(1) All insurance policies subject to the provisions of KRS 304.14-420 to 304.14-450 shall contain as the first page or first page of text, if it is preceded by a title page or pages, a cover sheet or sheets as provided in this section. The cover sheet or sheets shall be printed in legible type and readable language and shall contain at least the following:

(a) A brief statement that the policy is a legal contract between the policy owner and the company;

(b) The statement "READ YOUR POLICY CAREFULLY. This cover sheet provides only a brief outline of some of the important features of your policy. This cover sheet is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth, in detail, the rights and obligations of both you and your insurance company. IT IS THEREFORE IMPORTANT THAT YOU READ YOUR POLICY." and

(c) An index of the major provisions of the policy or contract and the pages on which they are found which may include the following items:

1. The person or persons insured by the policy;

2. The applicable events, occurrences, conditions, losses, or damages covered by the policy;

3. The limitations or conditions on the coverage of the policy;

4. Definitional sections of the policy;

5. Provision governing the procedure for filing a claim under the policy;

6. Provisions governing cancellation, renewal, or amendment of the policy by either the insurer or the policyowner;
 7. Any options under the policy; and
 8. Provisions governing the insurer's duties and powers in the event that suit is filed against the insured.
- (2) The cover sheet may include, either as part of the index or as a separate section, a brief summary of the extent and types of coverage in the policy.
 - (3) No cover sheet shall be used unless it has been filed with and approved by the **commissioner**~~[executive director]~~. The cover sheet shall be deemed approved sixty (60) days after filing unless disapproved by the **commissioner**~~[executive director]~~ within the sixty (60) day period, subject to a reasonable extension of times as the **commissioner**~~[executive director]~~ may require by notice given within the sixty (60) day period. The **commissioner**~~[executive director]~~ shall disapprove any cover sheet which does not meet the requirements of this section. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

➔Section 1157. KRS 304.14-435 is amended to read as follows:

- (1) All policy forms filed with the **department**~~[office]~~, and any other insurance policy or claim-related information, shall be written in the English language.
- (2) Applications required to be filed with the **department**~~[office]~~ may also be filed in a language other than English. The non-English version of the application shall:
 - (a) Be filed with the **department**~~[office]~~;
 - (b) Be accompanied by a certification written in English that the non-English version is a complete and accurate translation of the English form filed;
 - (c) Be in the same format as the English version; and
 - (d) Contain all items in English immediately followed in parenthesis with the non-English translation.
- (3) This section shall not prohibit an insurer from advertising or providing information related to the policy or claims with translations to consumers in a language other than English.
- (4) If there is a dispute between the English version and the non-English version, the English version shall control and the non-English version shall carry a disclaimer in the non-English language to this effect. The insurance policy is controlling and any advertisements or informational materials used by an insurer shall not be construed to modify or change the insurance policy.

➔Section 1158. KRS 304.14-440 is amended to read as follows:

- (1) All insurance policies subject to the provisions of KRS 304.14-420 to 304.14-450 shall be written in language easily readable and understandable by a person of average intelligence and education.
- (2) In determining whether a policy or contract is readable within the meaning of this section the **commissioner**~~[executive director]~~ shall consider, at least, the following factors:
 - (a) The simplicity of the sentence structure and the shortness of the sentences used;
 - (b) The extent to which commonly used and understood words are employed;
 - (c) The extent to which legal terms are avoided;
 - (d) The extent to which references to other sections or provisions of the contract are minimized;
 - (e) The extent to which definitional provisions are incorporated in the text of the policy or contract; and
 - (f) Any additional factors relevant to the readability or understandability of an insurance policy or contract which the **commissioner**~~[executive director]~~ may prescribe by regulation.

➔Section 1159. KRS 304.14-450 is amended to read as follows:

- (1) All insurance policies subject to the provisions of KRS 304.14-420 to 304.14-450 shall be printed in legible type and in a type face style approved by the **commissioner**~~[executive director]~~. The **commissioner**~~[executive director]~~ shall by regulation establish a list of type face styles approved as acceptable.

- (2) In determining whether a policy is legible the **commissioner**~~[executive director]~~ shall consider, in addition to the requirements of subsection (1) of this section relating to type face size and style, the following factors:
- (a) Margin size;
 - (b) Contrast and legibility of the color of the ink and paper;
 - (c) The amount and use of space to separate sections of the policy;
 - (d) The use of contrasting titles or headings for sections or similar aids; and
 - (e) Any additional factors relevant to legibility which the **commissioner**~~[executive director]~~ may prescribe by regulation.

➔Section 1160. KRS 304.14-510 is amended to read as follows:

The **commissioner**~~[executive director]~~ may make reasonable rules and regulations establishing minimum standards for Medicare supplement insurance policies delivered or issued for delivery in the state. Such regulations may cover but are not limited to:

- (1) Establishing specific standards for policy provisions;
- (2) Prohibiting policy provisions which in the opinion of the **commissioner**~~[executive director]~~ are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a Medicare supplement policy;
- (3) Establishing minimum standards for benefits under Medicare supplement policies;
- (4) Prescribing the format and content of the outline of coverage required by KRS 304.14-540. For purposes of this section, "format" means style, arrangements, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:
 - (a) A description of the principal benefits and coverage provided in the policy;
 - (b) A statement of the exceptions, reductions, and limitations contained in the policy;
 - (c) A statement of the renewal provisions, including any reservation by the insurer of a right to change premiums;
 - (d) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.
- (5) Prescribing a standard form and the contents of an informational brochure for persons eligible for Medicare which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the **commissioner**~~[executive director]~~ may require by regulation that the information brochure be provided to any prospective insureds eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the **commissioner**~~[executive director]~~ may require by regulation that the prescribed brochure be provided upon request to any prospective insureds eligible for Medicare, but in no event later than the time of policy delivery.
- (6) Establishing reasonable captions and notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for Medicare, other than:
 - (a) Medicare supplement policies; or
 - (b) Disability income policies.
- (7) Governing the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts, or certificates by persons eligible for Medicare.

➔Section 1161. KRS 304.14-530 is amended to read as follows:

Medicare supplement policies shall be expected to return to policyholders benefits which are reasonable in relation to the premium charged. The **commissioner**~~[executive director]~~ shall issue reasonable regulations to establish minimum standards for loss ratios of Medicare supplement policies on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted

actuarial principles and practices. For purposes of regulations issued pursuant to this section, Medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

➔Section 1162. KRS 304.14-560 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ of insurance shall biennially compile a consumer's guide to long-term care insurance in Kentucky. The consumer's guide shall cover all insurers offering health insurance policies in Kentucky, including health maintenance organizations, which provide coverage for services provided in long-term care facilities as defined in KRS 216.510(1). The purpose of the consumer's guide shall be to improve the buyer's ability to select the most appropriate long-term care coverage and to improve the buyer's understanding of long-term care. The consumer's guide shall contain, at a minimum, the following information:
 - (a) Definitions of long-term care services provided in Kentucky, the cost of services, sources of payment for long-term care, and eligibility for assistance programs;
 - (b) Factors that affect premium rates, such as age, deductibles, duration of benefits, and daily benefits paid;
 - (c) An explanation of the types of limitations contained in long-term care policies;
 - (d) A check list for the use of potential buyers of long-term care insurance which covers items that should be considered when selecting a long-term care insurance policy; and
 - (e) A comparison of the long-term care policies offered for sale in Kentucky. The comparison shall be updated at least annually, shall not recommend one policy over another, and shall provide the following information for policies: premiums at ages fifty-five (55), sixty-five (65), and seventy-five (75); services covered; length of coverage; limitations on coverage; prior institutionalization requirements; elimination period; and any other information the **commissioner**~~{executive director}~~ deems appropriate.
- (2) The **commissioner**~~{executive director}~~ shall issue administrative regulations setting forth specific information to be provided by insurers writing long-term health care insurance in Kentucky to the **department**~~{office}~~ to complete the biennially compiled consumer's guide to long-term care insurance in Kentucky.
- (3) The **commissioner**~~{executive director}~~ shall distribute, free of charge, a copy of the consumer's guide to long-term care insurance to any person upon request.
- (4) The **commissioner**~~{executive director}~~ shall assess against insurers writing long-term health care insurance in Kentucky on an equitable basis the cost of compiling, printing, and distributing the consumer's guide to long-term care.

➔Section 1163. KRS 304.14-600 is amended to read as follows:

As used in KRS 304.14-600 to 304.14-625, unless the context requires otherwise:

- (1) "Incidental" indicates that the value of the long-term care benefits provided in a policy is less than ten percent (10%) of the total value of the benefits provided over the life of the policy. Policies may include life insurance, disability insurance, and annuities. These values shall be measured as of the date of issue.
- (2) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than twelve (12) consecutive months for each covered person on an expense-incurred, indemnity, prepaid, or other basis for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital unless the hospital or unit is licensed or certified to provide long-term services. This term includes group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance. This term includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. This term also includes qualified long-term care insurance contracts as defined in 26 U.S.C. sec. 7702B(b). Long-term care insurance may be issued by insurers, fraternal benefit societies, nonprofit hospital, medical-surgical, dental, and health service corporations, health maintenance organizations, or any similar organization to the extent they are otherwise authorized to issue life or health insurance. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit coverage. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one (1) or more of the

qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Any product advertised, marketed, or offered as long-term care insurance or nursing home insurance which otherwise meets the definition of long-term care insurance shall be subject to the provisions of KRS 304.14-600 to 304.14-625.

- (3) "Applicant" means:
- (a) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and
 - (b) In the case of a group long-term care insurance policy, the proposed certificate holder.
- (4) "Certificate" means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in Kentucky, except as provided in KRS 304.14-610.
- (5) "Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in Kentucky by an insurer, fraternal benefit society, nonprofit health service corporation, or health maintenance organization, and which is issued to:
- (a) One (1) or more employers or labor organizations, or to a trust or to the trustees of a fund established by one (1) or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof, or for members or former members or a combination thereof, of the labor organizations;
 - (b) Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:
 1. Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and
 2. Has been maintained in good faith for purposes other than obtaining insurance;
 - (c) An association or a trust or the trustee of a fund established, created, or maintained for the benefit of members of one (1) or more associations. Prior to advertising, marketing, or offering the policy within Kentucky, the insurer of the association shall file with the ~~commissioner~~~~executive director~~ evidence that the association has at the outset a minimum of one hundred (100) persons and has been organized and maintained in good faith for purposes other than that of obtaining insurance, has been in active existence for at least one (1) year, and has a constitution and bylaws which provide:
 1. The association holds regular meetings not less than annually to further the purposes of the members;
 2. Except for credit unions, the association collects dues or solicits contributions from members; and
 3. The members have voting privileges and representation on the governing board and committees.

The association shall be deemed to satisfy the organizational requirements unless the ~~commissioner~~~~executive director~~ makes a finding that the association does not satisfy those organizational requirements within the time set forth in KRS 304.14-120; or
 - (d) A group other than that described in paragraphs (a), (b), and (c) of this subsection, subject to a finding by the ~~commissioner~~~~executive director~~ that:
 1. The issuance of the group policy is not contrary to the best interest of the public;
 2. The issuance of the group policy would result in economies of acquisition or administration; and
 3. The benefits are reasonable in relation to the premiums charged.
- (6) "Policy" means any policy, contract, subscriber, agreement, enrollment agreement, rider, or endorsement delivered or issued for delivery in Kentucky.

➔Section 1164. KRS 304.14-610 is amended to read as follows:

Group long-term care insurance coverage shall not be offered to a resident of Kentucky under a group policy issued in another state to a group described in KRS 304.14-600(5)(d) unless the **commissioner**~~executive director~~ or the insurance supervisory official of another state having statutory and regulatory long-term care insurance requirements substantially similar to KRS 304.14-600 to 304.14-625, has made a determination that these requirements have been met. Certificates of group long-term care insurance shall be filed with the **commissioner**~~executive director~~ as required by KRS 304.14-120.

➔Section 1165. KRS 304.14-615 is amended to read as follows:

- (1) The **commissioner**~~executive director~~ shall promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and require disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, pre-existing conditions, incidental benefits, lapse of insurance, termination of insurance, continuation of conversion, probationary periods, limitations, exceptions, reductions, elimination periods, premium rating practices and rating increases, requirements for replacement, recurrent conditions, and definitions of terms.
- (2) A long-term care insurance policy shall not:
 - (a) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder;
 - (b) Contain a provision establishing a new waiting period in the event existing coverage is covered to or replaced by a new or other form within the same insurer, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or
 - (c) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.
- (3)
 - (a) A long-term care insurance policy or certificate, other than a policy or certificate thereunder issued to a group defined in KRS 304.14-600(5)(a), shall not use a definition of "pre-existing condition" which is more restrictive than the following: "Pre-existing condition means a condition for which medical services or treatment was recommended by, or received from, a provider of health care services within six (6) months preceding the effective date of coverage of an insured person."
 - (b) A long-term care insurance policy or certificate, other than a policy or certificate under a policy issued to a group as defined in KRS 304.14-600(5)(a), shall not exclude coverage for a loss or confinement which is the result of a pre-existing condition unless that loss or confinement begins within six (6) months following the effective date of coverage of an insured person.
 - (c) The **commissioner**~~executive director~~ may extend the limitation periods set forth in subsection (3)(a) and (b) of this section as to specific age group categories in specific policy forms upon finding that the extension is in the best interest of the public.
 - (d) The definition of "pre-existing condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a pre-existing condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in paragraph (b) of this subsection expires. A long-term care insurance policy or certificate shall not exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described pre-existing diseases or physical conditions beyond the waiting period described in paragraph (b) of this subsection.
- (4)
 - (a) A long-term care insurance policy shall not be delivered or issued for delivery in this Commonwealth if the policy:
 1. Conditions eligibility for any benefits on a prior hospitalization requirement;
 2. Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or
 3. Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.

- (b) 1. A long-term care insurance policy containing post-confinement, post-acute care, or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "limitations or conditions on eligibility for benefits" the limitations or conditions, including any required number of days of confinement.
 2. A long-term care insurance policy or rider which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days.
- (5) The **commissioner**~~{executive director}~~ may promulgate administrative regulations establishing loss ratio standards for long-term care insurance policies if a specific reference to long-term care insurance policies is contained in the administrative regulations.
- (6) Long-term care insurance applicants shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in KRS 304.14-600(5)(a), the applicant is not satisfied for any reason.
- (7)
 - (a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.
 1. The **commissioner**~~{executive director}~~ shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of an outline of coverage.
 2. In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.
 3. In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.
 - (b) The outline of coverage shall include:
 1. A description of the principal benefits and coverage provided in the policy;
 2. A statement of the principal exclusions, reductions, and limitations contained in the policy;
 3. A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described;
 4. A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;
 5. A description of the terms under which the policy or certificate may be returned and premium refunded; and
 6. A brief description of the relationship of the cost of care and benefits.
- (8) A certificate issued pursuant to a group long-term care insurance policy which is delivered or issued for delivery in this Commonwealth or a certificate subject to approval by the **commissioner**~~{executive director}~~ shall include:
 - (a) A description of the principal benefits and coverage provided in the policy;
 - (b) A statement of the principal exclusions, reductions, and limitations contained in the policy; and
 - (c) A statement that the group master policy determine governing contract provisions.
- (9) At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of any request, the

insurer shall deliver the policy summary no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary shall also include:

- (a) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;
 - (b) An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits, if any, for each covered person;
 - (c) Any exclusions, reductions, and limitations on benefits of long-term care insurance; and
 - (d) If applicable to the policy type, the summary shall also include:
 - 1. A disclosure of the effects of exercising other rights under the policy;
 - 2. A disclosure of guarantees related to long-term care of insurance charges; and
 - 3. Current and projected maximum lifetime benefits.
- (10) When a long-term care benefit funded through a life insurance vehicle by the acceleration of the death benefit is in benefit payment status, a monthly report shall be provided to the policyholder by the insurer. The report shall include:
- (a) Any long-term care benefits paid out during the month;
 - (b) An explanation of any changes in the policy, such as death benefits or cash values, due to long-term care benefits being paid out; and
 - (c) The amount of long-term care benefits existing or remaining.
- (11) Any policy or rider advertised or marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of KRS 304.14-600 to 304.14-625.

➔Section 1166. KRS 304.14-617 is amended to read as follows:

- (1) Any long-term care policy, issued on or after June 21, 2001, which provides coverage for assisted living benefits shall cover services received in any assisted living community which:
 - (a) Meets the requirements of KRS 194A.700 to 194A.729 and any administrative regulations promulgated under KRS 194A.700 to 194A.729; and
 - (b) Meets any additional requirements of an assisted living community set forth in the long-term care policy approved by the *commissioner*~~executive director~~.
- (2) Any long-term care policy, issued on or after June 21, 2001, which provides coverage for adult day care services shall cover services received in any adult day care facility which:
 - (a) Meets the requirements of KRS 205.950 or 216B.0443 and any administrative regulations promulgated under KRS 205.950 or 216B.0443; and
 - (b) Meets any additional requirements of an adult day care center set forth in the long-term care policy approved by the *commissioner*~~executive director~~.

➔Section 1167. KRS 304.14-620 is amended to read as follows:

The *commissioner*~~executive director~~ shall issue administrative regulations to establish minimum standards for marketing practices, agent compensation, agent testing, penalties, and reporting practices for long-term care insurance.

➔Section 1168. KRS 304.14-630 is amended to read as follows:

The *commissioner*~~executive director~~ shall issue administrative regulations to establish standards for premium rate practices and rate increases for long-term care benefits.

➔Section 1169. KRS 304.14-635 is amended to read as follows:

The *commissioner*~~executive director~~ shall promulgate administrative regulations to establish standards for incidental long-term care benefits.

➔Section 1170. KRS 304.14-642 is amended to read as follows:

- (1) The Kentucky Long-Term Care Partnership Insurance Program is established as a partnership between the Department for Medicaid Services and the **Department**~~{Office}~~ of Insurance to:
 - (a) Provide incentives for an individual to insure against the cost of providing for his or her long-term care needs;
 - (b) Increase utilization of long-term care insurance policies;
 - (c) Assist in alleviating the financial burden of Kentucky's Medicaid program by encouraging the use of private insurance; and
 - (d) Provide a mechanism for individuals to qualify for Medicaid services for costs of long-term care without exhausting all of their assets and resources.
- (2) A long-term care partnership insurance policy shall:
 - (a) Provide coverage for expenses for at least twelve (12) months for each covered person on an expense-incurred, indemnity, or prepaid basis for one (1) or more long-term care services provided in a setting other than an acute care unit of a hospital;
 - (b) Be qualified under Section 7702B(b) of the Internal Revenue Code of 1986;
 - (c) Provide coverage for long-term care services for a policyholder who is a resident of a state with a qualified long-term care partnership program when coverage first became effective; and
 - (d) Not be issued prior to the effective date of an approved amendment to the State Medicaid Plan.
- (3) The **Department**~~{Office}~~ of Insurance shall have responsibility to approve, pursuant to KRS 304.14-120, any long-term care partnership insurance policy available in Kentucky that meets and continues to meet all applicable federal and state laws and regulations. The state shall not impose any requirement affecting the terms or benefits of such a policy unless the state imposes such requirement on long-term care insurance policies without regard to whether the policy is covered under the partnership or is offered in connection with the partnership.
- (4) The **Department**~~{Office}~~ of Insurance shall ensure that any agent who sells a long-term care partnership insurance policy can demonstrate an understanding of long-term care partnership insurance and how it relates to other public and private coverage of long-term care expenses. The Department for Medicaid Services shall provide consultation, materials, and other information to the **Department**~~{Office}~~ of Insurance to enable the **Department**~~{Office}~~ of Insurance to facilitate the development and issuance of uniform training materials for agents who sell long-term care insurance policies. The **Department**~~{Office}~~ of Insurance may contract with another entity to conduct agent training and testing. Training and certification may be conducted at the expense of the insurance agent.
- (5) Within sixty (60) days of notice of approval of the amendment to the State Medicaid Plan required under KRS 205.619, the **Department**~~{Office}~~ of Insurance shall promulgate an administrative regulation pursuant to KRS Chapter 13A to implement the Kentucky Long-Term Care Partnership Insurance Program.
- (6) The **Department**~~{Office}~~ of Insurance and the Department for Medicaid Services shall report no later than September 30 each year to the Interim Joint Committee on Banking and Insurance and the Interim Joint Committee on Health and Welfare on the number of partnership insurance policies sold in Kentucky, utilization of the partnership insurance policies, and expenditures and cost savings associated with implementation, utilization, and maintenance of the partnership program. If national data reporting standards become available, the report submitted to the federal agency shall meet the requirements of this subsection.

➔Section 1171. KRS 304.14-644 is amended to read as follows:

- (1) Each insurer or its agent, soliciting or offering to sell a policy that is intended to qualify as a partnership policy, shall provide each prospective applicant a Partnership Program Notice disclosing the availability of the Kentucky Long-Term Care Partnership Insurance Program as authorized in Section 6021 of the Deficit Reduction Act of 2005 and outlining the requirements and benefits of a partnership policy.
- (2) The manner and content of the disclosure described in subsection (1) of this section shall be established through promulgation of administrative regulations by the **Department**~~{Office}~~ of Insurance in coordination with the Cabinet for Health and Family Services.

➔Section 1172. KRS 304.14-660 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for sale of short-term nursing home insurance policies, terms of renewability, initial and subsequent conditions or eligibility, nonduplication of coverage provisions, coverage of dependents, pre-existing conditions, termination of insurance, continuation of conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions.

➔Section 1173. KRS 304.14-665 is amended to read as follows:

The **commissioner**~~{executive director}~~ may promulgate administrative regulations establishing loss ratio standards for short-term nursing home insurance policies.

➔Section 1174. KRS 304.14-675 is amended to read as follows:

- (1) Any short-term nursing home insurance policy issued on or after July 15, 2002, which provides coverage for assisted living benefits shall cover services received in any assisted living community which:
 - (a) Meets the requirements of KRS 194A.700 to 194A.729 and any administrative regulations promulgated under KRS 194A.700 to 194A.729; and
 - (b) Meets any additional requirements of an assisted living community set forth in the short-term nursing home insurance policy approved by the **commissioner**~~{executive director}~~.
- (2) Any short-term nursing home insurance policy issued on or after July 15, 2002, which provides coverage for adult day care services shall cover services received in any adult day care facility which:
 - (a) Meets the requirements of KRS 205.950 or 216B.0443 and any administrative regulations promulgated under KRS 205.950 or 216B.0443; and
 - (b) Meets any additional requirements of an adult day care center set forth in the short-term nursing home insurance policy approved by the **commissioner**~~{executive director}~~.

➔Section 1175. KRS 304.15-020 is amended to read as follows:

- (1) "Advertisement" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communication media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a life settlement contract.
- (2) "Business of life settlements" means an activity involved in but not limited to the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner, of life settlement contracts.
- (3) "Chronically ill" means:
 - (a) Being unable to perform at least two (2) activities of daily living, including but not limited to eating, toileting, transferring, bathing, dressing, or continence;
 - (b) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
 - (c) Having a level of disability similar to that described in paragraph (a) of this subsection as determined by the Secretary of Health and Human Services.
- (4) "College life insurance" is that form of life insurance sold to college students, the initial premiums for which are financed by a promissory note.
- (5) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a life settlement provider, credit enhancer, or any entity that has a direct ownership in a policy that is the subject of a life settlement contract but:
 - (a) Whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one (1) or more policies or to provide credit enhancement; and

- (b) Who has an agreement in writing with one (1) or more licensed life settlement providers to finance the acquisition of life settlement contracts or to provide stop loss insurance.

"Financing entity" does not include a nonaccredited investor or purchaser.

- (6) "Financing transaction" means a transaction in which a life settlement provider obtains financing from a financing entity, including without limitation any secured or unsecured financing, any securitization transaction, or any securities offering which either is registered or exempt from registration under federal and state securities law.
- (7) "Fraudulent life settlement act" includes:
- (a) Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits his employees or its agents to engage in acts including:
1. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a life settlement provider, life settlement broker, life insurance producer, financing entity, insurer, premium finance lender, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one (1) or more of the following:
 - a. An application for the issuance of a life settlement contract or policy;
 - b. The underwriting of a life settlement contract or policy;
 - c. A claim for payment or benefit pursuant to a life settlement contract or policy;
 - d. Premiums paid on a policy;
 - e. Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or policy;
 - f. The reinstatement or conversion of a policy;
 - g. In the solicitation, offer, effectuation, or sale of a life settlement contract or policy;
 - h. The issuance of written evidence of a life settlement contract or policy;
 - i. A financing transaction;
 - j. Any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy; or
 - k. Stranger-originated life insurance;
 2. Employing any device, scheme, or artifice to defraud related to policies acquired pursuant to a life settlement contract;
 3. In the solicitation, application, or issuance of a life insurance policy, employing any device, scheme, or artifice in violation of state insurable interest laws;
- (b) Any of the following acts committed by any person or permitted by a person to be committed by the person's employees or agents in the furtherance of a fraud or to prevent detection of a fraud to:
1. Remove, conceal, alter, destroy, or sequester from the **commissioner**~~{executive director}~~ the assets or records of a licensee or other person engaged in the business of life settlements;
 2. Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
 3. Transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements;
 4. File with the **commissioner**~~{executive director}~~ or the chief insurance regulatory official of another jurisdiction a document containing false information or which otherwise conceals information about a material fact from the **commissioner**~~{executive director}~~; or

5. Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this section and KRS 304.15-700 to 304.15-720;
- (c) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a life settlement provider, life settlement broker, insurer, insured, owner, insurance policyowner, or any other person engaged in the business of life settlements or insurance;
- (d) Recklessly entering into, brokering, or otherwise dealing in a life settlement contract, the subject of which is a policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the owner or the owner's agent intended to defraud the policy issuer. For the purposes of this paragraph, "recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct; or
- (e) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.
- (8) "Industrial life insurance" is that form of life insurance written under policies of face amount of \$3,000 or less issued on the basis of an industrial mortality table, and under which premiums are payable monthly or more often.
- (9) "Life expectancy" means the number of months the insured under the life insurance policy to be settled can be expected to live considering medical records and appropriate experiential data.
- (10) "Premium finance loan" means a loan made primarily for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.
- (11) "Purchaser" means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a life insurance policy or certificate issued pursuant to a group life insurance policy which has been the subject of a life settlement contract.
- (12) "Related provider trust" means a titling trust or other trust established by a licensed life settlement provider or financing entity for the sole purpose of holding the ownership or beneficial interest in policies. The trust shall have a written agreement with the licensed life settlement provider under which the licensed life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to life settlement transactions available to the **commissioner**~~executive director~~ as if those records and files were maintained directly by the licensed life settlement provider.
- (13) "Settled policy" means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.
- (14) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed life settlement provider.
- (15) "Stranger-originated life insurance" or "STOLI" means the procurement of new life insurance by persons or entities that lack insurable interest on the insured and, at policy inception, such person or entity owns or controls, or has an arrangement or agreement to own or control, the policy or the majority of the death benefit in the policy and the insured or insured's beneficiaries receive little or none of the proceeds of the death benefits of the policy. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in paragraph (b) of subsection (17) of this section.
- (16) "Life settlement broker" or "broker" means an individual, partnership, corporation, or other person who is working exclusively on behalf of an owner and for a fee, commission, or other valuable consideration, offers or advertises the availability of life settlements, introduces an owner to life settlement providers, or offers or attempts to negotiate life settlements between an owner and one (1) or more life settlement providers. "Life settlement broker" does not include an attorney, certified public accountant, or financial planner who is retained to represent the owner and whose compensation is not paid directly or indirectly by the life settlement provider or any other person except the owner.

- (17) (a) "Life settlement contract" means a written agreement entered into between a life settlement provider and an owner owning a policy or who owns or is covered under a group policy insuring the life of a person and the agreement establishes the terms under which the life settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate. A life settlement contract also includes a contract for a loan or other financing transaction with an owner secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A life settlement contract includes an agreement with an owner to transfer ownership or change the beneficiary designation of a policy at a later date regardless of the date that compensation is paid to the owner. "Life settlement contract" does not mean a written agreement entered into between an owner and a person having an insurable interest in the insured's life.
- (b) "Life settlement contract" also includes a premium finance loan made for a policy on or before the date of issuance of the policy where:
1. The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;
 2. The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or
 3. The owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.
- (c) "Life settlement contract" does not include:
1. A policy loan by a life insurance company pursuant to the terms of the life insurance policy or accelerated death provisions contained in the life insurance policy, whether issued with the original policy or as a rider;
 2. A premium finance loan or any loan made by a bank or other licensed financial institution, provided that neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under KRS 304.15-700 to 304.15-720;
 3. A collateral assignment of a life insurance policy by an owner;
 4. A loan made by a lender that does not violate Subtitle 30 of this chapter, if the loan is not described in paragraph (b) of this subsection and is not otherwise within the definition of life settlement contract;
 5. An agreement where all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;
 6. Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;
 7. A bona fide business succession planning arrangement:
 - a. Between one (1) or more shareholders in a corporation or between a corporation and one (1) or more of its shareholders or one (1) or more trust established by its shareholders;
 - b. Between one (1) or more partners in a partnership or between a partnership and one (1) or more of its partners or one (1) or more trust established by its partners; or
 - c. Between one (1) or more members in a limited liability company or between a limited liability company and one (1) or more of its members or one (1) or more trust established by its members;

8. An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or
 9. Any other contract, transaction, or arrangement not included in the definition of life settlement contract as determined by the *commissioner*~~[executive director]~~ by administrative regulation.
- (18) "Life settlement provider" or "provider" means an individual, partnership, corporation, or other person who or that enters into an agreement with a person owning a policy under the terms of which the life settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the policy to the life settlement provider. Life settlement provider does not include:
- (a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution or creditor or secured party that takes an assignment of a policy as collateral for a loan;
 - (b) The issuer of a policy that provides accelerated benefits that accelerate in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider;
 - (c) Any natural person who is not licensed in accordance with KRS 304.15-700 and who enters into no more than one (1) agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
 - (d) A related provider trust;
 - (e) An authorized or eligible insurer that provides stop-loss coverage to a life settlement provider, financing entity, special purpose entity, or related provider trust;
 - (f) A special purpose entity;
 - (g) A related provider trust;
 - (h) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, and who acquires a policy from a life settlement provider;
 - (i) A purchaser;
 - (j) A financing entity; or
 - (k) Broker.
- (19) "Owner" means a resident of this Commonwealth who is the owner of a policy or a certificate holder under a group policy who enters or seeks to enter into a life settlement contract. An owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one (1) owner on a single policy and the owners are residents of different states, the transaction shall be governed by the law of the state in which the owner having the largest percentage of ownership resides or, if the owners hold equal ownership, the state of residence of one (1) owner agreed upon in writing by all owners. "Owner" does not include:
- (a) A life settlement provider licensed pursuant to KRS 304.9-440;
 - (b) A qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, as amended;
 - (c) A financing entity;
 - (d) A special purpose entity; or
 - (e) A related provider trust.
- (20) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.
- (21) "Wholesale life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and

where policies are issued on the lives of not less than four (4) employees at date of issue. Premiums for the policies shall be paid either wholly from the employer's funds, or funds contributed by him, or partly from the funds and partly from funds contributed by the insured employees.

➔Section 1176. KRS 304.15-035 is amended to read as follows:

Nothing in this subtitle preempts or otherwise limits the provisions of the Securities Act of Kentucky, KRS Chapter 292, or any administrative regulations, orders, policy statements, notices, bulletins, or other interpretations issued by or through the *commissioner*~~[executive director]~~ of the Kentucky *Department*~~[Office]~~ of Financial Institutions or *the commissioner's*~~[his]~~ designee acting pursuant to the Securities Act of Kentucky. Compliance with the provisions of this subtitle does not constitute compliance with any applicable provision of the Securities Act of Kentucky and any amendments thereto or any administrative regulations, orders, policy statements, notices, bulletins, or other interpretations issued by or through the *commissioner*~~[executive director]~~ of the Kentucky *Department*~~[Office]~~ of Financial Institutions or *the commissioner's*~~[his]~~ designee acting pursuant to the Securities Act of Kentucky.

➔Section 1177. KRS 304.15-045 is amended to read as follows:

No college life insurance policy shall be sold or delivered in this Commonwealth unless the following provisions are complied with:

- (1) A letter of acceptance, on a form approved by the *commissioner*~~[executive director]~~ is presented to the proposed insured, setting forth the conditions concerning the financing agreement, the due date of the note, the amount of the note, the annual rate of interest on the note, and the annual premium on the policy;
- (2) The acceptance letter must be signed by the proposed insured, agreeing that he has read and understands the conditions, a copy to be retained by the insured, and a copy to be retained by the agent and company;
- (3) A copy of a financing arrangement is to be attached to and made a part of the contract.

➔Section 1178. KRS 304.15-115 is amended to read as follows:

- (1) As used in this section:
 - (a) "Policy" includes annuity contracts as defined in KRS 304.5-030 which provide for policy loans, and certificates issued by a fraternal benefit society as defined in KRS 304.29-011;
 - (b) "Policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer;
 - (c) "Policy loan" includes an advance of cash as specified in KRS 304.15-110 and any premium loan made under a policy to pay one (1) or more premiums that were not paid to the life insurer as they fell due; and
 - (d) "Published monthly average" means Moody's Corporate Bond Yield Average - Monthly Average Corporates as published by Moody's Investors Service, Inc. or any successor thereto, or, in the event that Moody's Corporate Bond Yield Average - Monthly Average Corporates is no longer published, a substantially similar average prescribed by the *commissioner*~~[executive director]~~.
- (2) Notwithstanding any other provision of law:
 - (a) Policies issued on or after July 13, 1984, shall contain either, but not both, of the following policy loan interest rate provisions:
 1. A provision permitting a maximum interest rate of not more than eight percent (8%) per annum; or
 2. A provision permitting an adjustable maximum interest rate established at regular intervals by the life insurer as permitted by law.
 - (b) The rate of interest charged on a policy loan made under paragraph (a)2. of this subsection shall not exceed eighteen percent (18%) nor the higher of the following:
 1. The published monthly average for the calendar month ending two (2) months before the date on which the rate is determined; or

2. The rate used to compute cash surrender values under the policy during the applicable period plus one percent (1%) per annum.
- (c) If the maximum rate of interest is determined pursuant to paragraph (a)2. of this subsection, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy;
- (d) The maximum rate for each policy shall be determined at regular intervals at least once every twelve (12) months, but not more frequently than once in any three (3) month period. At the intervals specified in the policy:
 1. The rate being charged may be increased whenever such increase as determined under paragraph (b) of this subsection would increase the rate by one-half of one percent (0.5%) or more per annum;
 2. The rate being charged shall be reduced whenever such reduction as determined under paragraph (b) of this subsection would decrease that rate by one-half of one percent (0.5%) or more per annum.
- (e) The life insurer shall:
 1. Notify the policyholder at the time an advance of cash is made of the initial rate of interest on the loan;
 2. Notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in subparagraph 3. of this paragraph;
 3. Send to policyholders with loans reasonable advance notice of any increase in the rate; and
 4. Include in the notices required in subparagraphs 1., 2., and 3. of this paragraph the substance of the pertinent provisions of paragraphs (a) and (c) of this subsection.
- (f) The loan value of the policy shall be determined in accordance with KRS 304.15-110, but no policy shall terminate in a policy year as the sole result of changes in the interest rate during that policy year. The life insurer shall maintain coverage during that policy year until such time at which it would otherwise have terminated if there had been no change during that policy year;
- (g) The substance of the pertinent provisions of paragraphs (a) and (c) of this subsection shall be set forth in the policies to which they apply;
- (h) For the purposes of this section, the rate of interest on policy loans permitted under this section shall include the interest rate charged for reinstatement of policy loans for the period during and after any lapse of a policy;
- (i) No other provision of law shall apply to policy loan interest rates unless such provision specifically applies to such rates.
- (3) The provisions of this section shall not apply to any policy issued before July 13, 1984, unless the policyholder agrees in writing to the applicability of such provisions.

➔Section 1179. KRS 304.15-120 is amended to read as follows:

In case the policy provides that the proceeds may be payable in installments which are determinable at issue of the policy, there shall, except as otherwise permitted by the *commissioner*~~{executive director}~~, be a table showing the amounts of the guaranteed installments.

➔Section 1180. KRS 304.15-175 is amended to read as follows:

- (1) When a life insurance policy has been paid up by completion of all premium payments, the insurer shall provide notice to the *Department*~~{Office}~~ of Insurance within thirty (30) days of completion of all policy payments. The notice to the *department*~~{office}~~ shall include the following information:
 - (a) The name of the policy holder;
 - (b) The last known address of the policy holder;
 - (c) The policy number; and

(d) The date the policy was paid up.

- (2) The **commissioner**~~[executive director]~~ shall retain the notice required by subsection (1) of this section in a manner that will facilitate response to policyholder inquiries regarding their policy in the event of loss or destruction of the policy, or in the event of acquisition or merger of the insurer.

➔Section 1181. KRS 304.15-260 is amended to read as follows:

- (1) No policy of life insurance shall be delivered or issued for delivery in this state if it contains any of the following provisions:

(a) A provision limiting the time within which an action at law or in equity may be commenced on such a policy to less than three (3) years after the cause of action has accrued.

(b) A provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified therein in the event of death under any one (1) or more of the following circumstances:

1. Death as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces, or of any act or hazard of such war or action, or of service in the military, naval, or air forces or in civilian forces auxiliary thereto, or from any cause while a member of such military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in such military action;
2. Death as a result of aviation or any air travel or flight;
3. Death as a result of specified hazardous occupation or occupations;
4. Death while the insured is a resident outside the continental United States and Canada; or
5. Death within two (2) years from the date of issue of the policy as a result of suicide, while sane or insane.

- (2) A policy which contains any exclusion or restriction pursuant to paragraph (b) of subsection (1) of this section, shall also provide that in the event of death under the circumstances to which any such exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioner's reserve valuation method upon the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy provides for no such benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy) with adjustment for indebtedness or dividend credit.

- (3) This section shall not apply to group life insurance, health insurance, reinsurance, or annuities, or to any provision in a life insurance policy or contract supplemental thereto relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

- (4) Nothing contained in this section shall prohibit any provision which in the opinion of the **commissioner**~~[executive director]~~ is more favorable to the policyholder than a provision permitted by this section.

➔Section 1182. KRS 304.15-310 is amended to read as follows:

- (1) No policy of life insurance, except as stated in KRS 304.15-360 shall be delivered or issued for delivery in this state unless it shall contain, in substance the following provisions, or corresponding provisions which in the opinion of the **commissioner**~~[executive director]~~ are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified and are essentially in compliance with KRS 304.15-352:

(a) Paid-up nonforfeiture benefit. That, in the event of default in any premium payment, the insurer will grant, upon proper request not later than sixty (60) days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be hereinafter specified. In lieu of such stipulated paid-up nonforfeiture benefit, the insurer may substitute, upon proper request not later than sixty (60) days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a

greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

- (b) Cash surrender value. That, upon surrender of the policy within sixty (60) days after the due date of any premium payment in default after premiums have been paid for at least three (3) full years in the case of ordinary insurance or five (5) full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.
 - (c) Effective date of benefit. That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty (60) days after the due date of the premium in default.
 - (d) Cash surrender value if policy paid up. That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the insurer will pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.
 - (e) Mortality table and interest rate used. In the case of policies which cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefits, if any, available under the policy on each policy anniversary either during the first twenty (20) policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.
 - (f) Method used in computing value and benefit. A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.
- (2) Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.
 - (3) The insurer shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand therefor with surrender of the policy.

➔Section 1183. KRS 304.15-315 is amended to read as follows:

- (1) This section shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities."
- (2) This section shall not apply to any reinsurance group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the insurer issuing the contract. However, to the extent that a variable annuity contract provides benefits that do not, before the maturity date, vary in accordance with the investment performance of any separate account or accounts

maintained by the insurer as to such contract, as provided for in KRS 304.15-390, the contract shall contain provisions that satisfy the requirements of this section and shall not otherwise be subject to this section.

- (3) In the case of contracts issued on or after the operative date of this section as defined in subsection (12) of this section, no contract of annuity, except as stated in subsection (2) of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the ~~commissioner~~~~executive director~~ are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract.
- (a) That upon cessation of payment of considerations under a contract, the insurer will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (5), (6), (7), (8) and (10) of this section.
 - (b) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections (5), (6), (8) and (10) of this section. The insurer shall reserve the right to defer the payment of such cash surrender benefit for a period of six (6) months after demand therefor with surrender of the contract.
 - (c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.
 - (d) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars (\$20) monthly, the insurer may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

- (4) The minimum values as specified in subsections (5), (6), (7), (8) and (10) of this section of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.
- (a) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of three percent (3%) per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:
 1. Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent (3%) per annum; and
 2. The amount of any indebtedness to the insurer on the contract, including interest due and accrued;

and increased by any existing additional amounts credited by the insurer to the contract. The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross consideration credited to the contract during that contract year less an annual contract charge of thirty dollars (\$30) and less a collection charge of one dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent (65%) of the net consideration for the first contract year and eighty-seven and one-half percent (87.5%) of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent (65%) of the portion of the total net consideration

- for any renewal contract year which exceeds by not more than two (2) times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent (65%).
- (b) Notwithstanding any other provision of this subsection, for any contract issued on or after July 1, 2003, and before July 1, 2006, the interest rate at which net considerations, prior withdrawals, and partial surrenders shall be accumulated for the purpose of determining nonforfeiture amounts shall be no less than one and one-half percent (1.5%) per annum.
- (c) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two (2) exceptions:
1. The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent (65%) of the net consideration for the first contract year plus twenty-two and one-half percent (22.5%) of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.
 2. The annual contract charge shall be the lesser of,
 - a. Thirty dollars (\$30), or
 - b. Ten percent (10%) of the gross annual consideration.
- (d) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent (90%) and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars (\$75).
- (5) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.
- (6) For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.
- (7) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.
- (8) For the purpose of determining the benefits calculated under subsections (6) and (7) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

- (9) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.
- (10) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.
- (11) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (5), (6), (7), (8), and (10) of this section, additional benefits payable:
- (a) In the event of total and permanent disability;
 - (b) As reversionary annuity or deferred reversionary annuity benefits; or
 - (c) As other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits;

shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

- (12) (a) 1. After August 1, 2005, any insurer may file with the ~~commissioner~~~~executive director~~ a written notice of its election to apply the provisions of KRS 304.15-365 on a contract-form by contract-form basis to annuity contracts issued by the insurer during the period from the date of the election through June 30, 2006;
2. In all other instances, insurers shall apply the provisions of KRS 304.15-315 to annuity contracts issued through June 30, 2006; and
- (b) Insurers shall apply the provisions of KRS 304.15-365 to all annuity contracts issued on or after July 1, 2006.

➔Section 1184. KRS 304.15-340 is amended to read as follows:

- (1) How calculated. This section shall not apply to policies issued on or after the operative date of KRS 304.15-342 as defined therein. Except as provided in subsection (4) of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairment or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:
- (a) The then present value of the future guaranteed benefits provided for by the policy;
 - (b) Two percent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy;
 - (c) Forty percent (40%) of the adjusted premium for the first policy year; and
 - (d) Twenty-five percent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.
- (2) In applying the percentages specified in paragraphs (c) and (d) of subsection (1) of this section, no adjusted premium shall be deemed to exceed four percent (4%) of the amount of insurance or uniform amount equivalent thereto. Whenever the plan or term of a policy has been changed, either by request of the insured or automatically in accordance with the provisions of the policy, the date of issue of the changed policy for the

purposes of determining a nonforfeiture benefit or cash surrender value shall be the date as of which the age of the insured is determined for the purposes of the changed policy. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

- (3) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; provided that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten (10), the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten (10) were the amount provided by such policy at age ten (10).
- (4) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to:
 - (a) The adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by
 - (b) The adjusted premiums for such term insurance, paragraphs (a) and (b) of this subsection being calculated separately and as specified in subsections (1), (2) and (3) of this section, except that, for the purposes of paragraphs (b), (c), and (d) of subsection (1) of this section, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in paragraph (b) of this subsection shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in paragraph (a) of this subsection.
- (5) All adjusted premiums and present values referred to in KRS 304.15-310 to 304.15-360, inclusive, but not including KRS 304.15-342 and 304.15-344 shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six (6) years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the Commissioners 1961 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed four percent (4%) per year except that a rate of interest not exceeding five and one-half percent (5.5%) per year may be used for policies issued on or after June 17, 1978. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit for ordinary insurance, the rates of mortality assumed may not be more than those shown in the Commissioners 1958 Extended Term Insurance Table and for industrial insurance the rates of mortality may not be more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the ~~commissioner~~^{executive director}.

➔Section 1185. KRS 304.15-342 is amended to read as follows:

- (1) This section shall apply to all policies issued on or after the effective date of this section as defined in subsection (11) of this section. Except as provided in subsection (7) of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of:
 - (a) The then present value of the future guaranteed benefits provided for by the policy;
 - (b) One percent (1%) of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and
 - (c) One hundred twenty-five percent (125%) of the nonforfeiture net level premium as hereinafter defined.

Provided, however, that in applying the percentage specified in (c) above, no nonforfeiture net level premium shall be deemed to exceed four percent (4%) of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years. This date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

- (2) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one (1) per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.
- (3) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.
- (4) Except as otherwise provided in subsection (7) of this section, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (a) the sum of the then present value of the then future guaranteed benefits provided for by the policy and the additional expense allowance, if any, over (b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.
- (5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of:
 - (a) One percent (1%) of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten (10) policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten (10) policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and
 - (b) One hundred twenty-five percent (125%) of the increase, if positive, in the nonforfeiture net level premium.
- (6) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (a) by (b) where:
 - (a) Equals the sum of:
 1. The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, and
 2. The present value of the increase in future guaranteed benefits provided for by the policy, and
 - (b) Equals the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.
- (7) Notwithstanding any other provisions of this section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.
- (8) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the commissioners 1980 standard ordinary mortality table or at the election of the insurer for any one (1) or more specified plans of life insurance, the commissioners 1980 standard ordinary

mortality table with ten-year select mortality factors; shall for all policies of industrial insurance be calculated on the basis of the commissioners 1961 standard industrial mortality table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year. Provided, however, that:

- (a) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year.
 - (b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by KRS 304.15-310, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.
 - (c) Any insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.
 - (d) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioners 1961 industrial extended term insurance table for policies of industrial insurance.
 - (e) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.
 - (f) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the ~~commissioner~~~~executive director~~ for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioners 1980 extended term insurance table.
 - (g) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the ~~commissioner~~~~executive director~~ for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1961 standard industrial mortality table or the commissioners 1961 industrial extended term insurance table.
- (9) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent (125%) of the calendar year statutory valuation interest rate for such policy as defined in KRS 304.6-130 to 304.6-180, inclusive to the nearer one quarter of one percent (0.25%).
 - (10) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.
 - (11) Any insurer may file with the ~~commissioner~~~~executive director~~ a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1989, which shall be the effective date of this section for such insurer. If an insurer makes no such election, the effective date of this section for such insurer shall be January 1, 1989.

➔Section 1186. KRS 304.15-344 is amended to read as follows:

- (1) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in KRS 304.15-310 to 304.15-340 and in KRS 304.15-342, then:
 - (a) The ~~commissioner~~~~executive director~~ must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by KRS 304.15-310 to 304.15-360 herein;

- (b) The *commissioner*~~[executive director]~~ must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;
- (c) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of KRS 304.15-310 to 304.15-360, as determined by regulations promulgated by the *commissioner*~~[executive director]~~.
- (d) Notwithstanding any other provision in the laws of this state, any policy, contract or certificate providing life insurance under any such plan must be affirmatively approved by the *commissioner*~~[executive director]~~ before it can be marketed, issued, delivered or used in this state.

➔Section 1187. KRS 304.15-365 is amended to read as follows:

- (1) This section shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities of 2005."
- (2) This section shall not apply to any reinsurance group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the insurer issuing the contract. However, to the extent that a variable annuity contract provides benefits that do not, before the maturity date, vary in accordance with the investment performance of any separate account or accounts maintained by the insurer as to such contract, as provided for in KRS 304.15-390, the contract shall contain provisions that satisfy the requirements of this section and shall not otherwise be subject to this section.
- (3) In the case of contracts issued on or after July 1, 2006, no contract of annuity, except as provided in subsection (2) of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the *commissioner*~~[executive director]~~ are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:
 - (a) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the insurer shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (8), (9), (10), (11), and (13) of this section;
 - (b) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer shall pay, in lieu of any paid-up annuity benefit, a cash surrender benefit of such amount as is specified in subsections (8), (9), (10), (11), and (13) of this section. The insurer may reserve the right to defer the payment of this cash surrender benefit for a period not to exceed six (6) months after demand therefor with surrender of the contract after making written request and receiving written approval of the *commissioner*~~[executive director]~~. The request shall address the necessity and equitability to all policyholders of the deferral;
 - (c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits; and
 - (d) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which these benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to that period would be less than twenty dollars (\$20) monthly, the insurer may at its option terminate the contract by payment in cash of the then-present value of such portion of the paid-up annuity benefit, calculated

on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by this payment shall be relieved of any further obligation under such contract.

- (4) The minimum values as specified in subsections (8), (9), (10), (11), and (13) of this section of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.
 - (a) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at rates of interest as indicated in subsection (5) of this section of the net considerations, as defined in paragraph (b) of this subsection, paid prior to that time, decreased by the sum of:
 1. Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest as indicated in subsection (5) of this section;
 2. An annual contract charge of fifty dollars (\$50) accumulated at rates of interest as indicated in subsection (5) of this section; and
 3. The amount of any indebtedness to the insurer on the contract, including interest due and accrued.
 - (b) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent (87.5%) of gross considerations credited to the contract during that contract year.
- (5) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent (3%) per annum and the following, which shall be specified in the contract if the interest rate will be reset:
 - (a) The five (5) year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date or average over a period rounded to the nearest one-twentieth of one percent (0.05%), specified in the contract no longer than fifteen (15) months prior to the contract issue date or redetermination date under paragraph (d) of this subsection;
 - (b) Reduced by one hundred twenty-five (125) basis points;
 - (c) Where the resulting interest rate is not less than one percent (1%); and
 - (d) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five (5) year Constant Maturity Treasury Rate to be used at each redetermination date.
- (6) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subsection (5)(b) of this section up to an additional one hundred (100) basis points to reflect the value of the equity index benefit. The present value at the contract issue date and at each redetermination date thereafter of the additional reduction shall not exceed the market value of the benefit. The **commissioner**~~executive director~~ may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such demonstration that is acceptable to the **commissioner**~~executive director~~, the **commissioner**~~executive director~~ may disallow or limit the additional reduction.
- (7) The **commissioner**~~executive director~~ may promulgate administrative regulations in accordance with KRS Chapter 13A implementing the provisions of subsection (6) of this section and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the **commissioner**~~executive director~~ determines adjustments are justified.
- (8) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. This present value shall be computed using the mortality table, if any, and the interest rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.
- (9) For contracts which provide cash surrender benefits, the cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the

paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, the present value being calculated on the basis of an interest rate not more than one percent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, decreased by the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under the contracts shall be at least equal to the cash surrender benefit.

- (10) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, the present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, the present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.
- (11) For the purpose of determining the benefits calculated under subsections (9) and (10) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.
- (12) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.
- (13) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.
- (14) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (8), (9), (10), (11), and (13) of this section, additional benefits payable:
 - (a) In the event of total and permanent disability;
 - (b) As reversionary annuity or deferred reversionary annuity benefits; or
 - (c) As other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits;

shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of these additional benefits shall not be required in any paid-up benefits, unless these additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

- (15) (a) After August 1, 2005, any insurer may file with the ~~commissioner~~~~executive director~~ a written notice of its election to apply the provisions of this section on a contract-form by contract-form basis to annuity contracts issued by the insurer during the period from the date of the election through June 30, 2006.
- (b) Insurers shall apply the provisions of this section to annuity contracts issued on or after July 1, 2006.

➔Section 1188. KRS 304.15-390 is amended to read as follows:

- (1) A domestic life insurer may establish one (1) or more separate accounts, and may allocate thereto, in accordance with the terms of a written contract or agreement, any amounts paid to the insurer in connection with a pension, retirement or profit-sharing plan, life insurance, or an annuity which are to be applied to provide benefits payable in fixed or in variable dollar amounts or in both.
- (2) The income, if any, and gains and losses, realized or unrealized, on each such account shall be credited to or charged against the amounts allocated to the account in accordance with the agreement, without regard to other income, gains or losses of the insurer.
- (3) Assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then in accordance with the terms of the applicable contract or agreement; except, that the portion of the assets of such separate account at least equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (1) of this section, if any, shall be valued in accordance with rules otherwise applicable to the insurer's assets.
- (4) If the agreement provides for payment of benefits in variable amounts, the contract shall contain a statement of the essential features of the procedure to be followed by the insurer in determining the dollar amount of such variable benefits. Any such contract and any certificate issued thereunder shall state that such dollar amount may decrease or increase and shall contain on its first page a statement that the benefits thereunder are on a variable basis.
- (5) No domestic life insurer, and no other authorized life insurer, shall be authorized to deliver within this state any such contract or agreement providing benefits in variable amounts until the insurer has satisfied the **commissioner**~~{executive director}~~ that its condition or methods of operation in connection with the issuance of such contracts or agreements will not render its operation hazardous to the public or its policyholders in this state. In determining the qualification of an insurer requesting such authority, the **commissioner**~~{executive director}~~ shall consider, among other things:
 - (a) The history and financial condition of the insurer;
 - (b) The character, responsibility and general fitness of the officers and directors of the insurer; and
 - (c) In the case of an insurer other than a domestic insurer, whether the statutes or regulations of the jurisdiction of its incorporation provide a degree of protection to policyholders and the public which is substantially equal to that provided by this section and the rules and regulations issued thereunder.
- (6) Amounts allocated by domestic life insurers to separate accounts in the exercise of the power granted by this section shall be owned by the insurer and the insurer shall not be, or hold itself to be, a trustee, in respect to such amounts.
- (7) The **commissioner**~~{executive director}~~ shall have sole authority to regulate the issuance and sale of such agreements, and to make rules and regulations for the effectuation of this section.

➔Section 1189. KRS 304.15-410 is amended to read as follows:

In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in KRS 304.6-150, 304.6-155 and 304.6-180, the reserves which are held under any such plan must:

- (1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and
- (2) Be computed by a method which is consistent with the principles of this standard valuation law;

as determined by regulations promulgated by the **commissioner**~~{executive director}~~.

➔Section 1190. KRS 304.15-700 is amended to read as follows:

- (1) No person may act as a life settlement provider without first having obtained a license as a life settlement provider from the **commissioner**~~{executive director}~~.
- (2) Except as provided in paragraph (b) or (c) of this subsection, no person may broker, solicit, or negotiate life settlement contracts between an owner and one (1) or more life settlement providers or otherwise act on behalf of an owner without first having obtained a license as a life settlement broker from the **commissioner**~~{executive director}~~ as follows:

- (a) All applicants for a life settlement broker license shall attend the required life broker training and pass a life broker examination designated by the **commissioner**~~{executive director}~~ through administrative regulation.
- (b) A person licensed as a resident or nonresident insurance agent with a life line of authority, as set forth in KRS 304.9-030(2)(a), shall be deemed to meet the licensing requirements of a life settlement broker and shall be permitted to operate as a life settlement broker without obtaining a license as a life settlement broker as set forth in this subtitle if:
1. That person has been licensed as a resident insurance agent with a life line of authority in his home state for at least one (1) year;
 2. Not later than thirty (30) days from the first day of operating as a life settlement broker, the agent notifies the **commissioner**~~{executive director}~~, on a notification form prescribed by the **commissioner**~~{executive director}~~, that he is acting as a life settlement broker and pays any applicable fees to be determined by the **commissioner**~~{executive director}~~. The notification shall include an acknowledgment by the agent that he will operate as a life settlement broker in accordance with this subtitle; and
 3. Irrespective of the manner in which a life settlement broker or life insurance agent is compensated, the life settlement broker or life insurance agent is deemed to represent only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interests of the owner.
- (c) Notwithstanding this subsection, a person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, whose compensation is not paid directly or indirectly by the life settlement provider, may negotiate life settlement contracts without having to obtain a license as a life settlement broker.
- (d) A life insurance agent operating as a life settlement broker in accordance with paragraph (b) of this subsection, prior to the execution of the life settlement contract by all the parties for which such agent is operating as a life settlement broker, shall have in force and file with the **commissioner**~~{executive director}~~ evidence of financial responsibility as follows:
1. A policy of insurance covering the legal liability of the agent as the result of erroneous acts or failure to act in his or her capacity as a life settlement broker, and inuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year; or
 2. An agreement with a licensed life settlement provider whereby the agent is an additional insured on the policy of insurance covering the legal liability of both the life settlement provider and the agent as the result of erroneous acts or failure to act in his or her capacity as a life settlement broker on a life settlement contract to which the life settlement provider is a party, in the sum of twenty thousand dollars (\$20,000) for any single occurrence; or
 3. A deposit with the **commissioner**~~{executive director}~~ of cash or a cash surety bond, executed by an insurer authorized to write business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000), which shall be subject to lawful levy of execution by any party to whom the agent has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as a life settlement broker.
- (3) Application for a life settlement provider license or a life settlement broker license shall be made in accordance with KRS 304.9-150.
- (4) Licenses for life settlement providers and life settlement brokers shall be in accordance with Subtitle 9 of KRS Chapter 304. A business entity licensed as a life settlement broker or life settlement provider shall designate individuals to act under its license in accordance with KRS 304.9-133.
- (5) Prior to issuance of a license as a life settlement broker or life settlement provider, except as provided in subsection (2)(d) of this section, the applicant shall file with the **commissioner**~~{executive director}~~, and

thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility in the sum of not less than twenty thousand dollars (\$20,000) per occurrence, and the sum of one hundred thousand dollars (\$100,000) in the aggregate, for all occurrences within one (1) year. This evidence shall be in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. The policy, bond, deposit, or combination thereof shall not be terminated without thirty (30) days' prior written notice to the licensee and the **commissioner**~~{executive director}~~. This subsection shall not apply to a life insurance agent operating as a life settlement broker in accordance with subsection (2) of this section.

- (6) No person shall use a life settlement contract form or provide to an owner a disclosure statement form in this Commonwealth unless it has been filed with and approved by the **commissioner**~~{executive director}~~ in the following manner:
- (a) At the expiration of sixty (60) days from the date the filing is complete, the form filed shall be deemed approved unless the **commissioner**~~{executive director}~~ has by order given prior approval or disapproval. Approval of a form by the **commissioner**~~{executive director}~~ shall constitute a waiver of any unexpired portion of the waiting period. The **commissioner**~~{executive director}~~ may extend by not more than thirty (30) days the time period in which he or she may approve or disapprove the form. The **commissioner**~~{executive director}~~ shall give notice to the licensee of the extension before expiration of the initial sixty (60) day period. At the expiration of the extended period, and in the absence of the prior approval or disapproval, the form shall be deemed approved. The **commissioner**~~{executive director}~~ may at any time, after notice and for cause shown, withdraw any approval. The **commissioner**~~{executive director}~~ shall disapprove a life settlement contract form or disclosure statement form if, in the determination of the **commissioner**~~{executive director}~~, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise are misleading or unfair to the owner. Upon notice and hearing the **commissioner**~~{executive director}~~ shall withdraw approval of any contract later determined to be unreasonable, misleading, unfair, or contrary to the interest of the public; and
 - (b) Forms may be submitted simultaneously with an application or at any time during the process of approving an application for a license pursuant to this subtitle or at any other time.
- (7) A licensed life settlement provider shall not use any person to perform the functions of a life settlement broker as defined in KRS 304.15-020 unless the person holds a current and valid license or is a licensed insurance agent authorized pursuant to this subtitle to operate as a life settlement broker. A licensed life settlement broker shall not use any person to perform the functions of a life settlement provider as defined in KRS 304.15-020 unless the person holds a current and valid license as a life settlement provider.
- (8) If any employee of a licensee violates any provision of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126, the **department**~~{office}~~ may take disciplinary action against the employer licensee.
- (9) When a life settlement provider elects to use a related provider trust, the life settlement provider shall file notice of its intention to use that trust with the **department**~~{office}~~ with a copy of the trust agreement. Any change in the trust agreement shall be filed with the **commissioner**~~{executive director}~~ prior to its effect.
- (10) Any additional death benefit payment on a life insurance policy that is the subject of a life settlement contract with a double or additional indemnity for accidental death shall be payable to the following:
- (a) The beneficiary last named by the policy owner prior to entering into the life settlement contract; or
 - (b) To the estate of the owner in the absence of a beneficiary.
- (11) An insurer that issued a policy that is the subject of a life settlement contract shall not be responsible for any act or omission of a broker, provider, or purchaser arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of the life settlement contract from the provider, purchaser, or broker in connection with the life settlement contract.
- (12) No insurer may, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the **commissioner**~~{executive director}~~ for use in connection with life settlement contracts in the Commonwealth.

➔Section 1191. KRS 304.15-705 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may, when the **commissioner**~~{executive director}~~ deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The **commissioner**~~{executive director}~~ shall have the authority to order information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interest of the public. The reasonable expenses incurred in conducting any examination shall be paid by the licensee or applicant.
- (2) Records of all transactions of life settlement contracts shall be subject to the following:
 - (a) The following records of all transactions of life settlement contracts shall be maintained by the licensee for five (5) years after the death of the owner, and shall be available to the **commissioner**~~{executive director}~~ for inspection during reasonable business hours:
 1. Proposed, offered, or executed settlement contracts, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the settlement contract, whichever is later; and
 2. All checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction.
 - (b) All other business records shall be kept for a period of five (5) years following creation of records, or the completion of the purpose for which records were created, whichever shall occur last.
 - (c) This section shall not relieve a licensed settlement provider of the obligation to produce these documents to the **commissioner**~~{executive director}~~ after the retention period has expired if the settlement provider has retained the documents.
 - (d) Records required to be retained by this section shall be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of the record.

➔Section 1192. KRS 304.15-708 is amended to read as follows:

- (1) When the **department**~~{office}~~ finds that a violation presents an immediate danger to the public health, safety, or welfare that requires an immediate final order, it shall issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent.
- (2) The **department**~~{office}~~ may impose and collect an administrative fine not to exceed ten thousand dollars (\$10,000) for each violation of a cease and desist order issued in accordance with this section.

➔Section 1193. KRS 304.15-709 is amended to read as follows:

- (1) In addition to the penalties and other enforcement provisions of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126, if any person violates any provision of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126, or any administrative regulations promulgated under KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126, the **department**~~{office}~~ may seek an injunction in Franklin Circuit Court or in the Circuit Court of the county where the person resides or has a principal place of business and may apply for temporary and permanent orders that the **department**~~{office}~~ determines necessary to restrain the person from committing the violation.
- (2) Any person damaged by the acts of a person in violation of any provision of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126 may bring a civil action against the person in the Circuit Court of the county in which the alleged violator resides, or has a principal place of business, or in the county where the alleged violation occurred.

➔Section 1194. KRS 304.15-710 is amended to read as follows:

- (1) With each application for a life settlement contract, a life settlement provider or life settlement broker shall provide the owner a copy of the **department's**~~{office's}~~ consumer guide relating to life settlements. The provider shall provide in writing, in a separate document that is signed by the owner and provider the information in this subsection to the owner no later than the date the life settlement contract is signed by all parties. The written disclosures shall be conspicuously displayed in any life settlement contract or in a separate

document furnished to the owner by a provider including any affiliations or contractual arrangements between the provider and the broker and shall provide the following information:

- (a) That there are possible alternatives to life settlement contracts including but not limited to accelerated benefits or policy loans offered under the owner's policy;
 - (b) That some or all of the proceeds of the life settlement may be taxable under federal income tax laws and state franchise and income tax laws, and that assistance should be sought from a personal tax advisor;
 - (c) That proceeds of the life settlement contract could be subject to the claims of creditors;
 - (d) That receipt of the proceeds of a life settlement contract may adversely affect the owner's eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate government agencies;
 - (e) That the owner has a right to rescind a life settlement contract before the earlier of thirty (30) calendar days of the date it is executed by all parties or fifteen (15) calendar days after the receipt of the proceeds of the life settlement contract by the owner. If exercised by the owner, rescission is effective only if both notice of the rescission is given, and within the rescission period all proceeds, and any premiums, loans, and loan interest are repaid to the settlement provider. If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all life settlement proceeds and any premiums, loans, and loan interest to the life settlement provider. The life settlement provider shall effectuate the change of ownership of the policy or certificate to the owner immediately upon effective rescission by the owner;
 - (f) That entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the owner and that assistance should be sought from a financial adviser;
 - (g) That funds will be sent to the owner within three (3) business days after the life settlement provider has received the insurer's or group administrator's acknowledgment that ownership of the policy has been transferred and the beneficiary has been designated pursuant to the life settlement contract;
 - (h) That the disclosure document shall contain the following language:

"All medical, financial, or personal information solicited or obtained by a life settlement provider or life settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the life settlement between the owner and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two (2) years."; and
 - (i) That the insured may be contacted by the life settlement provider or its authorized representative for the purpose of determining the insured's health status or to verify the insured's address. This contact shall be limited to once every three (3) months if the insured has a life expectancy of more than one (1) year, and no more than once per month if the insured has a life expectancy of one (1) year or less.
- (2) A life settlement provider shall provide the owner with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and the life settlement provider and provide the following information:
- (a) State the affiliation, if any, between the life settlement provider and the issuer of the policy to be acquired pursuant to a settlement contract;
 - (b) State the name, address and telephone number of the life settlement provider;
 - (c) If a policy to be acquired pursuant to a life settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be acquired pursuant to a settlement contract, the owner shall be informed of the possible loss of coverage on the other lives and shall be advised to consult with his insurance producer or the company issuing the policy for advice on the proposed life settlement contract;

- (d) State the dollar amount of the current death benefit payable to the life settlement provider under the policy. The life settlement provider shall, if known, also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy, and the life settlement provider's interest in those benefits;
 - (e) State the name, business address, and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents;
 - (f) The date by which the funds will be available to the owner and the transmitter of the funds;
 - (g) That a consumer guide shall be delivered to owners with each application as required in this subsection;
 - (h) That applications and life settlement contracts shall contain the statement as required in KRS 304.15-717(2);
 - (i) That a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interests of the owner; and
 - (j) The fact that a change in ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one (1) life.
- (3) If the life settlement provider transfers ownership or changes the beneficiary of the policy, the life settlement provider shall communicate the change in ownership or beneficiary to the insured within twenty (20) days after the change.
- (4) A broker shall provide the owner and the provider with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:
- (a) The name, business address, and telephone number of the broker;
 - (b) A full, complete, and accurate description of all the offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;
 - (c) The name of each broker who receives compensation and the amount of compensation received by the broker, which compensation includes anything of value paid or given to the broker in connection with the life settlement contract;
 - (d) A complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purposes of this paragraph, "gross offer or bid" means the total amount or value offered by the provider for the purchase of one (1) or more life insurance policies, inclusive of the commissions and fees; and
 - (e) The failure to provide the disclosures or rights described in this section shall be deemed an unfair trade practice.

➔Section 1195. KRS 304.15-712 is amended to read as follows:

- (1) A broker or provider licensed pursuant to KRS 304.15-700 to 304.15-720 may conduct or participate in advertisements within this state. Such advertisements shall comply with all advertising and marketing laws of this chapter or rules and administrative regulations promulgated by the **commissioner**~~executive director~~ that are applicable to life insurers or to brokers, and providers licensed pursuant to this chapter.
- (2) Advertisements shall be accurate, truthful, and not misleading in fact or by implication.
- (3) No person or trust shall:
 - (a) Directly or indirectly market, advertise, solicit, or otherwise promote the purchase of a life insurance policy for the sole purpose of, or with a primary emphasis on, settling the policy; or
 - (b) Use the words "free," "no cost," or words of similar import in the marketing, advertising, soliciting, or otherwise promoting the purchase of a life insurance policy.

➔Section 1196. KRS 304.15-715 is amended to read as follows:

- (1) A life settlement provider entering into a life settlement contract with any person shall first obtain:
 - (a) If the owner is insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a life settlement contract; and
 - (b) A document in which the insured consents to the release of his or her medical records to a life settlement provider, life insurance agent, or life settlement broker and, if the policy was issued less than two (2) years from the date of application for a life settlement contract, to the insurance company that issued the policy.
- (2) The insurer shall respond to a request for verification of coverage submitted by a life settlement provider or life settlement broker not later than thirty (30) calendar days after the date the request is received. The request for verification of coverage shall be made on a form approved by the ~~commissioner~~~~executive director~~. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at that time regarding the validity of the insurance contract or possible fraud, and shall provide sufficient detail of all reasons for the investigation to the life settlement provider or life settlement broker.
- (3) Prior to or at the time of execution of the life settlement contract, the life settlement provider shall obtain a witnessed document in which the owner consents to the life settlement contract, represents that he or she has a full and complete understanding of the life settlement contract and a full and complete understanding of the benefits of the policy, and acknowledges that he or she has entered into the life settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, that the terminal or chronic illness or condition was diagnosed after the policy was issued.
- (4) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information.
- (5) All life settlement contracts entered into in this state shall contain an unconditional right to rescind a life settlement contract before the earlier of thirty (30) calendar days after the date it is executed or fifteen (15) calendar days after the date of receipt of the proceeds of the life settlement contract by the owner. If exercised by the owner, rescission is effective only if both notice of the rescission is given, and within the rescission period all proceeds, and any premiums, loans, and loan interest are repaid to the life settlement provider. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded subject to repayment of all proceeds and any premiums, loans, and loan interest to the life settlement provider. The life settlement provider shall effectuate the change of ownership of the policy or certificate to the owner immediately upon effective rescission by the owner.
- (6) The independent third-party trustee shall transfer the proceeds that are due to the owner within two (2) business days upon receipt of acknowledgment of the transfer of ownership from the insurer.
- (7) Failure to tender consideration to the owner for the life settlement contract by the date disclosed renders the life settlement contract voidable by the owner for lack of consideration until the time consideration is tendered to and accepted by the owner.
- (8) Contacts with the insured for the purpose of determining the health status of the insured after the execution of the life settlement contract shall only be made by the life settlement provider or its authorized representative and shall be limited to once every three (3) months for an insured with a life expectancy of more than one (1) year, and to no more than once per month for an insured with a life expectancy of one (1) year or less. The life settlement provider shall explain the procedure for these contacts at the time the life settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Life settlement providers shall be responsible for the actions of their authorized representatives.
- (9) The insurer shall not unreasonably delay effecting change of ownership or beneficiary with any life settlement contract lawfully entered into in the Commonwealth or with a resident of the Commonwealth.
- (10) If a life settlement broker performs any activities required of the provider under this section, the provider is deemed to have fulfilled those requirements of this section that have been properly performed by the broker.

- (11) If a life settlement broker performs any of the disclosure activities required of the provider under KRS 304.15-710, the provider is deemed to have fulfilled those requirements of KRS 304.15-710 that have been properly performed by the broker.
- (12) Within twenty (20) days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a life settlement contract. The notice shall be accompanied by the documents required by KRS 304.15-702(1)(b).
- (13) Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract shall be computed as a percentage of the offer obtained, not the face value of the policy. Nothing in this section shall be construed as prohibiting a broker from reducing such broker's fee below this percentage if the broker so chooses.
- (14) The broker shall disclose to the owner anything of value paid or given to a broker which relates to a life settlement contract.

➔Section 1197. KRS 304.15-717 is amended to read as follows:

- (1) It is unlawful for any person:
 - (a) To knowingly or intentionally enter into a life settlement contract when the subject life insurance policy was obtained by means of a false, deceptive, or misleading application for the life insurance policy;
 - (b) To knowingly or intentionally interfere with the enforcement of the provisions of this subtitle or investigations of suspected or actual violations of this subtitle;
 - (c) To knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements as defined in KRS 304.15-020(5);
 - (d) To commit a fraudulent life settlement act;
 - (e) To misrepresent that the life settlement provider, life settlement broker, other licensee, or any other person has been guaranteed, sponsored, recommended, or approved by the state, or by any local, state, or federal agency or officer thereof;
 - (f) To act as a life settlement broker if the person is acting as a life settlement provider in the same life settlement contract;
 - (g) For any person to pay any compensation or provide anything of value to an insured's physician, attorney, accountant, or any other person who provides medical, legal, or financial advice to the insured as a finder's or referral fee;
 - (h) To engage in any transaction, practice, or course of business if such person knows or reasonably should have known that the intent was to avoid the notice requirements of KRS 304.15-020 and 304.15-700 to 304.15-720;
 - (i) To engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of this state;
 - (j) To issue, solicit, market, or otherwise promote the purchase of a life insurance policy for the sole purpose of or with a primary emphasis on settling the policy;
 - (k) To enter into a life settlement contact on a policy that was the subject of a premium finance agreement as described in KRS 304.15-020(17)(b)2.;
 - (l) With respect to any life settlement contract or life insurance policy and a broker, to knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to any provider, financing entity, or related provider trust, or any insurer that is controlling, controlled by, or under common control with such broker unless disclosed to the owner;
 - (m) With respect to any life settlement contract or life insurance policy and a provider, to knowingly enter into a life settlement contract with an owner if, in connection with such life settlement contract, anything of value will be paid to a broker or provider that is controlling, controlled by, or under common control with such provider, the financing entity, or related provider trust that is involved in such life settlement, or any insurer unless disclosed to the owner;

- (n) With respect to a provider, to enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by administrative regulation, have been filed with the **commissioner**~~{executive director}~~. Marketing materials shall not expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time shall be considered a violation of KRS 304.15-700 to 304.15-720;
- (o) With respect to any insurance company, insurance producer, broker, or provider, or any other person, to make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy; or
- (p) If an insurer, to:
 1. Engage in or permit any discrimination between individuals of the same class, same policy amount, and equal expectation of life in the rates charged for any life insurance policy or annuity contract based upon an individual's having entered into a life settlement contract or being insured under a settled policy;
 2. Make any false or misleading statement as to the business of life settlements or financing premiums due for a policy or to any owner or insured for the purpose of inducing or tending to induce the owner or insured not to enter into a life settlement contract; or
 3. Engage in any transaction, act, practice, or course of business, or dealing which restricts, limits, or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy.

This subsection shall not prohibit a statement that the person is licensed, if that statement is true and the effect of the statement is not misrepresented.

- (2) A life settlement contract and an application for a life settlement contract, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and upon conviction may be subject to fines or confinement in prison, or both."

The lack of a statement required by this section does not constitute a defense in any prosecution for a fraudulent life settlement act.

- (3) (a) A person engaged in the business of life settlements who has knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed shall provide the information required to the **commissioner**~~{executive director}~~, in a manner prescribed by the **commissioner**~~{executive director}~~.
- (b) Any person who has knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide the information required to the **commissioner**~~{executive director}~~, in a manner prescribed by the **commissioner**~~{executive director}~~ in administrative regulations.
- (4) (a) Civil liability may not be imposed on and a cause of action may not arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts, or suspected or completed fraudulent insurance acts, if the information is provided to or received from:
 1. The **commissioner**~~{executive director}~~ or the **commissioner's**~~{executive director's}~~ employees, agents, or representatives;
 2. Federal, state, or local law enforcement or regulatory officials, or their employees, agents, or representatives;
 3. A person involved in the prevention and detection of fraudulent life settlement acts or that person's agents, employees, or representatives;
 4. The National Association of Insurance Commissioners (NAIC), the National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), or their employees, agents, or representatives, or any other regulatory body overseeing life insurance or life settlement contracts;

5. The insurer that issued the policy covering the life of the insured; or
 6. The licensee and any agents, employees, or representatives.
- (b) This subsection shall not apply to a statement made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that this subsection shall not apply because the person filing the report or furnishing the information did so with actual malice.
 - (c) A person who furnishes information concerning fraudulent life settlement acts and who is a party in a civil cause of action for libel, slander, or another relevant tort arising out of activities in carrying out the provisions of this chapter shall be entitled to an award of attorney's fees and court costs if he is the prevailing party in the suit and the party bringing the action was not substantially justified in filing the cause of action. For purposes of this paragraph, a proceeding is "substantially justified" if a person had a reasonable basis in law or fact at the time the cause of action was initiated.
 - (d) This subsection shall not abrogate or modify common law or statutory privileges or immunities enjoyed by a person.
 - (e) This subsection shall not apply to a person who furnishes information concerning his own suspected, anticipated, or completed fraudulent life settlement acts or suspected, anticipated, or completed fraudulent insurance acts.
- (5) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the **commissioner**~~{executive director}~~ in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action, except that:
- (a) This subsection shall not prohibit release by the **commissioner**~~{executive director}~~ of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:
 1. In administrative or judicial proceedings to enforce laws administered by the **commissioner**~~{executive director}~~;
 2. To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts, or to the National Association of Insurance Commissioners (NAIC); or
 3. At the discretion of the **commissioner**~~{executive director}~~, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.
 - (b) The release of documents and evidence provided by paragraph (a) of this subsection shall not abrogate or modify the privilege granted by this subsection.
- (6) This section shall not:
- (a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;
 - (b) Prevent or prohibit a person from voluntarily disclosing information concerning fraudulent life settlement acts to a law enforcement or regulatory agency other than the **Department**~~{Office}~~ of Insurance;
 - (c) Limit the powers granted elsewhere by the laws of this state to the **commissioner**~~{executive director}~~ or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers; or
 - (d) Preempt, supersede, or limit any provision of any state securities law or any rule, order, administrative regulation, or notice issued thereunder.
- (7) A life settlement provider shall adopt antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. The **commissioner**~~{executive director}~~ may order or, if a licensee requests, may grant modifications of the required initiatives listed in this subsection as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so

long as the modifications reasonably may be expected to accomplish the purpose of this section. Antifraud initiatives shall include the following:

- (a) Fraud investigators, who may be life settlement providers or employees or independent contractors of those life settlement providers; and
- (b) An antifraud plan submitted to the **commissioner**~~{executive director}~~ that shall include but is not limited to the following:
 1. The procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;
 2. The procedures for reporting possible fraudulent life settlement acts to the **commissioner**~~{executive director}~~;
 3. The plan for antifraud education and training of underwriters and other personnel; and
 4. A chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

Antifraud plans submitted to the **commissioner**~~{executive director}~~ shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

➔Section 1198. KRS 304.15-719 is amended to read as follows:

Each provider shall file with the **commissioner**~~{executive director}~~ on or before March 1 of each year an annual statement containing such information as the **commissioner**~~{executive director}~~ may prescribe by administrative regulation. In addition to any other requirements, the annual statement of each provider shall also include the names of the insurance companies whose policies have been settled.

➔Section 1199. KRS 304.15-720 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall have the authority to:

- (1) Promulgate administrative regulations in accordance with KRS Chapter 13A implementing KRS 304.15-020 and 304.15-700 to 304.15-720;
- (2) Establish standards for evaluating reasonableness of payments under life settlement contracts where the insured under the policy which is the subject of a life settlement contract is terminally or chronically ill. This authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a policy. A life settlement provider, where the insured is not terminally or chronically ill, shall pay an amount greater than the cash surrender value or accelerated death benefit then available;
- (3) Establish appropriate licensing requirements and fees for agents and brokers; and
- (4) Promulgate administrative regulations governing the relationship and responsibilities of an insurer and a life settlement provider, life insurance producer, and others in the business of life settlements during the period of consideration or effectuation of a life settlement contract.

➔Section 1200. KRS 304.16-110 is amended to read as follows:

No policy of group life insurance shall be delivered in this state unless it contains in substance the standard provisions as required by KRS 304.16-120 to 304.16-210, inclusive, or provisions which in the opinion of the **commissioner**~~{executive director}~~ are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholders; except, that:

- (1) Provisions set forth in KRS 304.16-170 to 304.16-210, inclusive, shall not apply to policies issued to a creditor to insure its debtors.
- (2) If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the **commissioner**~~{executive director}~~ is or are equitable to the insured persons and to the policyholder, but such nonforfeiture benefits are not required to be the same as those required for individual life insurance policies.

- (3) The standard provisions required for individual life insurance policies shall not apply to group life insurance policies.

➔Section 1201. KRS 304.17-030 is amended to read as follows:

No policy of health insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this title, and complies with the following:

- (1) The entire money and other considerations therefor shall be expressed therein;
- (2) The time when the insurance takes effect and terminates shall be expressed therein;
- (3) It shall purport to insure only one (1) person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family, who shall be deemed the policyholder, any two (2) or more eligible members of that family, including husband, wife, unmarried dependent children to age nineteen (19), unmarried children from nineteen (19) to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the policyholder for maintenance and support, and any other person dependent upon the policyholder as provided pursuant to KRS 304.17-310;
- (4) The style, arrangement, and overall appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any indorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten (10) point with a lower case unspaced alphabet length not less than one hundred and twenty (120) point (the "text" shall include all printed matter except the name and address of the insurer, name on title of the policy, the brief description, if any, and captions and subcaptions);
- (5) The exceptions and reductions of indemnity shall be set forth in the policy and other than those contained in KRS 304.17-050 to 304.17-290, inclusive, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and Reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction shall be included with the benefit provision to which it applies;
- (6) Each form, including riders and indorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and
- (7) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the *commissioner*~~{executive director}~~.

➔Section 1202. KRS 304.17-040 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in KRS 304.17-050 to 304.17-160, inclusive, in the words in which the same appear; except, that the insurer may at its option, substitute for one (1) or more of such provisions corresponding provisions of different wording approved by the *commissioner*~~{executive director}~~ which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision shall be preceded individually by the applicable caption shown, or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the *commissioner*~~{executive director}~~ may approve.
- (2) If any such provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the *commissioner*~~{executive director}~~, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of a provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

➔Section 1203. KRS 304.17-180 is amended to read as follows:

Except as provided in subsection (2) of KRS 304.17-040, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in KRS 304.17-190 to 304.17-290, inclusive, unless such provisions are in the words in which the same appear in the applicable section, except that the

insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the **commissioner**~~{executive director}~~ which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the **commissioner**~~{executive director}~~ may approve.

➔Section 1204. KRS 304.17-220 is amended to read as follows:

- (1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the like amount of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

- (2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in subsection (1) of KRS 304.17-230, there shall be added to the caption of the foregoing provision the phrase "... Expense Incurred Benefits."
- (3) The insurer may, at its option, include in the provision provided in subsection (1) of this section, a definition of "other valid coverage" approved as to form by the **commissioner**~~{executive director}~~, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the **commissioner**~~{executive director}~~. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying such policy provision no third-party liability coverage amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise, shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying such policy provision no third-party liability coverage shall be included as "other valid coverage."

➔Section 1205. KRS 304.17-230 is amended to read as follows:

- (1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

- (2) If the policy provision set out in subsection (1) of this section is included in a policy which also contains the policy provision set out in subsection (1) of KRS 304.17-220, there shall be added to the caption of the foregoing provisions the phrase "... Other Benefits."
- (3) The insurer may, at its option, include in the provision set out in subsection (1) of this section, a definition of "other valid coverage" approved as to form by the **commissioner**~~{executive director}~~, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance laws or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the **commissioner**~~{executive director}~~. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit

statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise, shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying such policy provision no third-party liability coverage shall be included as "other valid coverage."

➔Section 1206. KRS 304.17-240 is amended to read as follows:

(1) There may be a provision as follows:

"After the loss-of-time benefit of this policy has been payable for ninety (90) days, such benefit will be adjusted, as provided below, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed -- % of the insured's earned income; provided, however, that if the information contained in the application discloses that the total amount of loss-of-time benefits under this policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded -- % of the insured's earned income at the time of such application, such higher percentage will be used in the place of -- %. Such adjusted loss-of-time benefit under this policy for any month shall be only such proportion of the loss-of-time benefit otherwise payable under this policy as:

- (a) The product of the insured's earned income and -- % (or, if higher, the alternative percentage described at the end of the first sentence of this provision) bears to
- (b) The total amount of loss-of-time benefits payable for such month under this policy and all other valid loss-of-time coverage on the insured (without giving effect of the overinsurance provision in this or any other coverage) less in both paragraphs (a) and (b) of this subsection any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an 'overinsurance provision.' In making such computation, all benefits and earnings shall be converted to a consistent (insert 'weekly' if the loss-of-time benefit of this policy is payable weekly, 'monthly' if such benefit is payable monthly, etc.) basis. If the numerator of the foregoing ratio is zero (0) or is negative, no benefit shall be payable under this policy. In no event shall this provision
 - 1. Operate to reduce the total combined amount of loss-of-time benefits for such month payable under this policy and all other valid loss-of-time coverage below the lesser of three hundred dollars (\$300) and the total combined amount of loss-of-time benefits determined without giving effect to any 'overinsurance provision' nor
 - 2. Operate to increase the amount of benefits payable under this policy above the amount which would have been paid in the absence of this provision, nor
 - 3. Take into account or operate to reduce any benefit other than the loss-of-time benefit.
- (c) For purposes of this provision:
 - 1. 'Earned income,' except where otherwise specified, means the greater of the monthly earnings of the insured at the time disability commences and his *or her* average monthly earnings for a period of two (2) years immediately preceding the commencement of such disability, and shall not include any investment income or any other income not derived from the insured's vocational activities.
 - 2. 'Overinsurance provision' shall include this provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the total amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings."

(2) The foregoing provision may be included only in a policy which provides a loss-of-time benefit which may be payable for at least fifty-two (52) weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than sixty percent (60%), selected by the insurer and inserted in lieu of the blank factor above. The insurer may require, as part of the proof of claim, the information necessary to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of such other coverage shall be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy shall include a

definition of "valid loss-of-time coverage," approved as to form by the **commissioner**~~{executive director}~~, which definition may include coverage provided by governmental agencies and by organizations subject to regulations by insurance law and by insurance authorities of this or any other state of the United States or any other country or subdivision thereof, coverage provided for such insured pursuant to any disability benefits statute or any workers' compensation or employer's liability statute, benefits provided by labor-management trustee plans or union welfare plans or by employer or employee benefit organizations, or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved by the **commissioner**~~{executive director}~~.

- (3) If by application of any of the foregoing provisions the insurer effects a material reduction of benefits otherwise payable under the policy, the insurer shall refund to the insured any premium unearned on the policy by reason of such reduction of coverage during the policy year current and that next preceding at the time the loss commenced, subject to the insurer's right to provide in the policy that no such reduction of benefits or refund will be made unless the unearned premium to be so refunded amounts to five dollars (\$5) or such larger sum as the insurer may so specify.

➔Section 1207. KRS 304.17-380 is amended to read as follows:

Each insurer issuing health insurance policies for delivery in this state shall, before use thereof, file with the **commissioner**~~{executive director}~~ its premium rates and classification of risks pertaining to such policies. The insurer shall adhere to its rates and classifications as filed with the **commissioner**~~{executive director}~~. The insurer may change such filings from time to time as it deems proper.

➔Section 1208. KRS 304.17-383 is amended to read as follows:

- (1) No filing under KRS 304.17-380 that contains an increase in premium rates shall become effective until the **commissioner**~~{executive director}~~ has issued an order approving the filing. The **commissioner**~~{executive director}~~ may hold a hearing within thirty (30) days after receiving a filing under this subtitle containing a rate increase, and after the hearing shall issue a final order approving or disapproving the filing.
- (2) In approving or disapproving a filing under subsection (1) of this section, the **commissioner**~~{executive director}~~ shall consider:
- (a) Whether the benefits provided are reasonable in relation to the premium charged;
 - (b) Previous premium rates for the policies to which the filing applies; and
 - (c) The effect of the increase on policyholders.
- (3) The **commissioner**~~{executive director}~~ shall notify the Attorney General in writing of the hearing and of the premium increase to be considered. The Attorney General shall be considered a party to the hearing if he *or she* chooses to participate.
- (4) No insurer receiving the **commissioner's**~~{executive director's}~~ approval of a filing under this section shall submit a new filing containing a rate increase for any of the same policies until at least six (6) months have elapsed following the effective date of the approved increase.
- (5) At any time, the **commissioner**~~{executive director}~~, after an administrative hearing may withdraw approval of rates previously approved under this section if he *or she* determines that the benefits are no longer reasonable in relation to the premium charged. Administrative hearings conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B.

➔Section 1209. KRS 304.17A-005 is amended to read as follows:

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

- (1) "Association" means an entity, other than an employer-organized association, that has been organized and is maintained in good faith for purposes other than that of obtaining insurance for its members and that has a constitution and bylaws;
- (2) "At the time of enrollment" means:
 - (a) At the time of application for an individual, an association that actively markets to individual members, and an employer-organized association that actively markets to individual members; and
 - (b) During the time of open enrollment or during an insured's initial or special enrollment periods for group health insurance;

- (3) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the insurer to the individual or small group, or employer as defined in KRS 304.17A-0954, with similar case characteristics for health benefit plans with the same or similar coverage;
- (4) "Basic health benefit plan" means any plan offered to an individual, a small group, or employer-organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of this subtitle. If vision or eye services are offered, these services may be provided by an ophthalmologist or optometrist. Chiropractic benefits may be offered by providers licensed pursuant to KRS Chapter 312;
- (5) "Bona fide association" means an entity as defined in 42 U.S.C. sec. 300gg-91(d)(3);
- (6) "Church plan" means a church plan as defined in 29 U.S.C. sec. 1002(33);
- (7) "COBRA" means any of the following:
- (a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric vaccines;
 - (b) The Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161 et seq. other than sec. 1169); or
 - (c) 42 U.S.C. sec. 300bb;
- (8) (a) "Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:
1. A group health plan;
 2. Health insurance coverage;
 3. Part A or Part B of Title XVIII of the Social Security Act;
 4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;
 5. Chapter 55 of Title 10, United States Code, including medical and dental care for members and certain former members of the uniformed services, and for their dependents; for purposes of Chapter 55 of Title 10, United States Code, "uniformed services" means the Armed Forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration and of the Public Health Service;
 6. A medical care program of the Indian Health Service or of a tribal organization;
 7. A state health benefits risk pool;
 8. A health plan offered under Chapter 89 of Title 5, United States Code, such as the Federal Employees Health Benefit Program;
 9. A public health plan as established or maintained by a state, the United States government, a foreign country, or any political subdivision of a state, the United States government, or a foreign country that provides health coverage to individuals who are enrolled in the plan;
 10. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. sec. 2504(e)); or
 11. Title XXI of the Social Security Act, such as the State Children's Health Insurance Program.
- (b) This term does not include coverage consisting solely of coverage of excepted benefits as defined in subsection (14) of this section;
- (9) "Dependent" means any individual who is or may become eligible for coverage under the terms of an individual or group health benefit plan because of a relationship to a participant;
- (10) "Employee benefit plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan as defined by ERISA;
- (11) "Eligible individual" means an individual:

- (a) For whom, as of the date on which the individual seeks coverage, the aggregate of the periods of creditable coverage is eighteen (18) or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan. A period of creditable coverage under this paragraph shall not be counted if, after that period, there was a sixty-three (63) day period of time, excluding any waiting or affiliation period, during all of which the individual was not covered under any creditable coverage;
 - (b) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. secs. 1395j et seq.), or a state plan under Title XIX of the Social Security Act (42 U.S.C. secs. 1396 et seq.) and does not have other health insurance coverage;
 - (c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) of this subsection was not terminated based on a factor described in KRS 304.17A-240(2)(a), (b), and (c);
 - (d) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under KRS 304.18-110, who elected the coverage; and
 - (e) Who, if the individual elected the continuation coverage, has exhausted the continuation coverage under the provision or program;
- (12) "Employer-organized association" means any of the following:
- (a) Any entity that was qualified by the ~~commissioner~~~~executive director~~ as an eligible association prior to April 10, 1998, and that has actively marketed a health insurance program to its members since September 8, 1996, and which is not insurer-controlled;
 - (b) Any entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and that is not insurer-controlled; or
 - (c) Any entity that is a bona fide association as defined in 42 U.S.C. sec. 300gg-91(d)(3), whose members consist principally of employers, and for which the entity's health insurance decisions are made by a board or committee, the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation.
- Except as provided in KRS 304.17A-200, 304.17A.210, and 304.17A-220, no employer-organized association shall be treated as an association, small group, or large group under this subtitle;
- (13) "Employer-organized association health insurance plan" means any health insurance plan, policy, or contract issued to an employer-organized association, or to a trust established by one (1) or more employer-organized associations, or providing coverage solely for the employees, retired employees, directors and their spouses and dependents of the members of one (1) or more employer-organized associations;
- (14) "Excepted benefits" means benefits under one (1) or more, or any combination thereof, of the following:
- (a) Coverage only for accident, including accidental death and dismemberment, or disability income insurance, or any combination thereof;
 - (b) Coverage issued as a supplement to liability insurance;
 - (c) Liability insurance, including general liability insurance and automobile liability insurance;
 - (d) Workers' compensation or similar insurance;
 - (e) Automobile medical payment insurance;
 - (f) Credit-only insurance;
 - (g) Coverage for on-site medical clinics;
 - (h) Other similar insurance coverage, specified in administrative regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;
 - (i) Limited scope dental or vision benefits;
 - (j) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;

- (k) Such other similar, limited benefits as are specified in administrative regulations;
 - (l) Coverage only for a specified disease or illness;
 - (m) Hospital indemnity or other fixed indemnity insurance;
 - (n) Benefits offered as Medicare supplemental health insurance, as defined under section 1882(g)(1) of the Social Security Act;
 - (o) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code;
 - (p) Coverage similar to that in paragraphs (n) and (o) of this subsection that is supplemental to coverage under a group health plan; and
 - (q) Health flexible spending arrangements;
- (15) "Governmental plan" means a governmental plan as defined in 29 U.S.C. sec. 1002(32);
- (16) "Group health plan" means a plan, including a self-insured plan, of or contributed to by an employer, including a self-employed person, or employee organization, to provide health care directly or otherwise to the employees, former employees, the employer, or others associated or formerly associated with the employer in a business relationship, or their families;
- (17) "Guaranteed acceptance program participating insurer" means an insurer that is required to or has agreed to offer health benefit plans in the individual market to guaranteed acceptance program qualified individuals under KRS 304.17A-400 to 304.17A-480;
- (18) "Guaranteed acceptance program plan" means a health benefit plan in the individual market issued by an insurer that provides health benefits to a guaranteed acceptance program qualified individual and is eligible for assessment and refunds under the guaranteed acceptance program under KRS 304.17A-400 to 304.17A-480;
- (19) "Guaranteed acceptance program" means the Kentucky Guaranteed Acceptance Program established and operated under KRS 304.17A-400 to 304.17A-480;
- (20) "Guaranteed acceptance program qualified individual" means an individual who, on or before December 31, 2000:
- (a) Is not an eligible individual;
 - (b) Is not eligible for or covered by other health benefit plan coverage or who is a spouse or a dependent of an individual who:
 1. Waived coverage under KRS 304.17A-210(2); or
 2. Did not elect family coverage that was available through the association or group market;
 - (c) Within the previous three (3) years has been diagnosed with or treated for a high-cost condition or has had benefits paid under a health benefit plan for a high-cost condition, or is a high risk individual as defined by the underwriting criteria applied by an insurer under the alternative underwriting mechanism established in KRS 304.17A-430(3);
 - (d) Has been a resident of Kentucky for at least twelve (12) months immediately preceding the effective date of the policy; and
 - (e) Has not had his or her most recent coverage under any health benefit plan terminated or nonrenewed because of any of the following:
 1. The individual failed to pay premiums or contributions in accordance with the terms of the plan or the insurer had not received timely premium payments;
 2. The individual performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage; or
 3. The individual engaged in intentional and abusive noncompliance with health benefit plan provisions;
- (21) "Guaranteed acceptance plan supporting insurer" means either an insurer, on or before December 31, 2000, that is not a guaranteed acceptance plan participating insurer or is a stop loss carrier, on or before December

31, 2000, provided that a guaranteed acceptance plan supporting insurer shall not include an employer-sponsored self-insured health benefit plan exempted by ERISA;

- (22) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, short-term coverage, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code, or limited health service benefit plans;
- (23) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:
- (a) Physicians, osteopaths, and podiatrists licensed under KRS Chapter 311;
 - (b) Chiropractors licensed under KRS Chapter 312;
 - (c) Dentists licensed under KRS Chapter 313;
 - (d) Optometrists licensed under KRS Chapter 320;
 - (e) Physician assistants regulated under KRS Chapter 311;
 - (f) Advanced registered nurse practitioners licensed under KRS Chapter 314; and
 - (g) Other health care practitioners as determined by the *department*~~{office}~~ by administrative regulations promulgated under KRS Chapter 13A;
- (24) (a) "High-cost condition," pursuant to the Kentucky Guaranteed Acceptance Program, means a covered condition in an individual policy as listed in paragraph (c) of this subsection or as added by the *commissioner*~~{executive director}~~ in accordance with KRS 304.17A-280, but only to the extent that the condition exceeds the numerical score or rating established pursuant to uniform underwriting standards prescribed by the *commissioner*~~{executive director}~~ under paragraph (b) of this subsection that account for the severity of the condition and the cost associated with treating that condition.
- (b) The *commissioner*~~{executive director}~~ by administrative regulation shall establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost by using:
1. Codes in the most recent version of the "International Classification of Diseases" that correspond to the medical conditions in paragraph (c) of this subsection and the costs for administering treatment for the conditions represented by those codes; and
 2. The most recent version of the questionnaire incorporated in a national underwriting guide generally accepted in the insurance industry as designated by the *commissioner*~~{executive director}~~, the scoring scale for which shall be established by the *commissioner*~~{executive director}~~.
- (c) The diagnosed medical conditions are: acquired immune deficiency syndrome (AIDS), angina pectoris, ascites, chemical dependency cirrhosis of the liver, coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia, hemophilia, Hodgkin's disease, Huntington chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis, muscular dystrophy, myasthenia gravis, myotonia, open heart surgery, Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia, stroke, syringomyelia, and Wilson's disease;

- (25) "Index rate" means, for each class of business as to a rating period, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate;
- (26) "Individual market" means the market for the health insurance coverage offered to individuals other than in connection with a group health plan. The individual market includes an association plan that is not employer related, issued to individuals on an individually underwritten basis, other than an employer-organized association or a bona fide association, that has been organized and is maintained in good faith for purposes other than obtaining insurance for its members and that has a constitution and bylaws;
- (27) "Insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association, or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky;
- (28) "Insurer-controlled" means that the ~~commissioner~~~~executive director~~ has found, in an administrative hearing called specifically for that purpose, that an insurer has or had a substantial involvement in the organization or day-to-day operation of the entity for the principal purpose of creating a device, arrangement, or scheme by which the insurer segments employer groups according to their actual or anticipated health status or actual or projected health insurance premiums;
- (29) "Kentucky Access" has the meaning provided in KRS 304.17B-001(17);
- (30) "Large group" means:
- (a) An employer with fifty-one (51) or more employees; or
 - (b) An affiliated group with fifty-one (51) or more eligible members;
- (31) "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services and that integrate the financing and delivery of appropriate health care services to covered persons by arrangements with participating providers who are selected to participate on the basis of explicit standards for furnishing a comprehensive set of health care services and financial incentives for covered persons using the participating providers and procedures provided for in the plan;
- (32) "Market segment" means the portion of the market covering one (1) of the following:
- (a) Individual;
 - (b) Small group;
 - (c) Large group; or
 - (d) Association;
- (33) "Participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of the employer or members of the organization, or whose beneficiaries may be eligible to receive any benefit as established in Section 3(7) of ERISA;
- (34) "Preventive services" means medical services for the early detection of disease that are associated with substantial reduction in morbidity and mortality;
- (35) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals;
- (36) "Provider-sponsored integrated health delivery network" means any provider-sponsored integrated health delivery network created and qualified under KRS 304.17A-300 and KRS 304.17A-310;
- (37) "Purchaser" means an individual, organization, employer, association, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals;
- (38) "Rating period" means the calendar period for which premium rates are in effect. A rating period shall not be required to be a calendar year;

- (39) "Restricted provider network" means a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of the providers that have entered into a contractual arrangement with the insurer to provide health care services to covered individuals;
- (40) "Self-insured plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for covered services provided to its enrollees;
- (41) "Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two (2) but not more than fifty (50) employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year;
- (42) "Small group" means:
- (a) A small employer with two (2) to fifty (50) employees; or
 - (b) An affiliated group or association with two (2) to fifty (50) eligible members;
- (43) "Standard benefit plan" means the plan identified in KRS 304.17A-250; and
- (44) "Telehealth" has the meaning provided in KRS 311.550.

➔Section 1210. KRS 304.17A-071 is amended to read as follows:

- (1) The Kentucky Health Purchasing Alliance created under this subtitle shall not issue or renew any business after June 1, 1998. The **commissioner**~~executive director~~ shall take necessary and appropriate actions to terminate all activities of the alliance no later than June 30, 1999, and shall provide assistance to persons who are members of the alliance in obtaining health insurance coverage in the private market. KRS 304.17A-010 to 304.17A-070 shall become null and void on July 1, 1999.
- (2) No health benefit plans shall be issued, delivered, or renewed under the provisions of KRS 304.17A-110, 304.17A-120, and 304.17A-160 on or after June 30, 1998. Health benefit plans in effect on April 10, 1998, shall be subject to the provisions of KRS 304.17A-110, 304.17A-120, and 304.17A-160 until the end of the contract or policy period. The provisions of KRS 304.17A-110, 304.17A-120, and 304.17A-160 shall become null and void on July 1, 1999.

➔Section 1211. KRS 304.17A-080 is amended to read as follows:

- (1) There is hereby created and established a Health Insurance Advisory Council whose duties shall be to review and discuss with the **commissioner**~~executive director~~ any issues which impact the provision of health insurance in the state. The advisory council shall consist of nine (9) members: the **commissioner**~~executive director~~ plus eight (8) persons appointed by the Governor with the advice of the **commissioner**~~executive director~~ to serve two (2) year terms. The **commissioner**~~executive director~~ shall serve as chair of the advisory council.
- (2) The eight (8) persons appointed by the Governor with the advice of the **commissioner**~~executive director~~ shall be:
 - (a) Two (2) representatives of insurers currently offering health benefit plans in the state;
 - (b) Two (2) practicing health care providers;
 - (c) Two (2) representatives of purchasers of health benefit plans; and
 - (d) Two (2) representatives of agents.
- (3) The council shall:
 - (a) Review and discuss the design of the standard health benefit plan;
 - (b) Review and discuss the rate-filing process for all health benefit plans;
 - (c) Review and discuss the administrative regulations concerning this subtitle to be promulgated by the **department**~~office~~;
 - (d) Make recommendations on high-cost conditions as provided in KRS 304.17B-033;

- (e) Advise the **Department**~~{Office}~~ of Insurance concerning the **Department**~~{Office}~~ of Insurance's separation plan for the division of duties and responsibilities between the operation of the **Department**~~{Office}~~ of Insurance and the operation of Kentucky Access;
 - (f) Review and discuss issues that impact Kentucky Access; and
 - (g) Review and discuss other issues at the request of the **commissioner**~~{executive director}~~.
- (4) The advisory council shall be a budgetary unit of the **department**~~{office}~~ which shall pay all of the advisory council's necessary operating expenses and shall furnish all office space, personnel, equipment, supplies, and technical or administrative services required by the advisory council in the performance of the functions established in this section.

➔Section 1212. KRS 304.17A-095 is amended to read as follows:

- (1) (a) Notwithstanding any other provisions of this chapter to the contrary, each insurer that issues, delivers, or renews any health benefit plan to any market segment other than a large group shall, before use thereof, file with the **commissioner**~~{executive director}~~ its rates, fees, dues, and other charges paid by insureds, members, enrollees, or subscribers. The insurer shall also submit a copy of the filing to the Attorney General and shall comply with the provisions of this section. The insurer shall adhere to its rates, fees, dues, and other charges as filed with the **commissioner**~~{executive director}~~. The insurer shall submit a new filing to reflect any material change to the previously filed and approved rate filing. For all other changes, the insurer shall submit an amendment to a previously approved rate filing.
- (b) Notwithstanding any other provisions of this chapter to the contrary, each insurer that issues, delivers, or renews any health benefit plan to a large group as defined in KRS 304.17A-005 shall file the rating methodology with the **commissioner**~~{executive director}~~ and shall submit a copy of the filing to the Attorney General.
- (2) (a) A rate filing under this section may be used by the insurer on and after the date of filing with the **commissioner**~~{executive director}~~ prior to approval by the **commissioner**~~{executive director}~~. A rate filing shall be approved or disapproved by the **commissioner**~~{executive director}~~ within sixty (60) days after the date of filing. Should sixty (60) days expire after the **commissioner**~~{executive director}~~ receives the filing before approval or disapproval of the filing, the filing shall be deemed approved.
- (b) In the circumstances of a filing that has been deemed approved or has been disapproved under paragraph (a) of this subsection, the **commissioner**~~{executive director}~~ shall have the authority to order a retroactive reduction of rates to a reasonable rate if the **commissioner**~~{executive director}~~ subsequently determines that the filing contained misrepresentations or was based on fraudulent information, and if after applying the factors in subsection (3) of this section the **commissioner**~~{executive director}~~ determines that the rates were unreasonable. If the **commissioner**~~{executive director}~~ seeks to order a retroactive reduction of rates and more than one (1) year has passed since the date of the filing, the **commissioner**~~{executive director}~~ shall consider the reasonableness of the rate over the entire period during which the filing has been in effect.
- (3) In approving or disapproving a filing under this section, the **commissioner**~~{executive director}~~ shall consider:
 - (a) Whether the benefits provided are reasonable in relation to the premium or fee charged;
 - (b) Whether the fees paid to providers for the covered services are reasonable in relation to the premium or fee charged;
 - (c) Previous premium rates or fees for the policies or contracts to which the filing applies;
 - (d) The effect of the rate or rate increase on policyholders, enrollees, and subscribers;
 - (e) Whether the rates, fees, dues, or other charges are excessive, inadequate, or unfairly discriminatory;
 - (f) The effect on the rates of any assessment made under KRS 304.17B-021; and
 - (g) Other factors as deemed relevant by the **commissioner**~~{executive director}~~.
- (4) The rates for each policyholder shall be guaranteed for twelve (12) months at the rate in effect on the date of issue or date of renewal.

- (5) At any time the **commissioner**~~{executive director}~~, after a public hearing for which at least thirty (30) days' notice has been given, may withdraw approval of rates or fees previously approved under this section and may order an appropriate refund or future premium credit to policyholders, enrollees, and subscribers if the **commissioner**~~{executive director}~~ determines that the rates or fees previously approved are in violation of this chapter.
- (6) Notwithstanding subsection (2) of this section, premium rates may be used upon filing with the **department**~~{office}~~ of a policy form not previously used if the filing is accompanied by the policy form filing and a minimum loss ratio guarantee. Insurers may use the filing procedure specified in this subsection only if the affected policy forms disclose the benefit of a minimum loss ratio guarantee. An insurer may not elect to use the filing procedure in this subsection for a policy form that does not contain the minimum loss ratio guarantee. If an insurer elects to use the filing procedure in this subsection for a policy form or forms, the insurer shall not use a filing of premium rates that does not provide a minimum loss ratio guarantee for that policy form or forms.
- (a) The minimum loss ratio shall be in writing and shall contain at least the following:
1. An actuarial memorandum specifying the expected loss ratio that complies with the standards as set forth in this subsection;
 2. A statement certifying that all rates, fees, dues, and other charges are not excessive, inadequate, or unfairly discriminatory;
 3. Detailed experience information concerning the policy forms;
 4. A step-by-step description of the process used to develop the experience loss ratio, including demonstration with supporting data;
 5. A guarantee of a specific lifetime minimum loss ratio, that shall be greater than or equal to the following, taking into consideration adjustments for duration as set forth in administrative regulations promulgated by the **commissioner**~~{executive director}~~:
 - a. Sixty-five percent (65%) for policies issued to individuals or for certificates issued to members of an association that does not offer coverage to small employers;
 - b. Seventy percent (70%) for policies issued to small groups of two (2) to ten (10) employees or for certificates issued to members of an association that offers coverage to small employers; and
 - c. Seventy-five percent (75%) for policies issued to small groups of eleven (11) to fifty (50) employees;
 6. A guarantee that the actual Kentucky loss ratio for the calendar year in which the new rates take effect, and for each year thereafter until new rates are filed, will meet or exceed the minimum loss ratio standards referred to in subparagraph 5. of this paragraph, adjusted for duration;
 7. A guarantee that the actual Kentucky lifetime loss ratio shall meet or exceed the minimum loss ratio standards referred to in subparagraph 5. of this paragraph; and
 8. If the annual earned premium volume in Kentucky under the particular policy form is less than two million five hundred thousand dollars (\$2,500,000), the minimum loss ratio guarantee shall be based partially on the Kentucky earned premium and other credibility factors as specified by the **commissioner**~~{executive director}~~.
- (b) The actual Kentucky minimum loss ratio results for each year at issue shall be independently audited at the insurer's expense and the audit shall be filed with the **commissioner**~~{executive director}~~ not later than one hundred twenty (120) days after the end of the year at issue. The audit shall demonstrate the calculation of the actual Kentucky loss ratio in a manner prescribed as set forth in administrative regulations promulgated by the **commissioner**~~{executive director}~~.
- (c) The insurer shall refund premiums in the amount necessary to bring the actual loss ratio up to the guaranteed minimum loss ratio.
- (d) A Kentucky policyholder affected by the guaranteed minimum loss ratio shall receive a portion of the premium refund relative to the premium paid by the policyholder. The refund shall be made to all Kentucky policyholders insured under the applicable policy form during the year at issue if the refund

would equal ten dollars (\$10) or more per policy. The refund shall include statutory interest from July 1 of the year at issue until the date of payment. Payment shall be made not later than one hundred eighty (180) days after the end of the year at issue.

- (e) Premium refunds of less than ten dollars (\$10) per insured shall be aggregated by the insurer and paid to the Kentucky State Treasury.
 - (f) None of the provisions of subsections (2) and (3) of this section shall apply if premium rates are filed with the ~~department~~~~office~~ and accompanied by a minimum loss ratio guarantee that meets the requirements of this subsection. Such filings shall be deemed approved. Each insurer paying a risk assessment under KRS 304.17B-021 may include the amount of the assessment in establishing premium rates filed with the ~~commissioner~~~~executive director~~ under this section. The insurer shall identify any assessment allocated.
 - (g) The policy form filing of an insurer using the filing procedure with a minimum loss ratio guarantee will disclose to the enrollee, member, or subscriber as prescribed by the ~~commissioner~~~~executive director~~ an explanation of the lifetime loss ratio guarantee, and the actual loss ratio, and any adjustments for duration.
 - (h) The insurer who elects to use the filing procedure with a minimum loss ratio guarantee shall notify all policyholders of the refund calculation, the result of the refund calculation, the percent of premium on an aggregate basis to be refunded if any, any amount of the refund attributed to the payment of interests, and an explanation of amounts less than ten dollars (\$10).
 - (i) Notwithstanding the provisions of this subsection, an insurer may amend the policy forms used before March 31, 2005, or may amend the minimum loss ratio guarantee on policy forms filed with the ~~department~~~~office~~ and used by the insurer prior to March 31, 2005, to provide for a minimum loss ratio guarantee allowed under this subsection for policies issued, delivered, or renewed on or after March 31, 2005.
- (7) The ~~commissioner~~~~executive director~~ may by administrative regulation prescribe any additional information related to rates, fees, dues, and other charges as they relate to the factors set out in subsection (3) of this section that he or she deems necessary and relevant to be included in the filings and the form of the filings required by this section. When determining a loss ratio for the purposes of loss ratio guarantee, the insurer shall divide the total of the claims incurred, plus preferred provider organization expenses, case management and utilization review expenses, plus reinsurance premiums less reinsurance recoveries by the premiums earned less state and local premium taxes less other assessments. For purposes of determining the loss ratio for any loss ratio guarantee pursuant to this section, the ~~commissioner~~~~executive director~~ may examine the insurer's expenses for preferred provider organization, case management, utilization review, and reinsurance used by the insurer in calculating the loss ratio guarantee for reasonableness. Only those expenses found to be reasonable by the ~~commissioner~~~~executive director~~ may be used by the insurer for determining the loss ratio for purposes of any loss ratio guarantee.
- (8) (a) The ~~commissioner~~~~executive director~~ shall hold a hearing upon written request by the Attorney General. The written request shall be based upon one (1) or more of the reasons set out in subsection (3) of this section and shall state the applicable reasons.
- (b) An insurer may request a hearing, pursuant to KRS 304.2-310, with regard to any action taken by the ~~commissioner~~~~executive director~~ under this section as to the disapproval of rates or an order of a retroactive reduction of rates.
- (c) The hearing shall be a public hearing conducted in accordance with KRS 304.2-310.

➔Section 1213. KRS 304.17A-0952 is amended to read as follows:

Premium rates for a health benefit plan issued or renewed to an individual, a small group, or an association on or after April 10, 1998, shall be subject to the following provisions:

- (1) The premium rates charged during a rating period to an individual with similar case characteristics for the same coverage, or the rates that could be charged to that individual under the rating system for that class of business, shall not vary from the index rate by more than thirty-five percent (35%) of the index rate upon any policy issuance or renewal, on or after January 1, 2003.

- (2) Notwithstanding the thirty-five percent (35%) variance limitation in subsection (1) of this section, insurers offering an individual health benefit plan that is state-elected under sec. 35(e)(1)F of the Trade Act of 2002, Pub. L. No. 107-210 sec. 201, may vary from the index rate by more than thirty-five percent (35%) for individuals who are eligible for the health coverage tax credit under the following conditions:
 - (a) The insurer certifies that the individual does not meet the insurer's underwriting guidelines for issuance of an individual policy;
 - (b) The policy meets the requirements for state-elected coverage under the Trade Act of 2002; and
 - (c) The premium rate is actuarially justified and has been approved by the *Department*~~{Office}~~ of Insurance pursuant to KRS 304.17A-095.
- (3) The percentage increase in the premium rate charged to an individual for a new rating period shall not exceed the sum of the following:
 - (a) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the insurer is not issuing new policies, the insurer shall use the percentage change in the base premium rate;
 - (b) Any adjustment, not to exceed twenty percent (20%) annually and adjusted pro rata for rating periods of less than one (1) year, due to the claim experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the individual and dependents as determined from the insurer's rate manual for the class of business; and
 - (c) Any adjustment due to change in coverage or change in the case characteristics of the individual as determined from the insurer's rate manual for the class of business.
- (4) The premium rates charged during a rating period to a small group or to an association member with similar case characteristics for the same coverage, or the rates that could be charged to that small group or that association member under the rating system for that class of business, shall not vary from the index rate by more than fifty percent (50%) of the index rate.
- (5) The percentage increase in the premium rate charged to a small group or to an association member for a new rating period shall not exceed the sum of the following:
 - (a) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the insurer is not issuing new policies, the insurer shall use the percentage change in the base premium rate;
 - (b) Any adjustment, not to exceed twenty percent (20%) annually and adjusted pro rata for rating periods of less than one (1) year, due to the claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the employee, association member, or dependents as determined from the insurer's rate manual for the class of business; and
 - (c) Any adjustment due to change in coverage or change in the case characteristics of the small group or association member as determined from the insurer's rate manual for the class of business.
- (6) In utilizing case characteristics, the ratio of the highest rate factor to the lowest rate factor within a class of business shall not exceed five to one (5:1). For purpose of this limitation, case characteristics include age, gender, occupation or industry, and geographic area.
- (7) Adjustments in rates for claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, health status, and duration of coverage shall not be charged to an individual group member or the member's dependents. Any adjustment shall be applied uniformly to the rates charged for all individuals and dependents of the small group.
- (8) The *commissioner*~~{executive director}~~ may approve establishment of additional classes of business upon application to the *commissioner*~~{executive director}~~ and a finding by the *commissioner*~~{executive director}~~ that the additional class would enhance the efficiency and fairness for the applicable market segment.
 - (a) The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business in that market segment by more than ten percent (10%).

- (b) An insurer may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative cost related to the following reasons:
1. The insurer uses more than one (1) type of system for the marketing and sale of the health benefit plans;
 2. The insurer has acquired a class of business from another insurer; or
 3. The insurer is offering a state-elected plan under the provisions of the Trade Act of 2002, Pub. L. No. 107-210 sec. 201.
- (c) Notwithstanding any other provision of this subsection, beginning January 1, 2001, a GAP participating insurer may establish a separate class of business for the purpose of separating guaranteed acceptance program qualified individuals from other individuals enrolled in their plan prior to January 1, 2001. The index rate for the separate class created under this paragraph shall be established taking into consideration expected claims experience and administrative costs of the new class of business and the previous class of business.
- (9) For the purpose of this section, a health benefit plan that utilizes a restricted provider network shall not be considered similar coverage to a health benefit plan that does not utilize a restricted provider network if utilization of the restricted provider network results in substantial differences in claims costs.
- (10) Notwithstanding any other provision of this section, an insurer shall not be required to utilize the experience of those individuals with high-cost conditions who enrolled in its plans between July 15, 1995, and April 10, 1998, to develop the insurer's index rate for its individual policies.
- (11) Nothing in this section shall be construed to prevent an insurer from offering incentives to participate in a program of disease prevention or health improvement.

➔Section 1214. KRS 304.17A-0954 is amended to read as follows:

- (1) For purposes of this section:
- (a) "Base premium rate" has the meaning provided in KRS 304.17A-005;
 - (b) "Employer" means a person engaged in a trade or business who has two (2) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year;
 - (c) "Employer-organized association" means any of the following:
 1. Any entity which was qualified by the **commissioner**~~executive director~~ as an eligible association prior to April 10, 1998, and which has actively marketed a health insurance program to its members after September 8, 1996, and which is not insurer-controlled;
 2. An entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and which is not insurer-controlled; or
 3. Any entity which is a bona fide association as defined in 42 U.S.C. sec. 300gg-91(d)(3), whose members consist principally of employers, and for which the entity's health insurance decisions are made by a board or committee the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation;
 - (d) "Index rate" has the meaning provided in KRS 304.17A-005.
- (2) Notwithstanding any other provision of this chapter, the amount or rate of premiums for an employer-organized association health plan may be determined, subject to the restrictions of subsection (3) of this section, based upon the experience or projected experience of the employer-organized associations whose employers obtain group coverage under the plan. Without the written consent of the employer-organized association filed with the **commissioner**~~executive director~~, the index rate for the employer-organized association shall be calculated solely with respect to that employer-organized association and shall not be tied to, linked to, or otherwise adversely affected by any other index rate used by the issuing insurer.

- (3) The following restrictions shall be applied in calculating the permissible amount or rate of premiums for an employer-organized health insurance plan:
- (a) The premium rates charged during a rating period to members of the employer-organized association with similar characteristics for the same or similar coverage, or the premium rates that could be charged to a member of the employer-organized association under the rating system for that class of business, shall not vary from its own index rate by more than fifty percent (50%) of its own index rate.
 - (b) The percentage increase in the premium rate charged to an employer member of an employer-organized association for a new rating period shall not exceed the sum of the following:
 1. The percentage change in the new business premium rate for the employer-organized association measured from the first day of the prior rating period to the first day of the new rating period;
 2. Any adjustment, not to exceed twenty percent (20%) annually and adjusted pro rata for rating period of less than one (1) year, due to the claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the member as determined from the insurer's rate manual; and
 3. Any adjustment due to change in coverage or change in the case characteristics of the member as determined by the insurer's rate manual.
- (4) In utilizing case characteristics, the ratio of the highest rate factor to the lowest rate factor within a class of business shall not exceed five to one (5:1). For purpose of this limitation, case characteristics include age, gender, occupation or industry, and geographic area.
- (5) For the purpose of this section, a health insurance contract that utilizes a restricted provider network shall not be considered similar coverage to a health insurance contract that does not utilize a restricted provider network if utilization of the restricted provider network results in measurable differences in claims costs.

➔Section 1215. KRS 304.17A-138 is amended to read as follows:

- (1) (a) A health benefit plan shall not exclude a service from coverage solely because the service is provided through telehealth and not provided through a face-to-face consultation if the consultation is provided through the telehealth network established under KRS 194A.125. A health benefit plan may provide coverage for a consultation at a site not within the telehealth network at the discretion of the insurer.
- (b) A telehealth consultation shall not be reimbursable under this section if it is provided through the use of an audio-only telephone, facsimile machine, or electronic mail.
- (2) Benefits for a service provided through telehealth required by this section may be made subject to a deductible, copayment, or coinsurance requirement. A deductible, copayment, or coinsurance applicable to a particular service provided through telehealth shall not exceed the deductible, copayment, or coinsurance required by the health benefit plan for the same service provided through a face-to-face consultation.
- (3) Payment made under this section may be consistent with any provider network arrangements that have been established for the health benefit plan.
- (4) The ~~department~~~~(office)~~ shall promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained in conjunction with this section.

➔Section 1216. KRS 304.17A-150 is amended to read as follows:

- (1) On and after July 15, 1995, it is an unfair trade practice for an insurer, agent, broker, or any other person in the business of marketing and selling health plans, to commit or perform any of the following acts:
 - (a) Encourage individuals or groups to refrain from filing an application for coverage with the insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
 - (b) Encourage or direct individuals or groups to seek coverage from another insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
 - (c) Encourage an employer to exclude an employee from coverage.

The provisions of this subsection shall not apply to information provided regarding the established geographic service area of an insurer.

- (2) It is an unfair trade practice for an insurer to compensate an agent, broker, or any other person in the business of marketing and selling health plans on the basis of the health status, claims experience, industry, occupation, or geographic location of the insured or prospective insured except as provided in KRS 304.17B-001 to 304.17B-031.
- (3) It shall constitute an unfair trade practice for any insurer, insurance agent, or third-party administrator to refer an individual to Kentucky Access, or to arrange for an individual to apply to Kentucky Access, for the purpose of separating an individual from group health insurance coverage.
- (4) It is an unfair trade practice for an insurer that offers multiple health benefit plans to require a health care provider, as a condition of participation in a health benefit plan of the insurer, to participate in any of the insurer's other health benefit plans. In addition to the proceedings and penalties provided in this chapter for violation of this provision, a contract provision violating this subsection is void.
- (5) It is an unfair trade practice for an insurer not to compute an insured's coinsurance or cost sharing on the basis of the amount actually received by a health-care provider from the insurer.
- (6) The **commissioner**~~executive director~~ may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any insurer that fails to pay an assessment under KRS 304.17B-021. As an alternative, the **commissioner**~~executive director~~ may levy a civil penalty on any member insurer that fails to pay the assessment when due. The civil penalty shall not exceed five percent (5%) of the unpaid assessment per month, but no civil penalty shall be less than one hundred dollars (\$100) per month.
- (7) The remedy provided by KRS 304.12-120 shall be available for conduct proscribed by this section.
- (8) It is an unfair claims settlement practice for any person to make claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made in instances in which the insured has a liability under the policy beyond his or her copayment or deductible.

➔Section 1217. KRS 304.17A-200 is amended to read as follows:

- (1) An insurer that offers health benefit plan coverage in the small group, large group, or association market may not establish rules for eligibility of any individual to enroll under the terms of the plan based on any of the following health status-related factors in relation to the individual or the dependent of the individual:
 - (a) Health status;
 - (b) Medical condition, including both physical and mental illness;
 - (c) Claims experience;
 - (d) Receipt of health care;
 - (e) Medical history;
 - (f) Genetic information;
 - (g) Evidence of insurability, including conditions arising out of acts of domestic violence; and
 - (h) Disability.
- (2) An insurer that offers health benefit plan coverage in the small group, large group, or association market shall not require any individual to pay a premium or contribution which is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status-related factor in relation to the individual or a dependent of the individual. Nothing in this subsection shall prevent the insurer from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.
- (3) Subject to subsections (4) to (7) of this section, each insurer that offers health benefit plan coverage in the small groups market shall accept every small employer that applies for coverage and shall accept for enrollment under this coverage every individual eligible for the coverage who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the group health benefit plan.
 - (a) Notwithstanding any other provision of this subsection, the insurer may establish group participation rules requiring a minimum number of participants or beneficiaries that must be enrolled in relation to a specified percentage or number of those eligible for enrollment.

- (b) The terms and participation rules of the group health benefit plan shall be uniformly applicable to small employers in the small group market.
- (c) This subsection shall not apply to health benefit plan coverage offered by an insurer if the coverage is made available in the small group market only through one (1) or more bona fide associations.
- (4) In the case of an insurer that offers health benefit plan coverage in the small group market through a network plan, the insurer may:
 - (a) Limit the employers that may apply for coverage to those with individuals who live, work, or reside in the service area of the network plan; and
 - (b) Within the service area of the network plan, deny coverage to employers if the insurer has demonstrated to the ~~commissioner~~~~executive director~~ that:
 - 1. The network plan will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees; and
 - 2. The insurer is applying this denial uniformly to all employers.
- (5) An insurer, upon denying health benefit plan coverage in any service area in accordance with subsection (4) of this section, shall not offer coverage in the small group market within the service area for a period of one hundred eighty (180) days after the date the coverage is denied.
- (6) An insurer may deny health benefit plan coverage in the small group market if the insurer has demonstrated to the ~~commissioner~~~~executive director~~ that:
 - (a) The insurer does not have the financial reserves necessary to underwrite additional coverage; and
 - (b) The insurer is applying this denial uniformly to all employers in the small group market.
- (7) An insurer, upon denying health benefit plan coverage in connection with group health plans in accordance with subsection (6) of this section, shall not offer coverage in the small group market for a period of one hundred eighty (180) days after the date the coverage is denied or until the insurer has demonstrated to the ~~commissioner~~~~executive director~~ that the insurer has sufficient financial reserves to underwrite additional coverage, whichever is later.
- (8) A health benefit plan issued as an individual policy to individual employees or their dependents through or with the permission of a small employer shall be issued on a guaranteed-issue basis to all full-time employees and shall comply with the pre-existing condition provisions of KRS 304.17A-220.
- (9) (a) In connection with the offering of any health benefit plan to a small employer, an insurer:
 - 1. Shall make a reasonable disclosure to a small employer, as part of its solicitation and sales materials, of the availability of information described in paragraph (b) of this subsection; and
 - 2. Upon request of a small employer, provide the information described in paragraph (b) of this subsection.
- (b) Subject to paragraph (c) of this subsection, with respect to an insurer offering a health benefit plan to a small employer, information described in this subsection is information concerning:
 - 1. The provisions of the coverage concerning the insurer's right to change premium rates and the factors that may affect changes in premium rates;
 - 2. The provisions of the health benefit plan relating to renewability of coverage;
 - 3. The provisions of the health benefit plan relating to any preexisting condition exclusion; and
 - 4. The benefits and premiums available under all health benefit plans for which the small employer is qualified.
- (c) Information described in paragraph (b) of this subsection shall be provided to a small employer in a manner determined to be understandable by the average small employer and shall be sufficient to reasonably inform a small employer of his or her rights and obligations under the health benefit plan.
- (d) An insurer is not required under this section to disclose any information that is proprietary and trade secret information under applicable law.

➔Section 1218. KRS 304.17A-220 is amended to read as follows:

- (1) All group health plans and insurers offering group health insurance coverage in the Commonwealth shall comply with the provisions of this section.
- (2) Subject to subsection (8) of this section, a group health plan, and a health insurance insurer offering group health insurance coverage, may, with respect to a participant or beneficiary, impose a pre-existing condition exclusion only if:
 - (a) The exclusion relates to a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six (6) month period ending on the enrollment date. For purposes of this paragraph:
 1. Medical advice, diagnosis, care, or treatment is taken into account only if it is recommended by, or received from, an individual licensed or similarly authorized to provide such services under state law and operating within the scope of practice authorized by state law; and
 2. The six (6) month period ending on the enrollment date begins on the six (6) month anniversary date preceding the enrollment date;
 - (b) The exclusion extends for a period of not more than twelve (12) months, or eighteen (18) months in the case of a late enrollee, after the enrollment date;
 - (c)
 1. The period of any pre-existing condition exclusion that would otherwise apply to an individual is reduced by the number of days of creditable coverage the individual has as of the enrollment date, as counted under subsection (3) of this section; and
 2. Except for ineligible individuals who apply for coverage in the individual market, the period of any pre-existing condition exclusion that would otherwise apply to an individual may be reduced by the number of days of creditable coverage the individual has as of the effective date of coverage under the policy; and
 - (d) A written notice of the pre-existing condition exclusion is provided to participants under the plan, and the insurer cannot impose a pre-existing condition exclusion with respect to a participant or a dependent of the participant until such notice is provided.
- (3) In reducing the pre-existing condition exclusion period that applies to an individual, the amount of creditable coverage is determined by counting all the days on which the individual has one (1) or more types of creditable coverage. For purposes of counting creditable coverage:
 - (a) If on a particular day the individual has creditable coverage from more than one (1) source, all the creditable coverage on that day is counted as one (1) day;
 - (b) Any days in a waiting period for coverage are not creditable coverage;
 - (c) Days of creditable coverage that occur before a significant break in coverage are not required to be counted; and
 - (d) Days in a waiting period and days in an affiliation period are not taken into account in determining whether a significant break in coverage has occurred.
- (4) An insurer may determine the amount of creditable coverage in another manner than established in subsection (3) of this section that is at least as favorable to the individual as the method established in subsection (3) of this section.
- (5) If an insurer receives creditable coverage information, the insurer shall make a determination regarding the amount of the individual's creditable coverage and the length of any pre-existing exclusion period that remains. A written notice of the length of the pre-existing condition exclusion period that remains after offsetting for prior creditable coverage shall be issued by the insurer. An insurer may not impose any limit on the amount of time that an individual has to present a certificate or evidence of creditable coverage.
- (6) For purposes of this section:
 - (a) "Pre-existing condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the effective date of coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or

received before that day. A pre-existing condition exclusion includes any exclusion applicable to an individual as a result of information relating to an individual's health status before the individual's effective date of coverage under a health benefit plan;

- (b) "Enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the first day of coverage or, if there is a waiting period, the first day of the waiting period. If an individual receiving benefits under a group health plan changes benefit packages, or if the employer changes its group health insurer, the individual's enrollment date does not change;
 - (c) "First day of coverage" means, in the case of an individual covered for benefits under a group health plan, the first day of coverage under the plan and, in the case of an individual covered by health insurance coverage in the individual market, the first day of coverage under the policy or contract;
 - (d) "Late enrollee" means an individual whose enrollment in a plan is a late enrollment;
 - (e) "Late enrollment" means enrollment of an individual under a group health plan other than:
 1. On the earliest date on which coverage can become effective for the individual under the terms of the plan; or
 2. Through special enrollment;
 - (f) "Significant break in coverage" means a period of sixty-three (63) consecutive days during each of which an individual does not have any creditable coverage; and
 - (g) "Waiting period" means the period that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective. If an employee or dependent enrolls as a late enrollee or special enrollee, any period before such late or special enrollment is not a waiting period. If an individual seeks coverage in the individual market, a waiting period begins on the date the individual submits a substantially complete application for coverage and ends on:
 1. If the application results in coverage, the date coverage begins; or
 2. If the application does not result in coverage, the date on which the application is denied by the insurer or the date on which the offer of coverage lapses.
- (7) (a) 1. Except as otherwise provided under subsection (3) of this section, for purposes of applying subsection (2)(c) of this section, a group health plan, and a health insurance insurer offering group health insurance coverage, shall count a period of creditable coverage without regard to the specific benefits covered during the period.
2. A group health plan, or a health insurance insurer offering group health insurance coverage, may elect to apply subsection (2)(c) of this section based on coverage of benefits within each of several classes or categories of benefits specified in federal regulations. This election shall be made on a uniform basis for all participants and beneficiaries. Under this election, a group health plan or insurer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within this class or category.
3. In the case of an election with respect to a group health plan under subparagraph 2. of this paragraph, whether or not health insurance coverage is provided in connection with the plan, the plan shall:
- a. Prominently state in any disclosure statements concerning the plan, and state to each enrollee at the time of enrollment under the plan, that the plan has made this election; and
 - b. Include in these statements a description of the effect of this election.
- (b) Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in subsection (9) of this section or in such other manner as may be specified in administrative regulations.
- (8) (a) Subject to paragraph (e) of this subsection, a group health plan, and a health insurance insurer offering group health insurance coverage, may not impose any pre-existing condition exclusion on a child who, within thirty (30) days after birth, is covered under any creditable coverage. If a child is enrolled in a group health plan or other creditable coverage within thirty (30) days after birth and subsequently

enrolls in another group health plan without a significant break in coverage, the other group health plan may not impose any pre-existing condition exclusion on the child.

- (b) Subject to paragraph (e) of this subsection, a group health plan, and a health insurance insurer offering group health insurance coverage, may not impose any pre-existing condition exclusion on a child who is adopted or placed for adoption before attaining eighteen (18) years of age and who, within thirty (30) days after the adoption or placement for adoption, is covered under any creditable coverage. If a child is enrolled in a group health plan or other creditable coverage within thirty (30) days after adoption or placement for adoption and subsequently enrolls in another group health plan without a significant break in coverage, the other group health plan may not impose any pre-existing condition exclusion on the child. This shall not apply to coverage before the date of the adoption or placement for adoption.
 - (c) A group health plan may not impose any pre-existing condition exclusion relating to pregnancy.
 - (d) A group health plan may not impose a pre-existing condition exclusion relating to a condition based solely on genetic information. If an individual is diagnosed with a condition, even if the condition relates to genetic information, the insurer may impose a pre-existing condition exclusion with respect to the condition, subject to other requirements of this section.
 - (e) Paragraphs (a) and (b) of this subsection shall no longer apply to an individual after the end of the first sixty-three (63) day period during all of which the individual was not covered under any creditable coverage.
- (9) (a) 1. A group health plan, and a health insurance insurer offering group health insurance coverage, shall provide a certificate of creditable coverage as described in subparagraph 2. of this subsection. A certificate of creditable coverage shall be provided, without charge, for participants or dependents who are or were covered under a group health plan upon the occurrence of any of the following events:
- a. At the time an individual ceases to be covered under a health benefit plan or otherwise becomes eligible under a COBRA continuation provision;
 - b. In the case of an individual becoming covered under a COBRA continuation provision, at the time the individual ceases to be covered under the COBRA continuation provision; and
 - c. On request on behalf of an individual made not later than twenty-four (24) months after the date of cessation of the coverage described in subdivision a. or b. of this subparagraph, whichever is later.
- The certificate of creditable coverage as described under subdivision a. of this subparagraph may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.
2. The certification described in this subparagraph is a written certification of:
- a. The period of creditable coverage of the individual under the health benefit plan and the coverage, if any, under the COBRA continuation provision; and
 - b. The waiting period, if any, and affiliation period, if applicable, imposed with respect to the individual for any coverage under the plan.
3. To the extent that medical care under a group health plan consists of group health insurance coverage, the plan is deemed to have satisfied the certification requirement under this paragraph if the health insurance insurer offering the coverage provides for the certification in accordance with this paragraph.
- (b) In the case of an election described in subsection (7)(a)2. of this section by a group health plan or health insurance insurer, if the plan or insurer enrolls an individual for coverage under the plan and the individual provides a certification of coverage of the individual under paragraph (a) of this subsection:
- 1. Upon request of that plan or insurer, the entity that issued the certification provided by the individual shall promptly disclose to the requesting plan or insurer information on coverage of classes and categories of health benefits available under the entity's plan or coverage; and

2. The entity may charge the requesting plan or insurer for the reasonable cost of disclosing this information.
- (10) (a) A group health plan, and a health insurance insurer offering group health insurance coverage in connection with a group health plan, shall permit an employee who is eligible but not enrolled for coverage under the terms of the plan, or a dependent of that employee if the dependent is eligible but not enrolled for coverage under these terms, to enroll for coverage under the terms of the plan if each of the following conditions is met:
1. The employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent;
 2. The employee stated in writing at that time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or insurer, if applicable, required that statement at that time and provided the employee with notice of the requirement, and the consequences of the requirement, at that time;
 3. The employee's or dependent's coverage described in subparagraph 1. of this paragraph:
 - a. Was under a COBRA continuation provision and the coverage under that provision was exhausted; or
 - b. Was not under such a provision and either the coverage was terminated as a result of loss of eligibility for the coverage, including as a result of legal separation, divorce, cessation of dependent status, such as obtaining the maximum age to be eligible as a dependent child, death of the employee, termination of employment, reduction in the number of hours of employment, employer contributions toward the coverage were terminated, a situation in which an individual incurs a claim that would meet or exceed a lifetime limit on all benefits, or a situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual; or
 - c. Was offered through a health maintenance organization or other arrangement in the group market that does not provide benefits to individuals who no longer reside, live, or work in a service area and, loss of coverage in the group market occurred because an individual no longer resides, lives, or works in the service area, whether or not within the choice of the individual, and no other benefit package is available to the individual; and
 4. An insurer shall allow an employee and dependent a period of at least thirty (30) days after an event described in this paragraph has occurred to request enrollment for the employee or the employee's dependent. Coverage shall begin no later than the first day of the first calendar month beginning after the date the insurer receives the request for special enrollment.
- (b) A dependent of a current employee, including the employee's spouse, and the employee each are eligible for enrollment in the group health plan subject to plan eligibility rules conditioning dependent enrollment on enrollment of the employee if the requirements of paragraph (a) of this subsection are satisfied.
- (c) 1. If:
- a. A group health plan makes coverage available with respect to a dependent of an individual;
 - b. The individual is a participant under the plan, or has met any waiting period applicable to becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to enroll during a previous enrollment period; and
 - c. A person becomes such a dependent of the individual through marriage, birth, or adoption or placement for adoption;

the group health plan shall provide for a dependent special enrollment period described in subparagraph 2. of this paragraph during which the person or, if not otherwise enrolled, the individual, may be enrolled under the plan as a dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if the spouse is otherwise eligible for coverage.

2. A dependent special enrollment period under this subparagraph shall be a period of at least thirty (30) days and shall begin on the later of:
 - a. The date dependent coverage is made available; or
 - b. The date of the marriage, birth, or adoption or placement for adoption, as the case may be, described in subparagraph 1.c. of this paragraph.
 3. If an individual seeks to enroll a dependent during the first thirty (30) days of the dependent special enrollment period, the coverage of the dependent shall become effective:
 - a. In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;
 - b. In the case of a dependent's birth, as of the date of the birth; or
 - c. In the case of a dependent's adoption or placement for adoption, the date of the adoption or placement for adoption.
 - (d) At or before the time an employee is initially offered the opportunity to enroll in a group health plan, the employer shall provide the employee with a notice of special enrollment rights.
- (11) (a) In the case of a group health plan that offers medical care through health insurance coverage offered by a health maintenance organization, the plan may provide for an affiliation period with respect to coverage through the organization only if:
1. No pre-existing condition exclusion is imposed with respect to coverage through the organization;
 2. The period is applied uniformly without regard to any health status-related factors; and
 3. The period does not exceed two (2) months, or three (3) months in the case of a late enrollee.
- (b) 1. For purposes of this section, the term "affiliation period" means a period which, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective. The organization is not required to provide health care services or benefits during this period and no premium shall be charged to the participant or beneficiary for any coverage during the period.
2. This period shall begin on the enrollment date.
 3. An affiliation period under a plan shall run concurrently with any waiting period under the plan.
- (c) A health maintenance organization described in paragraph (a) of this subsection may use alternative methods other than those described in that paragraph to address adverse selection as approved by the **commissioner**~~executive director~~.

➔Section 1219. KRS 304.17A-230 is amended to read as follows:

- (1) A health insurer offering individual health benefit plan coverage in the individual market in the Commonwealth shall not impose any pre-existing conditions exclusions as to any eligible individual.
- (2) Each health insurer offering individual health benefit plan coverage in the individual market in the Commonwealth that chooses to impose a pre-existing conditions exclusion on individuals who do not meet the definition of eligible individual shall comply with the provisions of KRS 304.17A-220, which establishes standards and requirements for pre-existing conditions exclusions for group health plans, including crediting previous coverage, and certification of coverage. Pregnancy may be considered to be a pre-existing condition.
- (3) Genetic information shall not be treated as a pre-existing condition in the absence of a diagnosis of the condition related to the information.
- (4) The **Department**~~Office~~ of Insurance shall promulgate administrative regulations necessary to carry out the provisions of this section and KRS 304.17A-220.

➔Section 1220. KRS 304.17A-240 is amended to read as follows:

- (1) Except as provided in this section, an insurer shall renew or continue in force a health benefit plan at the option of the insured.
 - (2) An insurer may nonrenew, cancel, or discontinue a health benefit plan based only on one (1) or more of the following:
 - (a) The insured has failed to pay premiums or contributions in accordance with the terms of the plan or the insurer has not received timely premium payments;
 - (b) The insured has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage;
 - (c) The insured has engaged in intentional and abusive noncompliance with material provisions of the health benefit plan;
 - (d) The insurer is ceasing to offer coverage in the individual or group market in accordance with subsection (3) of this section;
 - (e) In the case of an insurer that offers health benefit plans through a network plan, the individual no longer resides, lives, or works in the service area or in an area for which the insurer is authorized to do business, but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals, or there is no longer any enrollee in connection with the group plan who resides, lives, or works in the service area of the insurer;
 - (f) In the case of a health benefit plan that is made available only through one (1) or more bona fide associations, the membership of the individual or employer in the association on the basis of which the coverage is provided ceases, but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals; or
 - (g) In the case of a health benefit plan issued to a group, the group no longer meets participation requirements or contribution requirements as established by the insurer.
 - (3) (a) In any case in which an insurer decides to discontinue offering a particular type of health benefit plan, coverage of the type may be discontinued by the insurer upon approval by the **commissioner**~~executive director~~ only if:
 1. The insurer provides notice to each insured provided coverage of this type in the market of the discontinuation at least ninety (90) days prior to the date of the discontinuation of the coverage;
 2. The insurer offers, to each insured provided coverage of this type, the option to purchase any other health benefit plan currently of that type being offered by the insurer in that market; and
 3. In exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph 2. of this paragraph, the insurer acts uniformly without regard to any health status-related factor of enrolled insureds or insureds who may become eligible for coverage.
 - (b) 1. Subject to paragraph (a)3. of this subsection, in any case in which an insurer elects to discontinue offering all health benefit plans in Kentucky, health benefit plans may be discontinued by the insurer only if:
 - a. The insurer provides notice to the **commissioner**~~executive director~~ and to each insured of the discontinuation at least one hundred eighty (180) days prior to the date of the expiration of the coverage; and
 - b. All health benefit plans issued or delivered for issuance in Kentucky are discontinued and coverage under the health benefit plans is not renewed.
 2. In the case of a discontinuation under subparagraph 1. of this paragraph, the insurer may not provide for the issuance of any health benefit plans in Kentucky during the five (5) year period beginning on the date of the discontinuation of the last health benefit plan not so renewed.
- (4) At the time of coverage renewal, an insurer may modify, with approval of the **commissioner**~~executive director~~, the health benefit plan for a policy form so long as the modification is consistent with this chapter and effective on a uniform basis among all individuals with that policy form.

- (5) In applying this section in the case of a health benefit plan that is made available by an insurer only through one (1) or more associations, a reference to an individual is deemed to include a reference to an association of which the individual is a member, and a reference to an employer member is deemed to include a reference to the employer.

➔Section 1221. KRS 304.17A-250 is amended to read as follows:

- (1) The *commissioner*~~[executive director]~~ shall, by administrative regulations promulgated under KRS Chapter 13A, define one (1) standard health benefit plan. After July 15, 2004, insurers may offer the standard health benefit plan in the individual or small group markets. Except as may be necessary to coordinate with changes in federal law, the *commissioner*~~[executive director]~~ shall not alter, amend, or replace the standard health benefit plan more frequently than annually.
- (2) If offered, the standard health benefit plan may be available in at least one (1) of these four (4) forms of coverage:
- (a) A fee-for-service product type;
 - (b) A health maintenance organization type;
 - (c) A point-of-service type; and
 - (d) A preferred provider organization type.
- (3) The standard health benefit plan shall be defined so that it meets the requirements of KRS 304.17B-021 for inclusion in calculating assessments and refunds under Kentucky Access.
- (4) Any health insurer who offers the standard health benefit plan may offer the standard health benefit plan in the individual or small group markets in each and every form of coverage that the health insurer offers to sell.
- (5) Nothing in this section shall be construed:
- (a) To require a health insurer to offer a standard health benefit plan in a form of coverage that the health insurer has not selected;
 - (b) To prohibit a health insurer from offering other health benefit plans in the individual or small group markets in addition to the standard health benefit plan; or
 - (c) To require that a standard health benefit plan have guaranteed issue, renewability, or pre-existing condition exclusion rights or provisions that are more generous to the applicant than the health insurer would be required to provide under KRS 304.17A-200, 304.17A-220, 304.17A.230, and 304.17A-240.
- (6) All health benefit plans shall cover hospice care at least equal to the Medicare benefits.
- (7) All health benefit plans shall coordinate benefits with other health benefit plans in accordance with the guidelines for coordination of benefits prescribed by the *commissioner*~~[executive director]~~ as provided in KRS 304.18-085.
- (8) Every health insurer of any kind, nonprofit hospital, medical-surgical, dental and health service corporation, health maintenance organization, or provider-sponsored health delivery network that issues or delivers an insurance policy in this state that directs or gives any incentives to insureds to obtain health care services from certain health care providers shall not imply or otherwise represent that a health care provider is a participant in or an affiliate of an approved or selected provider network unless the health care provider has agreed in writing to the representation or there is a written contract between the health care provider and the insurer or an agreement by the provider to abide by the terms for participation established by the insurer. This requirement to have written contracts shall apply whenever an insurer includes a health care provider as a part of a preferred provider network or otherwise selects, lists, or approves certain health care providers for use by the insurer's insureds. The obligation set forth in this section for an insurer to have written contracts with providers selected for use by the insurer shall not apply to emergency or out-of-area services.
- (9) A self-insured plan may select any third party administrator licensed under KRS 304.9-052 to adjust or settle claims for persons covered under the self-insured plan.
- (10) Any health insurer that fails to issue a premium rate quote to an individual within thirty (30) days of receiving a properly completed application request for the quote shall be required to issue coverage to that individual and

shall not impose any pre-existing conditions exclusion on that individual with respect to the coverage. Each health insurer offering individual health insurance coverage in the individual market in the Commonwealth that refuses to issue a health benefit plan to an applicant or insured with a disclosed high-cost condition as specified in KRS 304.17B-001 or for any reason, shall provide the individual with a denial letter within twenty (20) working days of the request for coverage. The letter shall include the name and title of the person making the decision, a statement setting forth the basis for refusing to issue a policy, a description of Kentucky Access, and the telephone number for a contact person who can provide additional information about Kentucky Access.

- (11) If a standard health benefit plan covers services that the plan's insureds lawfully obtain from health departments established under KRS Chapter 212, the health insurer shall pay the plan's established rate for those services to the health department.
- (12) No individually insured person shall be required to replace an individual policy with group coverage on becoming eligible for group coverage that is not provided by an employer. In a situation where a person holding individual coverage is offered or becomes eligible for group coverage not provided by an employer, the person holding the individual coverage shall have the option of remaining individually insured, as the policyholder may decide. This shall apply in any such situation that may arise through an association, an affiliated group, the Kentucky state employee health insurance plan, or any other entity.

➔Section 1222. KRS 304.17A-300 is amended to read as follows:

- (1) A provider-sponsored integrated health delivery network may be created by health care providers for the purpose of providing health care services.
- (2) No person shall in this Commonwealth be, act as, or hold itself out as a provider-sponsored integrated health delivery network unless it holds a certificate of filing from the **commissioner**~~{executive director}~~. Each provider-sponsored integrated health delivery network that seeks to offer services shall first be certified by the **department**~~{office}~~.
- (3) To qualify as a provider-sponsored integrated health delivery network, an applicant shall submit information acceptable to the **department**~~{office}~~ to satisfactorily demonstrate that the provider-sponsored integrated health delivery network:
 - (a) Is licensed and in good standing with the licensure boards for participating providers;
 - (b) Has demonstrated the capacity to administer the health plans it is offering;
 - (c) Has the ability, experience, and structure to arrange for the appropriate level and type of health care services;
 - (d) Has the ability, policies, and procedures to conduct utilization management activities;
 - (e) Has the ability to achieve, monitor, and evaluate the quality and cost effectiveness of care provided by its provider network;
 - (f) Is financially solvent;
 - (g) Has the ability to assure enrollees adequate access to providers, including geographic availability and adequate numbers and types;
 - (h) Has the ability and procedures to monitor access to its provider network;
 - (i) Has a satisfactory grievance procedure and the ability to respond to enrollees' inquiries and complaints;
 - (j) Does not limit the participation of any health care provider in its provider network in another provider network;
 - (k) Has the ability and policies that allow patients to receive care in the most appropriate, least restrictive setting;
 - (l) Does not discriminate in enrolling members;
 - (m) Participates in coordination of benefits;
 - (n) Uses standardized electronic claims and billing processes and formats; and
 - (o) Discloses to the cooperative reimbursement arrangements with providers.

- (4) Fees for the following services shall be paid to the **commissioner**~~[executive director]~~ by every provider-sponsored integrated health delivery network, and the fees shall be the same as those for insurers as specified in Subtitle 4 of this chapter:
- (a) For filing an application for a certificate of filing or amendment thereto;
 - (b) For filing an annual statement; and
 - (c) For other services deemed necessary by the **commissioner**~~[executive director]~~.
- (5) Provider-sponsored integrated health delivery networks shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:
- (a) Subtitle 1 -- Scope of Code;
 - (b) Subtitle 2 -- **Commissioner of the Department of Insurance**~~[executive director]~~;
 - (c) Subtitle 3 -- Authorization of Insurers and General Requirements;
 - (d) Subtitle 4 -- Fees and Taxes;
 - (e) Subtitle 5 -- Kinds of Insurance--Limits of Risk--Reinsurance;
 - (f) Subtitle 6 -- Assets and Liabilities;
 - (g) Subtitle 7 -- Investments;
 - (h) Subtitle 8 -- Administration of Deposits;
 - (i) Subtitle 9 -- Agents, Consultants, Solicitors, and Adjusters;
 - (j) Subtitle 12 -- Trade Practices and Frauds;
 - (k) Subtitle 14 -- KRS 304.14-120 to 304.14-130 and 304.14-500 to 304.14-560;
 - (l) Subtitle 25 -- Continuity of Management;
 - (m) Subtitle 33 -- Insurers Rehabilitation and Liquidation;
 - (n) Subtitle 37 -- Insurance Holding Company Systems; and
 - (o) Subtitle 99 -- Penalties.

➔Section 1223. KRS 304.17A-310 is amended to read as follows:

To qualify as a provider-sponsored integrated health delivery network, the network shall meet the following financial solvency requirements:

- (1) Maintenance of a fidelity bond or fidelity insurance in an amount not less than two hundred fifty thousand dollars (\$250,000) on employees and officers, directors, and partners who receive, collect, disburse, or invest funds of the provider-sponsored network;
- (2)
 - (a) The provider-sponsored network shall have an initial net worth requirement of one million five hundred thousand dollars (\$1,500,000) and shall thereafter maintain the minimum net worth required under paragraph (b) of this subsection.
 - (b) Every provider-sponsored network shall maintain a minimum net worth equal to the greater of:
 - 1. One million dollars (\$1,000,000);
 - 2. Two percent (2%) of annual premium revenues as reported on the most recent annual financial statement filed with the **commissioner**~~[executive director]~~ on the first one hundred fifty million dollars (\$150,000,000) of premiums and one percent (1%) of annual premiums on the premiums in excess of one hundred fifty million dollars (\$150,000,000);
 - 3. An amount equal to the sum of three (3) months' uncovered health care expenditures as reported on the most recent financial statement filed with the **commissioner**~~[executive director]~~ of insurance; or

4. An amount equal to the sum of eight percent (8%) of annual health care expenditures except those paid on a capitated basis or managed hospital payment basis and four percent (4%) of annual hospital expenditures paid on a managed hospital payment basis as reported on the most recent financial statement filed with the **commissioner**~~{executive director}~~.
- (c) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the **commissioner**~~{executive director}~~. Any interest obligation relating to the repayment of any subordinated debt shall be similarly subordinated.
 1. The interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses.
 2. Any debt incurred by a note meeting the requirements of this section, and otherwise acceptable to the **commissioner**~~{executive director}~~, shall not be considered a liability and shall be recorded as equity.
- (3) (a) Unless otherwise provided below, each provider-sponsored network shall deposit with the **commissioner**~~{executive director}~~ or, at the discretion of the **commissioner**~~{executive director}~~, with any organization or trustee acceptable to the **commissioner**~~{executive director}~~ through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the **commissioner**~~{executive director}~~ which at all times shall have a value of not less than three hundred thousand dollars (\$300,000).
 - (b) The deposit shall be an admitted asset of the provider-sponsored network in the determination of net worth.
 - (c) All income from deposits shall be an asset of the provider-sponsored network. A provider-sponsored network that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be approved by the **commissioner**~~{executive director}~~ before being deposited or substituted.
 - (d) The deposit shall be used to protect the interests of the provider-sponsored network's enrollees and to assure continuation of health care services to enrollees of a provider-sponsored network which is in rehabilitation or conservation. The **commissioner**~~{executive director}~~ may use the deposit for administrative costs directly attributable to a receivership or liquidation. If the provider-sponsored network is placed in receivership or liquidation, the deposit shall be an asset subject to the provisions of Subtitle 33 of this chapter.
- (4) Every provider-sponsored network shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the provider-sponsored network is or may be liable, and to provide for the expense of adjustment or settlement of such claims.
- (5) (a) Every contract between a provider-sponsored network and a participating provider of health care services shall be in writing and shall set forth that in the event the provider-sponsored network fails to pay for health care services as set forth in the contract, the enrollee shall not be liable to the provider for any sums owed by the provider-sponsored network.
 - (b) If the participating provider contract has not been reduced to writing as required by this subsection or if the contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the enrollee sums owed by the provider-sponsored network.
- (6) Each provider-sponsored network shall have a plan for handling insolvency which guarantees the continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits.
- (7) If at any time uncovered expenditures exceed ten percent (10%) of total health care expenditures, a provider-sponsored network shall place an uncovered expenditures insolvency deposit with the **commissioner**~~{executive director}~~ or with any organization or trustee acceptable to the **commissioner**~~{executive director}~~ through which a custodial or controlled account is maintained, in cash or securities that are acceptable to the **commissioner**~~{executive director}~~. This deposit shall at all times have a fair market value in an amount of one

hundred twenty percent (120%) of the provider-sponsored network's outstanding liability for uncovered expenditures for enrollees, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month. The provider-sponsored network shall file a report within forty-five (45) days of the end of the calendar quarter with information sufficient to demonstrate compliance with this subsection. The provisions of subsection (6) of this section shall apply to the deposit required in this subsection.

➔Section 1224. KRS 304.17A-320 is amended to read as follows:

- (1) No employer-organized association shall in this state self-insure in order to provide health benefit plans for its members unless it holds a certificate of filing from the *commissioner*~~[executive director]~~.
- (2) To qualify for a certificate of filing and to maintain a certificate of filing, the employer-organized association shall comply with the provisions of KRS 304.17A-800 to 304.17A-844 to the extent not in conflict with the expressed provisions of this section.
- (3) Each association that holds a certificate of filing from the *commissioner*~~[executive director]~~ shall be subject to the following:
 - (a) All assessments placed on insurers under KRS 304.17B-021;
 - (b) All rating restrictions placed on employer-organized associations under KRS 304.17A-0954;
 - (c) All rate review requirements placed on insurers under this subtitle;
 - (d) All data collection requirements placed on insurers under this subtitle; and
 - (e) Provisions of Subtitle 12 of this chapter that apply to health insurers.
- (4) Each association that holds a certificate of filing from the *commissioner*~~[executive director]~~ shall notify its members that health benefit plans issued to its members through the association are not protected through the Kentucky Life and Health Insurance Guaranty Association.
- (5) Under the provisions of KRS 304.17A-840, the *commissioner*~~[executive director]~~ may revoke the certificate of filing of any association. A violation of any provision of this section shall be deemed a violation of KRS 304.17A-800 to 304.17A-844 for purposes of KRS 304.17A-840.

➔Section 1225. KRS 304.17A-330 is amended to read as follows:

- (1) All insurers authorized to write health insurance in this state and employer-organized associations that self-insure shall transmit at least annually by July 31 to the *commissioner*~~[executive director]~~ the following information, in a format prescribed by the *commissioner*~~[executive director]~~, on their insurance experience in this state for the preceding calendar year:
 - (a) Total premium by product type and market segment;
 - (b) Total enrollment by product type and market segment;
 - (c) Total cost of medical claims filed by product type and market segment;
 - (d) Total amount of medical claims paid by the insurer and insured by product type and market segment;
 - (e) Total policies canceled by type and the aggregate reasons therefor; and
 - (f) List of total health and medical services paid for, grouped by types of services and costs:
 1. Total cost per health and medical service per insured group:
 - a. Cost paid by insurer;
 - b. Cost paid by insured; and
 2. Number of insureds who received each service.
- (2) With the approval of the *commissioner*~~[executive director]~~, the *department*~~[office]~~ may exempt insurers, employer-organized associations that self-insure, and health purchasing outlets from the data reporting requirements of this section if the total number of insureds is less than five hundred (500).

➔Section 1226. KRS 304.17A-340 is amended to read as follows:

- (1) In no event shall more than ten percent (10%) of federal and state funds allocated to the Kentucky Children's Health Insurance Program be used for:
 - (a) Children's health programs other than those targeted for low-income children as defined under Title XXI of the Federal Social Security Act;
 - (b) Initiatives for improving the health of children except those low income children as defined under Title XXI of the Federal Social Security Act or an approved Title XXI state plan (KCHIP);
 - (c) Outreach activities that inform families of children who are likely to be eligible for this program or other public or private health coverage programs allowed by the Federal Social Security Act; and
 - (d) Other reasonable costs incurred by the state to administer the program.
- (2) The ~~department office~~ shall use the insurer's or health maintenance organization's sales and marketing methods and may include the use of agents and payment of commissions, to inform families of the availability of the Kentucky Children's Health Insurance Program and assist them in obtaining coverage for children under the program.

➔Section 1227. KRS 304.17A-410 is amended to read as follows:

As used in KRS 304.17A-400 to 304.17A-480, unless the context requires otherwise:

- (1) "Actual guaranteed acceptance program plan losses" means a dollar amount calculated by subtracting an insurer's guaranteed acceptance program plan claims from that insurer's guaranteed acceptance program plan premiums;
- (2) "Benefits" means amounts paid by an insurer to covered lives or to third parties for the benefit of covered lives. "Benefits" do not include an insurer's administrative costs, any assessments under the plan, allocated loss adjustment expenses, reserves, or other overhead costs;
- (3) "Guaranteed acceptance program plan claims" or "alternative underwriting mechanism losses" means the dollar amount of benefits actually paid by an insurer on behalf of a guaranteed acceptance plan enrollee for claims that were incurred while the individual was a guaranteed acceptance program plan enrollee or another claim measurement formula as the ~~department office~~ may establish by administrative regulation to measure an insurer's costs, other than administrative costs, allocated loss adjustment expenses, reserves, or other overhead costs, with respect to a program plan;
- (4) "Guaranteed acceptance program plan premiums" means the dollar amount of premiums received by an insurer with respect to program plans;
- (5) "Guaranteed acceptance risk adjustment process" means the process of allocating guaranteed acceptance program plan losses provided for in KRS 304.17A-460;
- (6) "Group market" means the health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents through a group health plan or through any arrangement other than through the individual market, or through a federal health benefit plan or program;
- (7) "Health insurance stop-loss policy" means any policy of insurance that directly or indirectly protects, in whole or in part, an employer who self-insures health benefits covering any residents in Kentucky from the risk of paying benefits in excess of any specified amount;
- (8) "Market share" means a percentage calculated by dividing an insurer's health insurance coverage premiums in both the individual and group markets by the total amount of the health insurance coverage premiums in both the individual and group markets for all insurers;
- (9) "Other coverage" means coverage under any of the following:
 - (a) A group plan;
 - (b) Part A or Part B of Title XVIII of the Social Security Act, 42 U.S.C. secs. 1995c et seq.;
 - (c) A state plan under Title XIX of the Social Security Act, or any successor program;
 - (d) Continuation coverage under any COBRA continuation provisions as defined in 42 U.S.C. sec. 300gg-91(d)(4) or under a similar program under any state law; or

- (e) Any other health insurance coverage which is not individual health insurance coverage;
- (10) "Premiums" means amounts paid to insurers to purchase health insurance coverage and includes all amounts paid however denominated, including, but not limited to, amounts indicated as being charged for administrative costs, allocated loss adjustment expenses, reserve or other overhead costs;
- (11) "Program" means the Kentucky Guaranteed Acceptance Program;
- (12) "Refund" means an amount to be paid to an insurer by the program;
- (13) "Stop-loss carrier" means any person providing health insurance stop-loss coverage;
- (14) "Stop-loss premiums" means amounts paid to purchase health insurance stop-loss coverage; and
- (15) "Total actual guaranteed acceptance program plan losses" means a dollar amount equal to the sum of the actual program plan losses of all insurers participating in the program.

➔Section 1228. KRS 304.17A-430 is amended to read as follows:

- (1) A health benefit plan shall be considered a program plan and is eligible for inclusion in calculating assessments and refunds under the program risk adjustment process if it meets all of the following criteria:
 - (a) The health benefit plan was purchased by an individual to provide benefits for only one (1) or more of the following: the individual, the individual's spouse, or the individual's children. Health insurance coverage provided to an individual in the group market or otherwise in connection with a group health plan does not satisfy this criteria even if the individual, or the individual's spouse or parent, pays some or all of the cost of the coverage unless the coverage is offered in connection with a group health plan that has fewer than two (2) participants as current employees on the first day of the plan year;
 - (b) An individual entitled to benefits under the health benefit plan has been diagnosed with a high-cost condition on or before the effective date of the individual's coverage for coverage issued on a guarantee-issue basis after July 15, 1995;
 - (c) The health benefit plan imposes the maximum pre-existing condition exclusion permitted under KRS 304.17A-200;
 - (d) The individual purchasing the health benefit plan is not eligible for or covered by other coverage; and
 - (e) The individual is not a state employee eligible for or covered by the state employee health insurance plan under KRS Chapter 18A.
- (2) Notwithstanding the provisions of subsection (1) of this section, if the total claims paid for the high-cost condition under a program plan for any three (3) consecutive years are less than the premiums paid under the program plan for those three (3) consecutive years, then the following shall occur:
 - (a) The policy shall not be considered to be a program plan thereafter until the first renewal of the policy after there are three (3) consecutive years in which the total claims paid under the policy have exceeded the total premiums paid for the policy and at the time of the renewal the policy also qualifies under subsection (1) as a program plan; and
 - (b) Within the last six (6) months of the third year, the insurer shall provide each person entitled to benefits under the policy who has a high-cost condition with a written notice of insurability. The notice shall state that the recipient may be able to purchase a health benefit plan other than a program plan and shall also state that neither the notice nor the individual's actions to purchase a health benefit plan other than a program plan shall affect the individual's eligibility for plan coverage. The notice shall be valid for six (6) months.
- (3) (a) There is established within the guaranteed acceptance program the alternative underwriting mechanism that a participating insurer may elect to use. An insurer that elects this mechanism shall use the underwriting criteria that the insurer has used for the past twelve (12) months for purposes of the program plan requirement in paragraph (b) of subsection (1) of this section for high-risk individuals rather than using the criteria established in KRS 304.17A-005(24) and 304.17A-280 for high-cost conditions;

- (b) An insurer that elects to use the alternative underwriting mechanism shall make written application to the **commissioner**~~[executive director]~~. Before the insurer may implement the mechanism, the insurer shall obtain approval of the **commissioner**~~[executive director]~~. Annually thereafter, the insurer shall obtain the **commissioner's**~~[executive director's]~~ approval of the underwriting criteria of the insurer before the insurer may continue to use the alternative underwriting mechanism.

➔Section 1229. KRS 304.17A-505 is amended to read as follows:

An insurer shall disclose in writing to a covered person and an insured or enrollee, in a manner consistent with the provisions of KRS 304.14-420 to 304.14-450, the terms and conditions of its health benefit plan and shall promptly provide the covered person and enrollee with written notification of any change in the terms and conditions prior to the effective date of the change. The insurer shall provide the required information at the time of enrollment and upon request thereafter.

- (1) The information required to be disclosed under this section shall include a description of:
- (a) Covered services and benefits to which the enrollee or other covered person is entitled;
 - (b) Restrictions or limitations on covered services and benefits;
 - (c) Financial responsibility of the covered person, including copayments and deductibles;
 - (d) Prior authorization and any other review requirements with respect to accessing covered services;
 - (e) Where and in what manner covered services may be obtained;
 - (f) Changes in covered services or benefits, including any addition, reduction, or elimination of specific services or benefits;
 - (g) The covered person's right to the following:
 1. A utilization review and the procedure for initiating a utilization review, if an insurer elects to provide utilization review;
 2. An internal appeal of a utilization review made by or on behalf of the insurer with respect to the denial, reduction, or termination of a health care benefit or the denial of payment for a health care service, and the procedure to initiate an internal appeal; and
 3. An external review and the procedure to initiate the external review process;
 - (h) Measures in place to ensure the confidentiality of the relationship between an enrollee and a health care provider;
 - (i) Other information as the **commissioner**~~[executive director]~~ shall require by administrative regulation;
 - (j) A summary of the drug formulary, including, but not limited to, a listing of the most commonly used drugs, drugs requiring prior authorization, any restrictions, limitations, and procedures for authorization to obtain drugs not on the formulary and, upon request of an insured or enrollee, a complete drug formulary; and
 - (k) A statement informing the insured or enrollee that if the provider meets the insurer's enrollment criteria and is willing to meet the terms and conditions for participation, the provider has the right to become a provider for the insurer.
- (2) The insurer shall file the information required under this section with the **department**~~[office]~~.

➔Section 1230. KRS 304.17A-527 is amended to read as follows:

- (1) A managed care plan shall file with the **commissioner**~~[executive director]~~ sample copies of any agreements it enters into with providers for the provision of health care services. The **commissioner**~~[executive director]~~ shall promulgate administrative regulations prescribing the manner and form of the filings required. The agreements shall include the following:
- (a) A hold harmless clause that states that the provider may not, under any circumstance, including:
 1. Nonpayment of moneys due the providers by the managed care plan,
 2. Insolvency of the managed care plan, or
 3. Breach of the agreement,

bill, charge, collect a deposit, seek compensation, remuneration, or reimbursement from, or have any recourse against the subscriber, dependent of subscriber, enrollee, or any persons acting on their behalf, for services provided in accordance with the provider agreement. This provision shall not prohibit collection of deductible amounts, copayment amounts, coinsurance amounts, and amounts for noncovered services;

- (b) A continuity of care clause that states that if an agreement between the provider and the managed care plan is terminated for any reason, other than a quality of care issue or fraud, the insurer shall continue to provide services and the plan shall continue to reimburse the provider in accordance with the agreement until the subscriber, dependent of the subscriber, or the enrollee is discharged from an inpatient facility, or the active course of treatment is completed, whichever time is greater, and in the case of a pregnant woman, services shall continue to be provided through the end of the post-partum period if the pregnant woman is in her fourth or later month of pregnancy at the time the agreement is terminated;
 - (c) A survivorship clause that states the hold harmless clause and continuity of care clause shall survive the termination of the agreement between the provider and the managed care plan;
 - (d) A clause stating that the insurer issuing a managed care plan will, upon request of a participating provider, provide or make available to a participating provider, when contracting or renewing an existing contract with such provider, the payment or fee schedules or other information sufficient to enable the provider to determine the manner and amount of payments under the contract for the provider's services prior to the final execution or renewal of the contract and shall provide any change in such schedules at least ninety (90) days prior to the effective date of the amendment pursuant to KRS 304.17A-577; and
 - (e) A clause requiring that if a provider enters into any subcontract agreement with another provider to provide their licensed health care services to the subscriber, dependent of the subscriber, or enrollee of a managed care plan where the subcontracted provider will bill the managed care plan or subscriber or enrollee directly for the subcontracted services, the subcontract agreement must meet all requirements of this subtitle and that all such subcontract agreements shall be filed with the **commissioner**~~executive director~~ in accordance with this subsection.
- (2) An insurer that offers a health benefit plan that enters into any risk-sharing arrangement or subcontract agreement shall file a copy of the arrangement with the **commissioner**~~executive director~~. The insurer shall also file the following information regarding the risk-sharing arrangement:
- (a) The number of enrollees affected by the risk-sharing arrangement;
 - (b) The health care services to be provided to an enrollee under the risk-sharing arrangement;
 - (c) The nature of the financial risk to be shared between the insurer and entity or provider, including but not limited to the method of compensation;
 - (d) Any administrative functions delegated by the insurer to the entity or provider. The insurer shall describe a plan to ensure that the entity or provider will comply with KRS 304.17A-500 to 304.17A-590 in exercising any delegated administrative functions; and
 - (e) The insurer's oversight and compliance plan regarding the standards and method of review.
- (3) Nothing in this section shall be construed as requiring an insurer to submit the actual financial information agreed to between the insurer and the entity or provider. The **commissioner**~~executive director~~ shall have access to a specific risk sharing arrangement with an entity or provider upon request to the insurer. Financial information obtained by the **department**~~office~~ shall be considered to be a trade secret and shall not be subject to KRS 61.872 to 61.884.

➔Section 1231. KRS 304.17A-545 is amended to read as follows:

- (1) A managed care plan shall appoint a medical director who:
 - (a) Is a physician licensed to practice in this state;
 - (b) Is in good standing with the State Board of Medical Licensure;
 - (c) Has not had his or her license revoked or suspended, under KRS 311.530 to 311.620;

- (d) Shall sign any denial letter required under KRS 304.17A-540; and
 - (e) Shall be responsible for the treatment policies, protocols, quality assurance activities, and utilization management decisions of the plan.
- (2) The medical director shall ensure that:
- (a) Any utilization management decision to deny, reduce, or terminate a health care benefit or to deny payment for a health care service because that service is not medically necessary shall be made by a physician, except in the case of a health care service rendered by a chiropractor or optometrist, that decision shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky;
 - (b) A utilization management decision shall not retrospectively deny coverage for health care services provided to a covered person when prior approval has been obtained from the insurer for those services, unless the approval was based upon fraudulent, materially inaccurate, or misrepresented information submitted by the covered person or the participating provider;
 - (c) In the case of a managed care plan, a procedure is implemented whereby participating physicians have an opportunity to review and comment on all medical and surgical and emergency room protocols, respectively, of the insurer and whereby other participating providers have an opportunity to review and comment on all of the insurer's protocols that are within the provider's legally authorized scope of practice;
 - (d) The utilization management program is available to respond to authorization requests for urgent services and is available, at a minimum, during normal working hours for inquiries and authorization requests for nonurgent health care services; and
 - (e) In the case of a managed care plan, a covered person is permitted to choose or change a primary care provider from among participating providers in the provider network and, when appropriate, choose a specialist from among participating network providers following an authorized referral, if required by the insurer, and subject to the ability of the specialist to accept new patients.
- (3) A managed care plan shall develop comprehensive quality assurance or improvement standards adequate to identify, evaluate, and remedy problems relating to access, continuity, and quality of health care services. These standards shall be made available to the public during regular business hours and include:
- (a) An ongoing written, internal quality assurance or improvement program;
 - (b) Specific written guidelines for quality of care studies and monitoring, including attention to vulnerable populations;
 - (c) Performance and clinical outcomes-based criteria;
 - (d) A procedure for remedial action to correct quality problems, including written procedures for taking appropriate corrective action;
 - (e) A plan for data gathering and assessment; and
 - (f) A peer review process.
- (4) Each managed care plan shall have a process for the selection of health care providers who will be on the plan's list of participating providers, with written policies and procedures for review and approval used by the plan.
- (a) The plan shall establish minimum professional requirements for participating health care providers. An insurer may not discriminate against a provider solely on the basis of the provider's license by the state;
 - (b) The plan shall demonstrate that it has consulted with appropriately qualified health care providers to establish the minimum professional requirements;
 - (c) The plan's selection process shall include verification of each health care provider's license, history of license suspension or revocation, and liability claims history;
 - (d) A managed care plan shall establish a formal written, ongoing process for the reevaluation of each participating health care provider within a specified number of years after the provider's initial acceptance into the plan. The reevaluation shall include an update of the previous review criteria and an assessment of the provider's performance pattern based on criteria such as enrollee clinical outcomes, number of complaints, and malpractice actions.

- (5) The **commissioner**~~[executive director]~~ shall promulgate administrative regulations to establish a uniform application form and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on the plan's list of participating providers in accordance with subsection (4) of this section. In developing a uniform application and guidelines, the **department**~~[office]~~ shall consider industry standards and guidelines adopted by the Council for Affordable Quality Healthcare. The uniform application form and guidelines shall be used by all insurers.
- (6) A managed care plan shall not use a health care provider beyond, or outside of, the provider's legally authorized scope of practice.

➔Section 1232. KRS 304.17A-550 is amended to read as follows:

- (1) An insurer that offers a managed care plan shall offer a health benefit plan with out-of-network benefits to every contract holder. The plan with out-of-network benefits shall allow a covered person to receive covered services from out-of-network health care providers without having to obtain a referral. The plan with out-of-network benefits may require that an enrollee pre-certify selected services and pay a higher deductible, copayment, coinsurance, excess charges and higher premium for the out-of-network benefit plan pursuant to limits established by administrative regulations promulgated by the **department**~~[office]~~.
- (2) If the contract holder elects the out-of-network offering required under subsection (1) of this section, the insurer shall provide each enrollee with the opportunity at the time of enrollment and during the annual open enrollment period, to enroll in the out-of-network option. If the contract holder elects the out-of-network offering required under subsection (1) of this section, the insurer and the contract holder shall provide written notice of the benefit plan with out-of-network benefits to each enrollee in a plan and shall include in that notice a detailed explanation of the financial costs to be incurred by an enrollee who selects the plan.
- (3) The requirement of this section shall not apply to an insurer contract which offers a managed care plan that provides health care services solely to Medicaid or Medicare recipients.
- (4) Managed care plans currently licensed and doing business in Kentucky that do not yet offer benefit plans with out-of-network benefits must develop and offer those plans within three hundred sixty-five (365) days of April 10, 1998.

➔Section 1233. KRS 304.17A-560 is amended to read as follows:

- (1) No insurance contract with a provider shall contain a most-favored-nation provision except where the **commissioner**~~[executive director]~~ determines that the market share of the insurer is nominal.
- (2) Nothing in this section shall be construed to prohibit a health insurer and a provider from negotiating payment rates and performance-based contract terms that would result in the health insurer receiving a rate that is as favorable, or more favorable, than the rates negotiated between a provider and other health insurance issuers.

➔Section 1234. KRS 304.17A-565 is amended to read as follows:

The **commissioner**~~[executive director]~~ shall enforce the provisions of KRS 304.17A-500 to 304.17A-570 and shall adopt administrative regulations necessary to carry out the provisions of KRS 304.17A-500 to 304.17A-570.

➔Section 1235. KRS 304.17A-600 is amended to read as follows:

As used in KRS 304.17A-600 to 304.17A-633:

- (1) (a) "Adverse determination" means a determination by an insurer or its designee that the health care services furnished or proposed to be furnished to a covered person are:
1. Not medically necessary, as determined by the insurer, or its designee or experimental or investigational, as determined by the insurer, or its designee; and
 2. Benefit coverage is therefore denied, reduced, or terminated.
- (b) "Adverse determination" does not mean a determination by an insurer or its designee that the health care services furnished or proposed to be furnished to a covered person are specifically limited or excluded in the covered person's health benefit plan;
- (2) "Authorized person" means a parent, guardian, or other person authorized to act on behalf of a covered person with respect to health care decisions;

- (3) "Concurrent review" means utilization review conducted during a covered person's course of treatment or hospital stay;
- (4) "Covered person" means a person covered under a health benefit plan;
- (5) "External review" means a review that is conducted by an independent review entity which meets specified criteria as established in KRS 304.17A-623, 304.17A-625, and 304.17A-627;
- (6) "Health benefit plan" means the document evidencing and setting forth the terms and conditions of coverage of any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network policy or certificate; a self-insured policy or certificate or a policy or certificate provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; or limited health service benefit plans; and for purposes of KRS 304.17A-600 to 304.17A-633 includes short-term coverage policies;
- (7) "Independent review entity" means an individual or organization certified by the ~~department~~~~office~~ to perform external reviews under KRS 304.17A-623, 304.17A-625, and 304.17A-627;
- (8) "Insurer" means any of the following entities authorized to issue health benefit plans as defined in subsection (6) of this section: an insurance company, health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association; nonprofit hospital, medical-surgical, or health service corporation; or any other entity authorized to transact health insurance business in Kentucky;
- (9) "Internal appeals process" means a formal process, as set forth in KRS 304.17A-617, established and maintained by the insurer, its designee, or agent whereby the covered person, an authorized person, or a provider may contest an adverse determination rendered by the insurer, its designee, or private review agent;
- (10) "Nationally recognized accreditation organization" means a private nonprofit entity that sets national utilization review and internal appeal standards and conducts review of insurers, agents, or independent review entities for the purpose of accreditation or certification. Nationally recognized accreditation organizations shall include the National Committee for Quality Assurance (NCQA), the American Accreditation Health Care Commission (URAC), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or any other organization identified by the ~~department~~~~office~~;
- (11) "Private review agent" or "agent" means a person or entity performing utilization review that is either affiliated with, under contract with, or acting on behalf of any insurer or other person providing or administering health benefits to citizens of this Commonwealth. "Private review agent" or "agent" does not include an independent review entity which performs external review of adverse determinations;
- (12) "Prospective review" means utilization review that is conducted prior to a hospital admission or a course of treatment;
- (13) "Provider" shall have the same meaning as set forth in KRS 304.17A-005;
- (14) "Qualified personnel" means licensed physician, registered nurse, licensed practical nurse, medical records technician, or other licensed medical personnel who through training and experience shall render consistent decisions based on the review criteria;
- (15) "Registration" means an authorization issued by the ~~department~~~~office~~ to an insurer or a private review agent to conduct utilization review;

- (16) "Retrospective review" means utilization review that is conducted after health care services have been provided to a covered person. "Retrospective review" does not include the review of a claim that is limited to an evaluation of reimbursement levels, or adjudication of payment;
- (17) (a) "Urgent care" means health care or treatment with respect to which the application of the time periods for making nonurgent determination:
1. Could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or
 2. In the opinion of a physician with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the care or treatment that is the subject of the utilization review; and
- (b) "Urgent care" shall include all requests for hospitalization and outpatient surgery;
- (18) "Utilization review" means a review of the medical necessity and appropriateness of hospital resources and medical services given or proposed to be given to a covered person for purposes of determining the availability of payment. Areas of review include concurrent, prospective, and retrospective review; and
- (19) "Utilization review plan" means a description of the procedures governing utilization review activities performed by an insurer or a private review agent.

➔Section 1236. KRS 304.17A-607 is amended to read as follows:

- (1) An insurer or private review agent shall not provide or perform utilization reviews without being registered with the ~~department office~~. A registered insurer or private review agent shall:
- (a) Have available the services of sufficient numbers of registered nurses, medical records technicians, or similarly qualified persons supported by licensed physicians with access to consultation with other appropriate physicians to carry out its utilization review activities;
 - (b) Ensure that only licensed physicians shall:
 1. Make a utilization review decision to deny, reduce, limit, or terminate a health care benefit or to deny, or reduce payment for a health care service because that service is not medically necessary, experimental, or investigational except in the case of a health care service rendered by a chiropractor or optometrist where the denial shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky; and
 2. Supervise qualified personnel conducting case reviews;
 - (c) Have available the services of sufficient numbers of practicing physicians in appropriate specialty areas to assure the adequate review of medical and surgical specialty and subspecialty cases;
 - (d) Not disclose or publish individual medical records or any other confidential medical information in the performance of utilization review activities except as provided in the Health Insurance Portability and Accountability Act, Subtitle F, secs. 261 to 264 and 45 C.F.R. secs. 160 to 164 and other applicable laws and administrative regulations;
 - (e) Provide a toll free telephone line for covered persons, authorized persons, and providers to contact the insurer or private review agent and be accessible to covered persons, authorized persons, and providers for forty (40) hours a week during normal business hours in this state;
 - (f) Where an insurer, its agent, or private review agent provides or performs utilization review, be available to conduct utilization review during normal business hours and extended hours in this state on Monday and Friday through 6:00 p.m., including federal holidays;
 - (g) Provide decisions to covered persons, authorized persons, and all providers on appeals of adverse determinations and coverage denials of the insurer or private review agent, in accordance with this section and administrative regulations promulgated in accordance with KRS 304.17A-609;
 - (h) Except for retrospective review of an emergency admission where the covered person remains hospitalized at the time the review request is made, which shall be considered a concurrent review, provide a utilization review decision relating to urgent and nonurgent care in accordance with 29 C.F.R.

Part 2560, including the timeframes and written notice of the decision. A written notice in electronic format, including e-mail or facsimile, may suffice for this purpose where the covered person, authorized person, or provider has agreed in advance in writing to receive such notices electronically and shall include the required elements of subsection (j) of this section;

- (i) Provide a utilization review decision within twenty-four (24) hours of receipt of a request for review of a covered person's continued hospital stay and prior to the time when a previous authorization for hospital care will expire;
 - (j) Provide written notice of review decisions to the covered person, authorized person, and providers. An insurer or agent that denies coverage or reduces payment for a treatment, procedure, drug that requires prior approval, or device shall include in the written notice:
 - 1. A statement of the specific medical and scientific reasons for denial or reduction of payment or identifying that provision of the schedule of benefits or exclusions that demonstrates that coverage is not available;
 - 2. The state of licensure, medical license number, and the title of the reviewer making the decision;
 - 3. Except for retrospective review, a description of alternative benefits, services, or supplies covered by the health benefit plan, if any; and
 - 4. Instructions for initiating or complying with the insurer's internal appeal procedure, as set forth in KRS 304.17A-617, stating, at a minimum, whether the appeal shall be in writing, and any specific filing procedures, including any applicable time limitations or schedules, and the position and phone number of a contact person who can provide additional information;
 - (k) Afford participating physicians an opportunity to review and comment on all medical and surgical and emergency room protocols, respectively, of the insurer and afford other participating providers an opportunity to review and comment on all of the insurer's protocols that are within the provider's legally authorized scope of practice; and
 - (l) Comply with its own policies and procedures on file with the *department*~~{office}~~ or, if accredited or certified by a nationally recognized accrediting entity, comply with the utilization review standards of that accrediting entity where they are comparable and do not conflict with state law.
- (2) The insurer's failure to make a determination and provide written notice within the time frames set forth in this section shall be deemed to be an adverse determination by the insurer for the purpose of initiating an internal appeal as set forth in KRS 304.17A-617. This provision shall not apply where the failure to make the determination or provide the notice results from circumstances which are documented to be beyond the insurer's control.
 - (3) An insurer or private review agent shall submit a copy of any changes to its utilization review policies or procedures to the *department*~~{office}~~. No change to policies and procedures shall be effective or used until after it has been filed with and approved by the *commissioner*~~{executive director}~~.
 - (4) A private review agent shall provide to the *department*~~{office}~~ the names of the entities for which the private review agent is performing utilization review in this state. Notice shall be provided within thirty (30) days of any change.

➔Section 1237. KRS 304.17A-609 is amended to read as follows:

The *department*~~{office}~~ shall promulgate emergency administrative regulations regarding utilization review and internal appeal, including the specification of information required of insurers and private review agents which shall, at a minimum, include:

- (1) A utilization review plan that contains all information utilized for conducting preadmission, admission, readmission review, preauthorization, continued stay authorization, and retrospective review and which, for each type of review, includes:
 - (a) Utilization review policies and procedures to evaluate proposed or delivered medical services;
 - (b) Time frames for review;
 - (c) A written summary describing the review process and required forms;

- (d) Documentation that actively practicing providers with appropriate qualifications are involved in the development or adoption of utilization review criteria relating to specialty and subspecialty areas;
 - (e) Descriptions and names of review criteria upon which utilization review decisions are based; and
 - (f) Additional standards, if any, for the consideration of special circumstances;
- (2) The type and qualifications of the personnel either employed or under contract to perform utilization review;
 - (3) Assurance that a toll-free line will be provided that covered persons, authorized persons, and providers may use to contact the insurer or private review agent;
 - (4) The policies and procedures to ensure that a representative of the insurer or private review agent shall be reasonably accessible to covered persons, authorized persons, and providers at least forty (40) hours per week during normal business hours;
 - (5) The policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;
 - (6) A copy of the materials designed to inform covered persons, authorized persons, and providers of the toll-free number and the requirements of the utilization review plan;
 - (7) A list of the entities for which the private review agent is performing utilization review in this state; and
 - (8) Evidence of compliance or the ability to comply with the requirements and procedures established regarding utilization review and the administrative regulations promulgated thereunder.
 - (9) In lieu of disclosing information specified in subsection (1) of this section, an insurer or private review agent may submit to the *department*~~{office}~~ evidence of accreditation or certification, if any, with a nationally recognized accreditation organization that oversees the information described in subsections (1) to (8) of this section, provided that the *department*~~{office}~~ may still require the information in subsection (8) of this section or other information to demonstrate compliance with the requirements of this section and KRS 304.17A-600, 304.17A-607, 304.17A-613, 304.17A-617, 304.17A-623, and 304.17A-625 not covered by the standards of the nationally recognized accreditation organization, as well as basic information necessary for the *department*~~{office}~~ to contact the insurer or private review agent. Nothing in this subsection shall be construed to prohibit or in any way limit the *department's*~~{office's}~~ authority to require the submission of information specified in subsections (1) to (8) of this section or any other information the *department*~~{office}~~ deems necessary for purposes of investigating a complaint that the insurer or private review agent is not in compliance with KRS 304.17A-600 to 304.17A-633.

➔Section 1238. KRS 304.17A-613 is amended to read as follows:

- (1) The *department*~~{office}~~ shall, through the promulgation of emergency administrative regulations, develop a process:
 - (a) For the review of applications for registration of insurers or private review agents seeking to conduct utilization reviews;
 - (b) For the review of applications for insurers or private review agents seeking registration renewal to continue as a utilization review entity;
 - (c) Ensuring that no registration shall be approved unless the *commissioner*~~{executive director}~~ has documentation or findings that all applicants seeking registration or renewal to conduct utilization review are in compliance with the requirements and procedures established regarding utilization review, and as to renewals, have complied with KRS 304.17A-600 to 304.17A-633 and administrative regulations promulgated to enforce and to administer KRS 304.17A-600 to 304.17A-633; and
 - (d) Establishing fees for applications and renewals in an amount sufficient to pay the administrative costs of the program and any other costs associated with carrying out the provisions of KRS 304.17A-600, 304.17A-603, 304.17A-605, 304.17A-607, 304.17A-609, 304.17A-611, 304.17A-613, and 304.17A-615.
- (2) The registration issued in accordance with this section expires on the second anniversary of the effective date unless it is renewed.

- (3) The registration issued under this section is not transferable.
- (4) The **commissioner**~~{executive director}~~ may revoke or suspend the utilization review registration of any insurer or private review agent who does not comply with the requirements and procedures established regarding utilization review or any administrative regulations promulgated thereunder.
- (5) The **department**~~{office}~~ shall establish reporting requirements to:
 - (a) Evaluate the effectiveness of insurers and private review agents; and
 - (b) Determine if the utilization review plans are in compliance with the requirements and procedures established regarding utilization review and applicable administrative regulations.
- (6) Upon request of any provider, authorized person, or covered person whose care is subject to review, the **department**~~{office}~~ shall provide copies of policies or procedures of any insurer or private review agent that has been issued a registration by the **department**~~{office}~~ to conduct review in this state.
- (7) Notwithstanding any provision to the contrary, an insurer or private review agent registered and in good standing under the provisions of KRS 211.461 to 211.466, prior to July 14, 2000, shall be deemed in compliance with requirements and procedures established in KRS 304.17A-600 to 304.17A-633 regarding utilization review and registered accordingly.
- (8) Upon receipt of written complaints from covered persons, authorized persons, or providers stating that an insurer or a private review agent has failed to perform a review in accordance with the utilization review plan or the requirements and procedures established regarding utilization review, or administrative regulations promulgated thereunder, the **commissioner**~~{executive director}~~ shall:
 - (a) Send a copy of the complaint to the insurer or the private review agent within ten (10) days of receipt of the complaint, and require that any written reply be sent to the **commissioner**~~{executive director}~~ within ten (10) days; and
 - (b) Review the complaint and any written reply received from the insurer or private review agent within the time frames set forth in paragraph (a) of this subsection and make a recommendation to the insurer or private review agent and the covered person, authorized person, or provider.
- (9) The **commissioner**~~{executive director}~~ shall consider complaints before issuing or renewing any registration or renewal of a registration to an insurer or a private review agent.
- (10) Notwithstanding any provision in this section to the contrary, the **department**~~{office}~~ shall accept accreditation or certification by a nationally recognized accreditation organization as sufficient documentation or finding for purposes of subsections (1) and (5) of this section that the insurer or private review agent meets the application requirements for registration or renewal. Insurers or private review agents accredited or certified by a nationally recognized accreditation organization shall be deemed compliant with the utilization review and internal appeals requirements of this section and KRS 304.17A-600, 304.17A-607, 304.17A-609, 304.17A-617, 304.17A-623, and 304.17A-625 and administrative regulations to the extent the standards of such nationally recognized accreditation organization sufficiently meet these requirements. The **department**~~{office}~~ shall have a simplified process in administrative regulations for insurers and private review agents to register using accreditation or certification and shall limit any additional documentation only for demonstrating compliance with requirements in this section and KRS 304.17A-600, 304.17A-607, 304.17A-609, 304.17A-617, 304.17A-623, and 304.17A-625 not met by the standards of a nationally recognized accreditation organization.

➔Section 1239. KRS 304.17A-617 is amended to read as follows:

- (1) Every insurer shall have an internal appeal process to be utilized by the insurer or its designee, consistent with this section and KRS 304.17A-619 and which shall be disclosed to covered persons in accordance with KRS 304.17A-505(1)(g). An insurer shall disclose the availability of the internal process to the covered person in the insured's timely notice of an adverse determination or notice of a coverage denial which meets the requirements set forth in KRS 304.17A-607(1)(j). For purposes of this section, "coverage denial" means an insurer's determination that a service, treatment, drug, or device is specifically limited or excluded under the covered person's health benefit plan. Where a coverage denial is involved, in addition to stating the reason for the coverage denial, the required notice shall contain instructions for filing a request for internal appeal.
- (2) The internal appeals process may be initiated by the covered person, an authorized person, or a provider acting on behalf of the covered person. The internal appeals process shall include adequate and reasonable procedures

for review and resolution of appeals concerning adverse determinations made under utilization review and of coverage denials, including procedures for reviewing appeals from covered persons whose medical conditions require expedited review. At a minimum, these procedures shall include the following:

- (a) Insurers or their designees shall provide decisions to covered persons, authorized persons, and providers on internal appeals of adverse determinations or coverage denials within thirty (30) days of receipt of the request for internal appeal;
 - (b) Insurers or their designees shall render a decision not later than three (3) business days after receipt of the request for an expedited appeal of either an adverse determination or a coverage denial. An expedited appeal is deemed necessary when a covered person is hospitalized or, in the opinion of the treating provider, review under a standard time frame could, in the absence of immediate medical attention, result in any of the following:
 - 1. Placing the health of the covered person or, with respect to a pregnant woman, the health of the covered person or the unborn child in serious jeopardy;
 - 2. Serious impairment to bodily functions; or
 - 3. Serious dysfunction of a bodily organ or part;
 - (c) Internal appeal of an adverse determination shall only be conducted by a licensed physician who did not participate in the initial review and denial. However, in the case of a review involving a medical or surgical specialty or subspecialty, the insurer or agent shall, upon request by a covered person, authorized person, or provider, utilize a board eligible or certified physician in the appropriate specialty or subspecialty area to conduct the internal appeal;
 - (d) Those portions of the medical record that are relevant to the internal appeal, if authorized by the covered person and in accordance with state or federal law, shall be considered and providers given the opportunity to present additional information;
 - (e) In addition to any previous notice required under KRS 304.17A-607(1)(j), and to facilitate expeditious handling of a request for external review of an adverse determination or a coverage denial, an insurer or agent that denies, limits, reduces, or terminates coverage for a treatment, procedure, drug, or device for a covered person shall provide the covered person, authorized person, or provider acting on behalf of the covered person with an internal appeal determination letter that shall include:
 - 1. A statement of the specific medical and scientific reasons for denying coverage or identifying that provision of the schedule of benefits or exclusions that demonstrates that coverage is not available;
 - 2. The state of licensure, medical license number, and the title of the person making the decision;
 - 3. Except for retrospective review, a description of alternative benefits, services, or supplies covered by the health benefit plan, if any; and
 - 4. Instructions for initiating an external review of an adverse determination, or filing a request for review with the *department*{office} if a coverage denial is upheld by the insurer on internal appeal.
- (3) The *department*{office} shall establish and maintain a system for receiving and reviewing requests for review of coverage denials from covered persons, authorized persons, and providers. For purposes of this subsection, "coverage denials" shall not include an adverse determination as defined in KRS 304.17A-600 or subsequent denials arising from an adverse determination.
- (a) On receipt of a written request for review of a coverage denial from a covered person, authorized person, or provider, the *department*{office} shall notify the insurer which issued the denial of the request for review and shall call for the insurer to respond to the *department*{office} regarding the request for review within ten (10) business days of receipt of notice to the insurer.
 - (b) Within ten (10) business days of receiving the notice of the request for review from the *department*{office}, the insurer shall provide to the *department*{office} the following information:

1. Confirmation as to whether the person who received or sought the health service for which coverage was denied was a covered person under a health benefit plan issued by the insurer on the date the service was sought or denied;
 2. Confirmation as to whether the covered person, authorized person, or provider has exhausted his or her rights under the insurer's appeal process under this section; and
 3. The reason for the coverage denial, including the specific limitation or exclusion of the health benefit plan demonstrating that coverage is not available.
- (c) In addition to the information described in paragraph (b) of this subsection, the insurer and the covered person, authorized person, or provider shall provide to the *department*~~{office}~~ any information requested by the *department*~~{office}~~ that is germane to its review.
- (d) On the receipt of the information described in paragraphs (b) and (c) of this subsection, unless the *department*~~{office}~~ is not able to do so because making a determination requires resolution of a medical issue, it shall determine whether the service, treatment, drug, or device is specifically limited or excluded under the terms of the covered person's health benefit plan. If the *department*~~{office}~~ determines that the treatment, service, drug, or device is not specifically limited or excluded, it shall so notify the insurer, and the insurer shall either cover the service, or afford the covered person an opportunity for external review under KRS 304.17A-621, 304.17A-623, and 304.17A-625, where the conditions precedent to the review are present. If the *department*~~{office}~~ notifies the insurer that the treatment, service, drug, or device is specifically limited or excluded in the health benefit plan, the insurer is not required to cover the service or afford the covered person an external review.
- (e) An insurer shall be required to cover the treatment, service, drug, or device that was denied or provide notification of the right to external review in accordance with paragraph (d) of this subsection whether the covered person has disenrolled or remains enrolled with the insurer.
- (f) If the covered person has disenrolled with the insurer, the insurer shall only be required to provide the treatment, service, drug, or device that was denied for a period not to exceed thirty (30) days, or provide the covered person the opportunity for external review.

➔Section 1240. KRS 304.17A-621 is amended to read as follows:

The Independent External Review Program is hereby established in the *department*~~{office}~~. The program shall provide covered persons with a formal, independent review to address disagreements between the covered person and the covered person's insurer regarding an adverse determination made by the insurer, its designee, or a private review agent. This section and KRS 304.17A-623 and 304.17A-625 establish requirements and procedures governing external review and independent review entities.

➔Section 1241. KRS 304.17A-623 is amended to read as follows:

- (1) Every insurer shall have an external review process to be utilized by the insurer or its designee, consistent with this section and which shall be disclosed to covered persons in accordance with KRS 304.17A-505(1)(g). An insurer, its designee, or agent shall disclose the availability of the external review process to the covered person in the insured's timely notice of an adverse determination or notice of a coverage denial as set forth in KRS 304.17A-607(1)(j) and in the denial letter required in KRS 304.17A-617(1) and (2)(e). For purposes of this section "coverage denial" means an insurer's determination that a service, treatment, drug, or device is specifically limited or excluded under the covered person's health benefit plan.
- (2) A covered person, an authorized person, or a provider acting on behalf of and with the consent of the covered person, may request an external review of an adverse determination rendered by an insurer, its designee, or agent.
- (3) The insurer shall provide for an external review of an adverse determination if the following criteria are met:
 - (a) The insurer, its designee, or agent has rendered an adverse determination;
 - (b) The covered person has completed the insurer's internal appeal process, or the insurer has failed to make a timely determination or notification as set forth in KRS 304.17A-619(2). The insurer and the covered person may however, jointly agree to waive the internal appeal requirement;

- (c) The covered person was enrolled in the health benefit plan on the date of service or, if a prospective denial, the covered person was enrolled and eligible to receive covered benefits under the health benefit plan on the date the proposed service was requested; and
 - (d) The entire course of treatment or service will cost the covered person at least one hundred dollars (\$100) if the covered person had no insurance.
- (4) The covered person, an authorized person, or a provider with consent of the covered person shall submit a request for external review to the insurer within sixty (60) days, except as set forth in KRS 304.17A-619(1), of receiving notice that an adverse determination has been timely rendered under the insurer's internal appeal process. As part of the request, the covered person shall provide to the insurer or its designee written consent authorizing the independent review entity to obtain all necessary medical records from both the insurer and any provider utilized for review purposes regarding the decision to deny, limit, reduce or terminate coverage.
- (5) The covered person shall be assessed a one (1) time filing fee of twenty-five dollars (\$25) to be paid to the independent review entity and which may be waived if the independent review entity determines that the fee creates a financial hardship on the covered person. The fee shall be refunded if the independent review entity finds in favor of the covered person.
- (6) A covered person shall not be afforded an external review of an adverse determination if:
- (a) The subject of the covered person's adverse determination has previously gone through the external review process and the independent review entity found in favor of the insurer; and
 - (b) No relevant new clinical information has been submitted to the insurer since the independent review entity found in favor of the insurer.
- (7) The ~~department~~~~office~~ shall establish a system for each insurer to be assigned an independent review entity for external reviews. The system established by the ~~department~~~~office~~ shall be prospective and shall require insurers to utilize independent review entities on a rotating basis so that an insurer does not have the same independent review entity for two (2) consecutive external reviews. The ~~department~~~~office~~ shall contract with no less than two (2) independent review entities.
- (8) (a) If a dispute arises between an insurer and a covered person regarding the covered person's right to an external review, the covered person may file a complaint with the ~~department~~~~office~~. Within five (5) days of receipt of the complaint, the ~~department~~~~office~~ shall render a decision and may direct the insurer to submit the dispute to an independent review entity for an external review if it finds:
- 1. The dispute involves denial of coverage based on medical necessity or the service being experimental or investigational; and
 - 2. All of the requirements of subsection (3) of this section have been met.
- (b) The complaint process established in this section shall be separate and distinct from, and shall in no way limit other grievance or complaint processes available to consumers under other provisions of the KRS or duly promulgated administrative regulations. This complaint process shall not limit, alter, or supplant the mechanisms for appealing coverage denials established in KRS 304.17A-617.
- (9) The external review process shall be confidential and shall not be subject to KRS 61.805 to 61.850 and KRS 61.870 to 61.884.
- (10) External reviews shall be conducted in an expedited manner by the independent review entity if the covered person is hospitalized, or if, in the opinion of the treating provider, review under the standard time frame could, in the absence of immediate medical attention, result in any of the following:
- (a) Placing the health of the covered person or, with respect to a pregnant woman, the health of the covered person or her unborn child in serious jeopardy;
 - (b) Serious impairment to bodily functions; or
 - (c) Serious dysfunction of a bodily organ or part.
- (11) Requests for expedited external review, shall be forwarded by the insurer to the independent review entity within twenty-four (24) hours of receipt by the insurer.

- (12) For expedited external review, a determination shall be made by the independent review entity within twenty-four (24) hours from the receipt of all information required from the insurer. An extension of up to twenty-four (24) hours may be allowed if the covered person and the insurer or its designee agree. The insurer or its designee shall provide notice to the independent review entity and to the covered person, by same-day communication, that the adverse determination has been assigned to an independent review entity for expedited review.
- (13) External reviews which are not expedited shall be conducted by the independent review entity and a determination made within twenty-one (21) calendar days from the receipt of all information required from the insurer. An extension of up to fourteen (14) calendar days may be allowed if the covered person and the insurer are in agreement.

➔Section 1242. KRS 304.17A-625 is amended to read as follows:

- (1) In making its decision, an independent review entity conducting the external review shall take into account all of the following:
- (a) Information submitted by the insurer, the covered person, the authorized person, and the covered person's provider, including the following:
 1. The covered person's medical records;
 2. The standards, criteria, and clinical rationale used by the insurer to make its decision; and
 3. The insurer's health benefit plan;
 - (b) Findings, studies, research, and other relevant documents of government agencies and nationally recognized organizations, including the National Institutes of Health, or any board recognized by the National Institutes of Health, the National Cancer Institute, the National Academy of Sciences, and the United States Food and Drug Administration, the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services, and the Agency for Health Care Research and Quality; and
 - (c) Relevant findings in peer-reviewed medical or scientific literature, published opinions of nationally recognized medical specialists, and clinical guidelines adopted by relevant national medical societies.
- (2) The independent review entity shall base its decision on the information submitted under subsection (1) of this section. In making its decision, the independent review entity shall consider safety, appropriateness, and cost effectiveness.
- (3) The insurer shall provide any coverage determined by the independent review entity to be medically necessary. The independent review entity shall not be permitted to allow coverage for services specifically limited or excluded by the insurer in its health benefit plan. The decision shall apply only to the individual covered person's external review.
- (4) Nothing in this section shall be construed as requiring an insurer to provide coverage for out of network services, procedures, or tests, except as set forth in KRS 304.17A-515(1)(c) and 304.17A-550.
- (5) The insurer shall be responsible for the cost of the external review.
- (6) The independent review entity shall provide to the covered person, treating provider, insurer, and the ~~department~~~~office~~ a decision which shall include:
- (a) The findings for either the insurer or covered person regarding each issue under review;
 - (b) The proposed service, treatment, drug, device, or supply for which the review was performed;
 - (c) The relevant provisions in the insurer's health benefit plan and how applied; and
 - (d) The relevant provisions of any nationally recognized and peer-reviewed medical or scientific documents used in the external review.
- (7) The decision of the independent review entity shall not be made solely for the convenience of the insurer, the covered person, or the provider.
- (8) Consistent with the rules of evidence, a written decision prepared by an independent review entity shall be admissible in any civil action related to the adverse determination. The independent review entity's decision

shall be presumed to be a scientifically valid and accurate description of the state of medical knowledge at the time it was written.

- (9) The decision of the independent review entity shall be binding on the insurer with respect to that covered person. Failure of the insurer to provide coverage as required by the independent review entity shall:
 - (a) Be a violation of the insurance code of a nature sufficient to warrant the **commissioner**~~executive director~~ revoking or suspending the insurer's license or certificate of authority; and
 - (b) Constitute an unfair claims settlement practice as set forth in KRS 304.12-230.
- (10) Failure to provide coverage as required by the independent review entity shall also subject the insurer to the provisions of KRS 304.99-010 and 304.99-020 and require the insurer to pay the claim that was the subject of the external review, without need for the covered person or authorized person to further establish a right as to the payment amount. Reasonable attorney fees associated with the actions of the insured necessary to collect amounts owed the covered person shall be assessed against and borne by the insurer.
- (11) The insurer shall implement the decision of the independent review entity whether the covered person has disenrolled or remains enrolled with the insurer.
- (12) If the covered person has been disenrolled with the insurer, the insurer shall only be required to provide the treatment, service, drug, or device that was previously denied by the insurer, its agent, or designee and later approved by the independent review entity for a period not to exceed thirty (30) days.
- (13) Within thirty (30) days of the decision in favor of the covered person by the independent review entity, the insurer shall provide written notification to the **department**~~office~~ that the decision has been implemented in accordance with this section.
- (14) An independent review entity and any medical specialist the entity utilizes in conducting an external review shall not be liable in damages in a civil action for injury, death, or loss to person or property and is not subject to professional disciplinary action for making, in good faith, any finding, conclusion, or determination required to complete the external review. This subsection does not grant immunity from civil liability or professional disciplinary action to an independent review entity or medical specialist for an action that is outside the scope of authority granted in KRS 304.17A-621, 304.17A-623, and 304.17A-625.
- (15) Nothing in KRS 304.17A-600 to 304.17A-633 shall be construed to create a cause of action against any of the following:
 - (a) An employer that provides health care benefits to employees through a health benefit plan;
 - (b) A medical expert, private review agent, or independent review entity that participates in the utilization review, internal appeal, or external review addressed in KRS 304.17A-600 to 304.17A-633; or
 - (c) An insurer or provider acting in good faith and in accordance with any finding, conclusion, or determination of an Independent Review Entity acting within the scope of authority set forth in KRS 304.17A-621, 304.17A-623, and 304.17A-625.
- (16) The covered person, insurer, or provider in the external review may submit written complaints to the **department**~~office~~ regarding any independent review entity's actions believed to be an inappropriate application of the requirements set forth in KRS 304.17A-621, 304.17A-623, and 304.17A-625. The **department**~~office~~ shall promptly review the complaint, and if the **department**~~office~~ determines that the actions of the independent review entity were inappropriate, the **department**~~office~~ shall take corrective measures, including decertification or suspension of the independent review entity from further participation in external reviews. The **department's**~~office's~~ actions shall be subject to the powers and administrative procedures set forth in subtitle 17A of KRS Chapter 304.

➔Section 1243. KRS 304.17A-627 is amended to read as follows:

- (1) To be certified as an independent review entity under this chapter, an organization shall submit to the **department**~~office~~ an application on a form required by the **department**~~office~~. The application shall include the following:
 - (a) The name of each stockholder or owner of more than five percent (5%) of any stock or options for an applicant;

- (b) The name of any holder of bonds or notes of the applicant that exceeds one hundred thousand dollars (\$100,000);
 - (c) The name and type of business of each corporation or other organization that the applicant controls or with which it is affiliated and the nature and extent of the affiliation or control;
 - (d) The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under paragraph (c) of this subsection and a description of any relationship the named individual has with an insurer as defined in KRS 304.17A-600 or a provider of health care services;
 - (e) The percentage of the applicant's revenues that are anticipated to be derived from independent reviews;
 - (f) A description of the minimum qualifications employed by the independent review entity to select health care professionals to perform external review, their areas of expertise, and the medical credentials of the health care professionals currently available to perform external reviews; and
 - (g) The procedures to be used by the independent review entity in making review determinations.
- (2) If at any time there is a material change in the information included in the application, provided for in subsection (1) of this section, the independent review entity shall submit updated information to the ~~department~~~~office~~.
- (3) An independent review entity shall not be a subsidiary of, or in any way affiliated with, or owned, or controlled by an insurer or a trade or professional association of payors.
- (4) An independent review entity shall not be a subsidiary of, or in any way affiliated with, or owned, or controlled by a trade or professional association of providers.
- (5) Health care professionals who are acting as reviewers for the independent review entity shall hold in good standing a nonrestricted license in a state of the United States.
- (6) Health care professionals who are acting as reviewers for the independent review entity shall hold a current certification by a recognized American medical specialty board or other recognized health care professional boards in the area appropriate to the subject of the review, be a specialist in the treatment of the covered person's medical condition under review, and have actual clinical experience in that medical condition.
- (7) The independent review entity shall have a quality assurance mechanism to ensure the timeliness and quality of the review, the qualifications and independence of the physician reviewer, and the confidentiality of medical records and review material.
- (8) Neither the independent review entity nor any reviewers of the entity, shall have any material, professional, familial, or financial conflict of interest with any of the following:
- (a) The insurer involved in the review;
 - (b) Any officer, director, or management employee of the insurer;
 - (c) The provider proposing the service or treatment or any associated independent practice association;
 - (d) The institution at which the service or treatment would be provided;
 - (e) The development or manufacture of the principal drug, device, procedure, or other therapy proposed for the covered person whose treatment is under review; or
 - (f) The covered person.
- (9) As used in this section, "conflict of interest" shall not be interpreted to include:
- (a) A contract under which an academic medical center or other similar medical center provides health care services to covered persons, except for academic medical centers that may provide the service under review;
 - (b) Provider affiliations which are limited to staff privileges; or
 - (c) A specialist reviewer's relationship with an insurer as a contracting health care provider, except for a specialist reviewer proposing to provide the service under review.
- (10) On an annual basis, the independent review entity shall report to the ~~department~~~~office~~ the following information:

- (a) The number of independent review decisions in favor of covered persons;
- (b) The number of independent review decisions in favor of insurers;
- (c) The average turnaround time for an independent review decision;
- (d) The number of cases in which the independent review entity did not reach a decision in the time specified in statute or administrative regulation; and
- (e) The reasons for any delay.

➔Section 1244. KRS 304.17A-629 is amended to read as follows:

The *commissioner*~~{executive director}~~ shall promulgate administrative regulations to implement the provisions of KRS 304.17A-621, 304.17A-623, 304.17A-625, 304.17A-627, 304.17A-629, and 304.17A-631.

➔Section 1245. KRS 304.17A-633 is amended to read as follows:

The *commissioner*~~{executive director}~~ shall report every six (6) months to the Interim Joint Committee on Banking and Insurance, and to the Governor on the state of the Independent External Review Program. The report shall include a summary of the number of reviews conducted, medical specialties affected, and a summary of the findings and recommendations made by the independent external review entity.

➔Section 1246. KRS 304.17A-649 is amended to read as follows:

The *commissioner*~~{executive director}~~ shall promulgate administrative regulations necessary to implement the provisions of KRS 304.17A-640, 304.17A-641, 304.17A-643, 304.17A-645, and 304.17A-647.

➔Section 1247. KRS 304.17A-665 is amended to read as follows:

Sixty (60) days prior to the regular session of the General Assembly in 2002, and sixty (60) days prior to each subsequent even-numbered-year regular session of the General Assembly, the *commissioner*~~{executive director}~~ shall submit a written report to the Legislative Research Commission on the impact on health insurance costs of KRS 304.17A-660 to 304.17A-669.

➔Section 1248. KRS 304.17A-700 is amended to read as follows:

As used in KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123:

- (1) "Adjudicate" means an insurer pays, contests, or denies a clean claim;
- (2) "Claims payment time frame" means the time period prescribed under KRS 304.17A-702 following receipt of a clean claim from a provider at the address published by the insurer, whether it is the address of the insurer or a delegated claims processor, within which an insurer is required to pay, contest, or deny a health care claim;
- (3) "Clean claim" means a properly completed billing instrument, paper or electronic, including the required health claim attachments, submitted in the following applicable form:
 - (a) A clean claim from an institutional provider shall consist of:
 - 1. The UB-92 data set or its successor submitted on the designated paper or electronic format as adopted by the NUBC;
 - 2. Entries stated as mandatory by the NUBC; and
 - 3. Any state-designated data requirements determined and approved by the Kentucky State Uniform Billing Committee and included in the UB-92 billing manual effective at the time of service.
 - (b) A clean claim for dentists shall consist of the form and data set approved by the American Dental Association.
 - (c) A clean claim for all other providers shall consist of the HCFA 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claims Committee.
 - (d) A clean claim for pharmacists shall consist of a universal claim form and data set approved by the National Council on Prescription Drug Programs;
- (4) "*Commissioner*~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance;

- (5) "Covered person" means a person on whose behalf an insurer offering a health benefit plan is obligated to pay benefits or provide services;
- (6) "~~Department~~~~Office~~" means the ~~Department~~~~Office~~ of Insurance;
- (7) "Electronic" or "electronically" means electronic mail, computerized files, communications, or transmittals by way of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;
- (8) "Health benefit plan" has the same meaning as provided in KRS 304.17A-005;
- (9) "Health care provider" or "provider" means a provider licensed in Kentucky as defined in KRS 304.17A-005 and, for the purposes of KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 only, shall include physical therapists licensed under KRS Chapter 327, psychologists licensed under KRS Chapter 319, and social workers licensed under KRS Chapter 335. Nothing contained in KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 shall be construed to include physical therapists, psychologists, and social workers as a health care provider or provider under KRS 304.17A-005;
- (10) "Health claim attachments" means medical information from a covered person's medical record required by the insurer containing medical information relating to the diagnosis, the treatment, or services rendered to the covered person and as may be required pursuant to KRS 304.17A-720;
- (11) "Institutional provider" means a health care facility licensed under KRS Chapter 216B;
- (12) "Insurer" has the same meaning provided in KRS 304.17A-005;
- (13) "Kentucky Uniform Billing Committee (KUBC)" means the committee of health care providers, governmental payors, and commercial insurers established as a local arm of NUBC to implement the bill requirements of the NUBC and to prescribe any additional billing requirements unique to Kentucky insurers;
- (14) "National Uniform Billing Committee (NUBC)" means the national committee of health care providers, governmental payors, and commercial insurers that develops the national uniform billing requirements for institutional providers as referenced in accordance with the Federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Chapter 6A, Subchapter XXV, sec. 300gg et seq.;
- (15) "Retrospective review" means utilization review that is conducted after health care services have been provided to a covered person; and
- (16) "Utilization review" has the same meaning as provided in KRS 304.17A-600(18).

➔Section 1249. KRS 304.17A-720 is amended to read as follows:

- (1) In order to improve the efficiency and effectiveness of the health care system through administrative simplification of billing requirements, the ~~commissioner~~~~executive director~~ shall prescribe, through the promulgation of administrative regulations, standardized health claim attachments to be used by all insurers requiring additional medical information to process health care claims. The Kentucky State Uniform Billing Committee shall make recommendations to the ~~commissioner~~~~executive director~~ on the standardization of attachments.
- (2) Any administrative regulations that prescribe standardized health claim attachments shall be updated to conform with federal standards following the release of national requirements for transactions and data elements in accordance with the Federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Chapter 6A, Subchapter XXV, sec. 300gg et seq.

➔Section 1250. KRS 304.17A-722 is amended to read as follows:

- (1) No later than ninety (90) days following July 15, 2002, the ~~department~~~~office~~ shall promulgate administrative regulations requiring all insurers to report information on a calendar quarter basis on prompt payment of claims to providers, as defined in KRS 304.17A-700, that shall be limited to the following:
 - (a) The number of clean claims received by the insurer, its agent, or designee during the reporting period;
 - (b) The percentage of clean claims received by the insurer, its agent, or designee that were:
 1. Adjudicated within the claims payment timeframe;
 2. Adjudicated within one (1) to thirty (30) days from the end of the claims payment timeframe;

3. Adjudicated within thirty-one (31) to sixty (60) days from the end of the claims payment timeframe;
 4. Adjudicated within sixty-one (61) to ninety (90) days from the end of the claims payment timeframe;
 5. Adjudicated more than ninety (90) days from the end of the claims payment timeframe; and
 6. Not yet adjudicated;
- (c) The percentage of clean claims received during the reporting quarter that were paid and not denied or contested:
1. Within the claims payment timeframe;
 2. Within one (1) to thirty (30) days from the end of the claims payment timeframe;
 3. Within thirty-one (31) to sixty (60) days from the end of the claims payment timeframe;
 4. Within sixty (60) to ninety (90) days from the end of the claims payment timeframe;
 5. More than ninety (90) days from the end of the claims payment timeframe; and
 6. Not yet paid;
- (d) Amount of interest paid; and
- (e) For clean claims received during the reporting quarter that were not denied or contested, the percentage of the total dollar amount of those claims that were paid within the claims payment timeframe.
- (2) Data required in subsection (1) of this section shall be reported for hospitals, physicians, and all other providers, excluding pharmacies.
- (3) Insurers shall submit information required in subsection (1) of this section to the *department*~~{office}~~ no later than one hundred eighty (180) days following the close of the reporting quarter.
- (4) The *department*~~{office}~~ shall, as part of the market conduct survey of each insurer, audit the insurer to determine compliance with KRS 304.17A-700 to 304.17A-730 and KRS 304.14-135 and 304.99-123. Findings shall be made available to the public upon request.
- (5) The *commissioner*~~{executive director}~~ shall annually present to the Interim Joint Committee on Banking and Insurance and to the Governor a report on the payment practices of insurers and compliance with the provisions of KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 and the *commissioner's*~~{executive director's}~~ enforcement activities, including the number of complaints received and those acted upon by the *department*~~{office}~~.

➔Section 1251. KRS 304.17A-752 is amended to read as follows:

- (1) No individual or business entity shall act or hold themselves out as an insurance purchasing outlet without first being registered as an insurance purchasing outlet by the *commissioner*~~{executive director}~~ of the Kentucky *Department*~~{Office}~~ of Insurance in accordance with KRS 304.17A-750 to 304.17A-770 and 304.47-020.
- (2) No individual or business entity shall act for an insurance purchasing outlet to sell, solicit, or negotiate a health benefit plan to an eligible person unless the individual or business entity acting for the insurance purchasing outlet is licensed in accordance with Subtitle 9 of Chapter 304 as an agent with a health line of authority.
- (3) The *commissioner*~~{executive director}~~ may promulgate administrative regulations necessary to administer KRS 304.17A-750 to 304.17A-770 and 304.47-020.

➔Section 1252. KRS 304.17A-754 is amended to read as follows:

- (1) A business entity seeking to obtain a certificate of registration to act as an insurance purchasing outlet shall complete and file with the *commissioner*~~{executive director}~~ of the Kentucky *Department*~~{Office}~~ of Insurance an application prescribed by the *commissioner*~~{executive director}~~.
- (2) An application shall not be deemed filed until all information necessary to process the application properly has been received by the *commissioner*~~{executive director}~~.

- (3) Within one hundred eighty (180) days of receipt of an application for a certificate of registration, the **commissioner**~~executive director~~ shall make a determination concerning the application and provide notice to the applicant. If approved, a certificate of registration, in a form prescribed by the **commissioner**~~executive director~~, shall be provided to the insurance purchasing outlet.
- (4) The business entity seeking a certificate of registration to act as an insurance purchasing outlet shall file the following with the **commissioner**~~executive director~~:
- (a) Organizational information, including partnership agreements, articles of incorporation, bylaws, and other applicable documents;
 - (b) A business plan, including plan of operations, marketing plan, and financial projections of not less than three (3) years;
 - (c) Appeal procedures for denied enrollment to a health purchasing outlet;
 - (d) Enrollment procedures;
 - (e) Payment procedures;
 - (f) Evidence of financial responsibility to operate as an insurance purchasing outlet in the form of the following:
 1. A fidelity bond in an amount not less than ten percent (10%) of projected annual premiums collected; and
 2. A certificate of an insurer authorized to write legal liability insurance in Kentucky certifying that the insurer has and will keep in effect on behalf of the insurance purchasing outlet a policy of insurance covering the legal liability of the insurance purchasing outlet as a result of erroneous acts or failure to act in its capacity as an insurance purchasing outlet. The policy shall provide indemnification for the benefit of any aggrieved party as a result of each single occurrence in the sum of not less than ten thousand dollars (\$10,000). The policy shall not be terminated unless at least thirty (30) days prior written notice has been given to the **commissioner**~~executive director~~ and to the insurance purchasing outlet;
 - (g) Biographical affidavits of owners, partners, officers, and directors of the applicant;
 - (h) Identification of any contracted company which manages the insurance purchasing outlet, or any administrator which adjusts or settles claims of the insurance purchasing outlet members;
 - (i) Names and addresses of the principal places of business of the applicants;
 - (j) Geographic area to be serviced;
 - (k) Requirements for membership and participation in the insurance purchasing outlet;
 - (l) Name and address of each participating insurer, if known;
 - (m) Proposed health benefit plan to be offered, if known; and
 - (n) Any other information required by the **commissioner**~~executive director~~ to evaluate the applicant's suitability as an insurance purchasing outlet.
- (5) Any information filed by an insurance purchasing outlet pursuant to subsection (4) of this section that changes shall be refiled with the **commissioner**~~executive director~~ for approval.
- (6) The **commissioner**~~executive director~~ may promulgate administrative regulations to establish standards in accordance with subsection (4) of this section.
- ➔Section 1253. KRS 304.17A-758 is amended to read as follows:
- (1) The insurance purchasing outlet may collect premiums and the value of vouchers from or on behalf of insurance purchasing outlet members under its administrator license.
 - (2) The insurance purchasing outlet shall not adjust or settle claims on insurance purchasing outlet members under its administrator license.
 - (3) The insurance purchasing outlet shall comply with KRS 304.9-371 to 304.9-377.

- (4) The insurance purchasing outlet shall furnish annual and quarterly financial statements no later than sixty (60) days after the end of the reporting period on a form prescribed by the *commissioner*~~[executive director]~~. Additionally, the insurance purchasing outlet shall furnish to the *commissioner*~~[executive director]~~ annual audited financial statements based on generally accepted accounting principles by an independent certified public accountant on or before one hundred twenty (120) days from the end of the insurance purchasing outlet's fiscal year for the immediately preceding fiscal year.
- (5) The books and records of the insurance purchasing outlet shall be retained in the state of Kentucky and made available to the *commissioner*~~[executive director]~~ for inspection or examination.
- (6) Upon payment of all applicable fees, the certificate of registration issued in accordance with KRS 304.17A-754 shall be renewed at the same time that the insurance purchasing outlet renews its administrator license in accordance with Subtitle 9 of Chapter 304.
- (7) The certificate of registration issued under KRS 304.17A-754 is not transferable.
- (8) The *department*~~[office]~~ shall promulgate administrative regulations to establish fees for the initial registration and renewal of registration of an insurance purchasing outlet.

➔Section 1254. KRS 304.17A-760 is amended to read as follows:

- (1) An insurance purchasing outlet shall:
 - (a) Set and collect fees to finance necessary costs incurred in marketing, selling, servicing, and administering its services;
 - (b) Offer health benefit plans to eligible persons;
 - (c) Provide premium and voucher collection services for participating insurers;
 - (d) Establish and adhere to appropriate administrative and accounting procedures for operating the health purchasing outlet;
 - (e) Establish and adhere to rules, conditions, and procedures for insurance purchasing outlet members and participating insurers;
 - (f) Establish and adhere to enrollment and participation requirements for insurance purchasing outlet members;
 - (g) Receive, review, and conduct appeals for persons who have been denied enrollment to an insurance purchasing outlet;
 - (h) Demonstrate and maintain at all times proof of financial responsibility and solvency;
 - (i) Prepare an annual report on the operations of the insurance purchasing outlet in accordance with administrative regulations promulgated by the *commissioner*~~[executive director]~~;
 - (j) Establish procedures for billing and collection of premiums from insurance purchasing outlet members;
 - (k) Establish procedures for collecting and redeeming vouchers; and
 - (l) Maintain an administrator license in accordance with Subtitle 9 of Chapter 304.
- (2) An insurance purchasing outlet may:
 - (a) Contract with qualified third parties for any services necessary to carry out the powers and duties authorized or required by this chapter;
 - (b) Employ necessary staff;
 - (c) Sue or be sued;
 - (d) Contract with independent licensed administrators to adjust or settle claims, since the insurance purchasing outlet is prohibited from these activities in accordance with KRS 304.17A-758; and
 - (e) Employ, contract, or otherwise use licensed insurance agents to market and service coverage.

➔Section 1255. KRS 304.17A-762 is amended to read as follows:

- (1) For administrative purposes, an insurance purchasing outlet shall be the policyholder or contract holder of the health benefit plan on behalf of an insurance purchasing outlet member.
- (2) The participating insurer shall issue a certificate of coverage to each insurance purchasing outlet member.
- (3) The insurance purchasing outlet shall provide the following disclosures to an insurance purchasing outlet member at the time of enrollment:
 - (a) The insurance purchasing outlet is not an insurer and does not pay benefits or claims. It collects and distributes premiums on behalf of insurance purchasing outlet members;
 - (b) The insurance purchasing outlet is registered with the Kentucky ~~Department~~~~Office~~ of Insurance to provide specific administrative services and may not assume any risk for claim and benefit payments; and
 - (c) Other disclosures as the ~~commissioner~~~~executive director~~ shall require by administrative regulation.

➔Section 1256. KRS 304.17A-768 is amended to read as follows:

- (1) A voucher issued by an employer shall only be redeemable at an insurance purchasing outlet. A voucher shall be nonassignable and nontransferable.
- (2) An insurance purchasing outlet shall redeem the value of the voucher with the employer. If an employer fails to redeem the value of the voucher, the insurance purchasing outlet shall notify the eligible person. An eligible person may pay the premium amount directly to the insurance purchasing outlet if the employer fails to redeem the value of the voucher.
- (3) An insurance purchasing outlet shall pay an insurer the appropriate premium amount on or before the premium due date. If an insurance purchasing outlet fails to pay the premium amount on or before the due date the following shall occur:
 - (a) An insurer shall issue the insurance purchasing outlet a notice of termination if the premium amount is not paid pursuant to KRS 304.17A-245.
 - (b) Upon receipt of a notice of termination from the insurer, the insurance purchasing outlet shall issue the eligible member a notice of termination.
 - (c) The insurer shall notify the eligible person of his *or her* conversion rights under KRS 304.18-110.
- (4) An insurer may allow for a thirty-one (31) day grace period for the premium amount to be paid by the insurance purchasing outlet.
- (5) The ~~department~~~~office~~ shall prescribe the items to be included on a voucher.
- (6) An insurance purchasing outlet shall be required to accept a voucher as payment for a health benefit plan, or as partial payment if the value of the voucher is insufficient to cover the full premium of the health benefit plan.
- (7) An insurance purchasing outlet may charge a reasonable administrative fee to cover the cost of processing the voucher.
- (8) The ~~commissioner~~~~executive director~~ shall promulgate administrative regulations to implement the provisions of this section.

➔Section 1257. KRS 304.17A-802 is amended to read as follows:

- (1) "Administrator" means an individual, partnership, corporation, association, or other legal entity engaged by a self-insured employer-organized association group's board of trustees to carry out the policies established by the group's board of trustees and to provide day-to-day management of the group.
- (2) "Agent" means any person directly or indirectly associated with such organization who engages in solicitation or enrollment of persons for profit or pecuniary gain in a self-insured employer-organized association group.
- (3) "~~Commissioner~~~~Executive director~~" means the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance.
- (4) "Deceptive" means an act, practice, or statement which has the tendency or capacity to deceive, without regard to whether there is an intent to deceive or whether any person has suffered loss or injury as a result of the act, practice, or statement.

- (5) "Employer-organized association" means an entity defined in KRS 304.17A-804.
- (6) "Governmental entity" means the Commonwealth of Kentucky, other states, or the United States, their political subdivisions, municipal corporations, or public agencies.
- (7) "Insolvent" or "insolvency" means the inability of a self-insured employer-organized association group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.
- (8) "Person" includes but is not limited to any individual, partnership, association, trust, or corporation.
- (9) "Qualified actuary" means a member of the American Academy of Actuaries or a Fellow of the Society of Actuaries.
- (10) "Self-insured employer-organized association group" means a group described in KRS 304.17A-804.
- (11) "Service company" means a person or entity which provides services not provided by the administrator, including but not limited to claims adjustment, compilation of statistics in preparation of contribution and assessments, loss, and tax reports, preparation of other required self-insurance reports, development of members' contributions, assessments, and fees, and administration of a claim fund.
- (12) "Unfair" means an act, practice, or statement which is unconscionable.

➔Section 1258. KRS 304.17A-806 is amended to read as follows:

No person or entity in this state shall be, act as, or hold itself out as a self-insured employer-organized association group unless it holds a certificate of filing from the *commissioner*~~{executive director}~~. All certificates of filing shall be issued by the *commissioner*~~{executive director}~~.

➔Section 1259. KRS 304.17A-808 is amended to read as follows:

A proposed self-insured employer-organized association group shall file with the *commissioner*~~{executive director}~~ an application for a certificate of filing accompanied by a nonrefundable filing fee of five dollars (\$5). Each application for a certificate of filing shall be submitted to the *commissioner*~~{executive director}~~ upon a form prescribed by the *commissioner*~~{executive director}~~ and shall set forth or be accompanied by:

- (1) The group's name, location of its principal office, date of organization, and identification of its fiscal year. The application shall also include the name and address of each member if known at the time of application. If this information is unknown, a description of the group to be solicited for membership shall be included;
- (2) A copy of the articles of association or governance documents;
- (3) A copy of agreements with the administrator and with any service company;
- (4) A copy of the bylaws of the proposed group;
- (5) Certification of the group's financial solvency as set forth in KRS 304.17A-812;
- (6) Designation of the initial board of trustees and administrator;
- (7) The address where books and records of the group will be maintained at all times; and
- (8) A statement describing the self-insured employer-organized association which shall include:
 - (a) The health services to be offered;
 - (b) The financial risks to be assumed;
 - (c) The initial geographic area to be served;
 - (d) Pro forma financial projections for the first three (3) years of operation, including the assumptions the projections are based upon;
 - (e) The sources of working capital and funding;
 - (f) A description of the persons to be covered by the self-insured employer-organized association;
 - (g) Any proposed reinsurance arrangements;

- (h) Any proposed management, administrative, or cost-sharing arrangements; and
- (i) A description of the self-insured employer-organized association's proposed method of marketing.

➔Section 1260. KRS 304.17A-810 is amended to read as follows:

Upon receipt of an application for a certificate of filing, the *commissioner*~~[executive director]~~ shall issue or deny the same. A certificate of filing shall be issued only if the *commissioner*~~[executive director]~~ finds that the applicant has complied with KRS 304.17A-808, has paid the application fee, and the *commissioner*~~[executive director]~~ is satisfied that the following conditions are met:

- (1) The persons responsible for the conduct of the affairs of the self-insured employer-organized association group are competent, trustworthy, and possess good reputation;
- (2) The self-insured employer-organized association group is financially responsible and may reasonably be expected to meet its obligations to participants and prospective participants. In making this determination, the *commissioner*~~[executive director]~~ may consider:
 - (a) The adequacy of working capital;
 - (b) Any agreement with an insurer, a government, or any other organization for insuring the payment of health claims or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the self-insurance group; and
 - (c) Compliance with KRS 304.17A-812, as a guarantee that the obligations will be duly performed.

➔Section 1261. KRS 304.17A-812 is amended to read as follows:

- (1) This section applies to a group applying for and holding a certificate of filing as a self-insured employer-organized association group.
- (2) To obtain and to maintain its certificate of filing, a self-insured employer-organized association group shall have sufficient financial strength to pay all public or professional liabilities covered by the group, including known claims and expenses and incurred but unreported claims and expenses.
- (3) The *commissioner*~~[executive director]~~ shall require the following of a self-insured employer-organized association group:
 - (a) An actuarial certification by a member of the American Academy of Actuaries of the adequacy of the proposed rates funding arrangements of the group;
 - (b) Specific reinsurance ensuring the solvency of the funding arrangement;
 - (c) A demonstration of capital and surplus as follows:
 - 1. Initial financial requirements. Every self-insured employer-organized association shall demonstrate initial capital and surplus equal to the greater of:
 - a. Five hundred thousand dollars (\$500,000);
 - b. Two percent (2%) of projected annual contribution revenues on the first one hundred fifty million dollars (\$150,000,000) of contributions and one percent (1%) of projected annual contributions on the contributions in excess of one hundred fifty million dollars (\$150,000,000); or
 - c. An amount equal to the sum of eight percent (8%) of projected annual health care expenditures except those paid on a capitated basis or managed hospital payment basis and four percent (4%) of projected annual hospital expenditures paid on a managed hospital payment basis.
 - 2. Continuing financial requirements. Every self-insured employer-organized association shall demonstrate ongoing capital and surplus equal to the greater of:
 - a. Five hundred thousand dollars (\$500,000);
 - b. Two percent (2%) of annual contribution revenues, as reported on the most recent annual financial statement filed with the *commissioner*~~[executive director]~~, on the first one hundred fifty million dollars (\$150,000,000) of contributions and one percent (1%) of

annual premiums on the contributions in excess of one hundred fifty million dollars (\$150,000,000); or

- c. An amount equal to the sum of eight percent (8%) of projected annual health care expenditures except those paid on a capitated basis or managed hospital payment basis and four percent (4%) of annual hospital expenditures paid on a managed hospital payment basis, as reported on the most recent financial statement filed with the *commissioner*~~{executive director}~~; and
 - (d) A fidelity bond for the administrator and a fidelity bond for the service company in forms and amounts prescribed by the *commissioner*~~{executive director}~~.
- (4) The *commissioner*~~{executive director}~~, if not satisfied with the financial strength of a self-insured employer-organized association group, may require any or all of the following of a self-insured employer-organized association group:
- (a) Security in the form and amount prescribed by the *commissioner*~~{executive director}~~ as follows:
 - 1. A surety bond issued by a corporate surety authorized to transact business in the Commonwealth of Kentucky; or
 - 2. Any financial security endorsement issued as part of an acceptable excess insurance contract issued by an authorized insurer, which may be used to meet all or part of the security requirement.

The bond or financial security endorsement shall be solely for the benefit of the insured creditors to pay claims and associated expenses and shall be payable upon the failure of the group to pay professional or public liability claims the group is legally obligated to pay. The *commissioner*~~{executive director}~~ may establish and adjust the requirements for the amount of security based on differences among groups in their size, types of business, years in existence, or other relevant factors.

- (b) Specific and aggregate excess insurance in a form and amount issued by an insurer acceptable to the *commissioner*~~{executive director}~~.

➔Section 1262. KRS 304.17A-814 is amended to read as follows:

A self-insured employer-organized association group shall notify the *commissioner*~~{executive director}~~ immediately of any change in the information required to be filed under KRS 304.17A-808 or 304.17A-812.

➔Section 1263. KRS 304.17A-816 is amended to read as follows:

The funds of a self-insured employer-organized association group shall be invested only in securities or other investments permitted by Subtitle 7 of this chapter, or such other securities or investments as the *commissioner*~~{executive director}~~ may permit by administrative regulation.

➔Section 1264. KRS 304.17A-820 is amended to read as follows:

The *commissioner*~~{executive director}~~ or any person authorized by him *or her* shall have the power to examine the financial condition, affairs, and management of any self-insured employer-organized association group subject to the provisions of KRS 304.17A-800 to 304.17A-844. The *commissioner*~~{executive director}~~ shall have free access to all the books, papers, and documents relating to the business of the organization, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of any group, or any person in relation to its affairs, transactions, or conditions. The *commissioner*~~{executive director}~~ shall so examine each self-insured employer-organized association group subject to the provisions of KRS 304.17A-800 to 304.17A-844 no less frequently than every four (4) years. An examination under this section shall be subject to the provisions of KRS 304.2-210 to 304.2-290.

➔Section 1265. KRS 304.17A-824 is amended to read as follows:

- (1) A certificate of filing remains in effect until terminated at the request of the group or suspended or revoked by the *commissioner*~~{executive director}~~ pursuant to KRS 304.17A-840.
- (2) The *commissioner*~~{executive director}~~ shall not grant the request of the self-insured employer-organized association group to terminate its certificate of filing unless the group has filed with the *commissioner*~~{executive director}~~ a statement describing what arrangements, if any, have been made to pay

obligations of the group, including both known claims and expenses and incurred but unreported claims and expenses.

- (3) Subject to filing with the **commissioner**~~{executive director}~~, a self-insured employer-organized association group may merge with another self-insured employer-organized association group. As a result of any merger, the resulting self-insured employer-organized association shall assume in full all obligations of the constituent groups.

➔Section 1266. KRS 304.17A-826 is amended to read as follows:

- (1) Each group shall be operated by a board of trustees which shall consist of not less than two (2) persons selected in the manner prescribed by the self-insured employer-organized association or by other laws of the Commonwealth. The trustees shall not be officers, employees, or agents of an administrator or servicing organization. All trustees shall be residents of Kentucky or officers of corporations authorized to do business in Kentucky. The trustees shall have the authority to administer the operations of the self-insured employer-organized association group, and to assure that there is adequate funding to cover health liabilities, that all claims are paid promptly, and that all necessary precautions are taken to safeguard the assets of the group.
- (2) The board of trustees shall:
- (a) Maintain responsibility for all moneys collected or disbursed from the group;
 - (b) Maintain minutes of its meetings and make the minutes available to the **commissioner**~~{executive director}~~; and
 - (c) Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.
- (3) The board of trustees shall not:
- (a) Extend credit to individual group members for payment of contributions or assessments, except pursuant to payment plans filed with the **commissioner**~~{executive director}~~; or
 - (b) Permit the loan of any moneys to, or borrow any moneys from, the group or in the name of the group.
- (4) In its discretion, the self-insured employer-organized association group may refer to its trustees as directors. If this is done, the provisions of KRS 304.17A-800 to 304.17A-844 referring to trustees shall be construed as referring to directors.

➔Section 1267. KRS 304.17A-832 is amended to read as follows:

- (1) All self-insured employer-organized association groups shall file with the **commissioner**~~{executive director}~~ a statement of financial condition audited by an independent certified public accountant on or before one hundred twenty (120) days from the end of the group's fiscal year for the immediately preceding fiscal year. The financial statement shall be in a form approved by the **commissioner**~~{executive director}~~ and shall include:
- (a) Actuarially-appropriate reserves for:
 1. Known claims and expenses associated therewith.
 2. Claims incurred but not reported and any expenses associated therewith.
 3. Unearned contributions and assessments.
 4. Bad debts, which reserves shall be known as liabilities.
 - (b) An actuarial opinion by a qualified actuary and a supporting reserve study regarding reserves for known claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods.
- (2) No person shall make a deceptive statement or fail to correct a misstatement in connection with the solicitation of membership of a group.
- (3) The financial statements required by this section shall be completed in accordance with administrative regulations promulgated by the **commissioner**~~{executive director}~~.

➔Section 1268. KRS 304.17A-834 is amended to read as follows:

Self-insured employer-organized association groups shall file with the **commissioner**~~[executive director]~~ their rates, underwriting guidelines, evidence of coverage, and any changes therein. The filing shall be accompanied by a filing fee of five dollars (\$5) per form filing.

➔Section 1269. KRS 304.17A-840 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may suspend or revoke any certificate of filing issued to a self-insured employer-organized association group if the **commissioner**~~[executive director]~~ finds that any of the following conditions exist:
 - (a) The self-insured employer-organized association group is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under KRS 304.17A-800 to 304.17A-844, unless amendments to the submissions have been filed with and approved by the **commissioner**~~[executive director]~~;
 - (b) The self-insured employer-organized association group is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to participants or prospective participants;
 - (c) The self-insured employer-organized association group, or any person at its direction, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;
 - (d) The self-insured employer-organized association group has engaged in any unfair or deceptive practices under its certificate of filing; or
 - (e) The self-insured employer-organized association group has failed to correct a violation of KRS 304.17A-800 to 304.17A-844 or the administrative regulations promulgated thereunder, within a reasonable time period established by the **commissioner**~~[executive director]~~ in administrative regulations.
- (2) A certificate of filing shall be suspended or revoked only after compliance with the hearing procedure set forth in KRS 304.2-310 to 304.2-370.
- (3) When a certificate of filing of a self-insured employer-organized association group is suspended, the group shall not, during the period of suspension, enroll any new participants and shall not engage in any advertising or solicitation.
- (4) If the certificate of filing of a self-insured employer-organized association group is revoked, the group shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and shall conduct no further business, except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation. The **commissioner**~~[executive director]~~ may, by written order, prevent further operation of the group if he *or she* finds it to be in the best interest of the participants, to the end that the participants will be afforded the greatest practical opportunity to obtain health coverage elsewhere. If the **commissioner**~~[executive director]~~ permits further operation, the self-insured employer-organized association group shall continue to collect the contributions required of participants.

➔Section 1270. KRS 304.17A-842 is amended to read as follows:

The **commissioner**~~[executive director]~~ may promulgate reasonable administrative regulations not inconsistent with the provisions of KRS 304.17A-800 to 304.17A-844 that he *or she* deems necessary for the proper administration of these sections. Nothing in KRS 304.17A-800 to 304.17A-844 or 304.17A-320 or any administrative regulation promulgated thereunder shall require any self-insured employer-organized association group or its members to take any action in violation of the Constitution of the Commonwealth of Kentucky.

➔Section 1271. KRS 304.17A-844 is amended to read as follows:

- (1) After a hearing or upon agreement by the self-insured employer-organized association group, the **commissioner**~~[executive director]~~ may suspend or revoke the certificate of filing of a self-insured employer-organized association group, impose a civil penalty of up to five thousand dollars (\$5,000) per violation on a self-insured employer-organized association group, or both, for:
 - (a) Violations of KRS 304.17A-800 to 304.17A-844 or administrative regulations promulgated thereunder;
 - (b) Obtaining a certificate of filing by unfair or deceptive means;
 - (c) Operating in a financially hazardous manner;

- (d) Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled thereto by the group or its administrator; or
 - (e) Unfair or deceptive business practices.
- (2) The *commissioner*~~[executive director]~~, in his *or her* discretion and without advance notice or a hearing thereon, may suspend or revoke the certificate of filing of any self-insured employer-organized association group upon the commencement of the following proceedings:
- (a) Receivership;
 - (b) Conservatorship;
 - (c) Rehabilitation; or
 - (d) Other delinquency proceedings.

➔Section 1272. KRS 304.17A-846 is amended to read as follows:

- (1) Any insurer issuing or delivering group health benefit plans in the Commonwealth shall provide to an employer-organized association health benefit plan, within thirty (30) calendar days after a written request, the information relating to its health benefit plan that has been requested, including but not limited to the following information for the previous three (3) years or for the entire period of coverage, whichever is shorter:
- (a) Aggregate claims experience by month, including claims experience for pharmacy benefits;
 - (b) Total premiums paid by month;
 - (c) Total number of insureds on a monthly basis by coverage tier; and
 - (d) Sufficient detailed claims information to permit the employer-organized association to verify eligibility and participation of the groups and individuals participating in the employer-organized association program.

The *department*~~[office]~~ shall, by July 15, 2005, promulgate administrative regulations to implement the provisions of this section and define the extent that individual information shall be provided.

- (2) This section shall not require the insurer to disclose any nonpublic personal health information without the written consent of the individual who is the subject of the information, as required by administrative regulations promulgated by the *commissioner*~~[executive director]~~. However, nonpublic personal health information may be provided to the employer-organized association health benefit plan and large group health benefit plan with fifty-one (51) or more enrolled employees as a covered entity to cover entity transfer under the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. sec. 300gg et seq., provided that the health benefit plan certifies to the insurer that it has adopted HIPAA-required safeguards and will treat the nonpublic personal health information in accordance with HIPAA standards.
- (3) Any insurer issuing or delivering group health benefit plans in the Commonwealth shall provide to a large group health benefit plan with fifty-one (51) or more enrolled employees, within thirty (30) calendar days after receipt of a written request, the following information relating to its health benefit plan:
- (a) Total premiums paid by month;
 - (b) Total number of insureds on a monthly basis by coverage tier; and
 - (c) Additional utilization data to help the employer measure costs in the following areas:
 1. Detailed prescription drug utilization information, including generic versus brand utilization;
 2. Number of office visits to primary care providers and specialists;
 3. Number of emergency room visits;
 4. Number of inpatient and outpatient hospitalizations;
 5. Number of members utilizing deductible and out-of-pocket expenses by cost level; and
 6. A list of the most prevalent disease categories.

- (4) Insurers shall not be required to produce reports requested pursuant to subsection (3) of this section more than twice annually.

➔Section 1273. KRS 304.17B-001 is amended to read as follows:

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

- (1) "Administrator" is defined in KRS 304.9-051(1);
- (2) "Agent" is defined in KRS 304.9-020;
- (3) "Assessment process" means the process of assessing and allocating guaranteed acceptance program losses or Kentucky Access funding as provided for in KRS 304.17B-021;
- (4) "Authority" means the Kentucky Health Care Improvement Authority;
- (5) "Case management" means a process for identifying an enrollee with specific health care needs and interacting with the enrollee and their respective health care providers in order to facilitate the development and implementation of a plan that efficiently uses health care resources to achieve optimum health outcome;
- (6) "~~Commissioner~~~~Executive director~~" is defined in KRS 304.1-050(1);
- (7) "~~Department~~~~Office~~" is defined in KRS 304.1-050(2);
- (8) "Earned premium" means the portion of premium paid by an insured that has been allocated to the insurer's loss experience, expenses, and profit year to date;
- (9) "Enrollee" means a person who is enrolled in a health benefit plan offered under Kentucky Access;
- (10) "Eligible individual" is defined in KRS 304.17A-005(11);
- (11) "Guaranteed acceptance program" or "GAP" means the Kentucky Guaranteed Acceptance Program established and operated under KRS 304.17A-400 to 304.17A-480;
- (12) "Guaranteed acceptance program participating insurer" means an insurer that offered health benefit plans through December 31, 2000, in the individual market to guaranteed acceptance program qualified individuals;
- (13) "Health benefit plan" is defined in KRS 304.17A-005(22);
- (14) "High-cost condition" means acquired immune deficiency syndrome (AIDS), angina pectoris, ascites, chemical dependency, cirrhosis of the liver, coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia, hemophilia, Hodgkin's disease, Huntington's chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis, muscular dystrophy, myasthenia gravis, myotonia, open-heart surgery, Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia, stroke, syringomyelia, Wilson's disease, chronic renal failure, malignant neoplasm of the trachea, malignant neoplasm of the bronchus, malignant neoplasm of the lung, malignant neoplasm of the colon, short gestation period for a newborn child, and low birth weight of a newborn child;
- (15) "Incurred losses" means for Kentucky Access the excess of claims paid over premiums received;
- (16) "Insurer" is defined in KRS 304.17A-005(27);
- (17) "Kentucky Access" means the program established in accordance with KRS 304.17B-001 to 304.17B-031;
- (18) "Kentucky Access Fund" means the fund established in KRS 304.17B-021;
- (19) "Kentucky Health Care Improvement Authority" means the board established to administer the program initiatives listed in KRS 304.17B-003(5);
- (20) "Kentucky Health Care Improvement Fund" means the fund established for receipt of the Kentucky tobacco master settlement moneys for program initiatives listed in KRS 304.17B-003(5);
- (21) "MARS" means the Management Administrative Reporting System administered by the Commonwealth;
- (22) "Medicaid" means coverage in accordance with Title XIX of the Social Security Act, 42 U.S.C. secs. 1396 et seq., as amended;
- (23) "Medicare" means coverage under both Parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. secs. 1395 et seq., as amended;

- (24) "Pre-existing condition exclusion" is defined in KRS 304.17A-220(6);
- (25) "Standard health benefit plan" means a health benefit plan that meets the requirements of KRS 304.17A-250;
- (26) "Stop-loss carrier" means any person providing stop-loss health insurance coverage;
- (27) "Supporting insurer" means all insurers, stop-loss carriers, and self-insured employer-controlled or bona fide associations; and
- (28) "Utilization management" is defined in KRS 304.17A-500(12).

➔Section 1274. KRS 304.17B-003 is amended to read as follows:

- (1) There is hereby established the Kentucky Health Care Improvement Authority as an agency, instrumentality, and political subdivision of the Commonwealth and a public body corporate and politic with all the powers, duties, and responsibilities conferred upon it by statute and necessary or convenient to carry out its functions. The authority shall be administered by a board of fifteen (15) members and is created to perform the public functions of administering programs financed by the funds appropriated to the authority in conformance with KRS 304.17B-001 to 304.17B-031 and any terms and conditions established by the General Assembly as a part of the act appropriating the funds. The members of the board shall consist of the following:
- (a) The *commissioner*~~{executive—director}~~ of the *Department*~~{Office}~~ of Insurance, or the *commissioner's*~~{executive—director's}~~ designated representative, who shall serve as chair;
 - (b) The secretary of the Cabinet for Health and Family Services, or the secretary's designated representative, who shall serve as vice chair;
 - (c) Two (2) nonvoting members serving ex officio from the House of Representatives, one (1) of whom shall be appointed by the Speaker of the House and one (1) appointed by the minority floor leader, and who shall serve a term of two (2) years;
 - (d) Two (2) nonvoting members serving ex officio from the Senate, one (1) of whom shall be appointed by the President of the Senate and one (1) appointed by the minority floor leader, and who shall serve a term of two (2) years;
 - (e) The deans of the University of Louisville School of Medicine and the University of Kentucky College of Medicine, or their designated representatives;
 - (f) The commissioner of the Department for Public Health, or the commissioner's designated representative;
 - (g) Two (2) representatives of Kentucky health care providers, who shall be appointed by the Governor; and
 - (h) Four (4) citizens at large of the Commonwealth, who shall be appointed by the Governor.
- (2) The terms of office of the initial appointments of the citizen at-large members of the board shall expire one (1), two (2), three (3), and four (4) years respectively from the expiration date of the initial appointment. One (1) of the initial terms of the representatives of health care providers, at least one (1) of whom shall be male and at least one (1) of whom shall be female, shall be for two (2) years and one (1) shall be for four (4) years. All succeeding appointments shall be for four (4) years from the expiration date of the term of the initial appointment. Two (2) of the citizens at large shall be male and two (2) shall be female. Board members shall serve until their successors are appointed.
- (3) In making private sector and citizen-at-large appointments to the board, the Governor shall assure broad geographical and ethnic representation as well as representation from consumers and the major sectors of Kentucky's health care and health insurance businesses. Private sector and citizen-at-large members shall serve without compensation but shall be reimbursed for reasonable and necessary expenses.
- (4) The authority shall establish procedures for accountability, including the review of expenditures, and develop mechanisms to measure the success of programs that receive allocated funds in accordance with any criteria or instructions provided by the General Assembly. The authority shall be attached to the *Department*~~{Office}~~ of Insurance for administrative purposes and shall establish advisory boards it deems appropriate, which shall consist of health insurance consumers, health care providers, and insurance company representatives, to assist with oversight of fund expenditures.
- (5) Grants and funds obtained under KRS 304.17B-001 to 304.17B-031 shall be used for expenditures as follows:

- (a) Seventy percent (70%) of all moneys in the fund shall be placed into the Kentucky Access fund for the purpose of funding Kentucky Access;
 - (b) Twenty percent (20%) of all moneys in the fund shall be spent on a collaborative partnership between the University of Louisville and the University of Kentucky dedicated to lung cancer research; and
 - (c) Ten percent (10%) of all moneys in the fund shall be used to discourage the use of harmful substances by minors.
- (6) The authority shall assure that a public hearing is held on the expenditure of funds allocated under this section, except for funds allocated to the Kentucky Access fund. Advertisement of the public hearing shall be published at least once but may be published two (2) more times, if one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date of the public hearing. The authority shall submit an annual report to the Governor and the General Assembly indicating how the funds were used and an evaluation of the program's effectiveness in health care and access to health insurance for Kentucky residents.
 - (7) Neither the authority nor its employees shall be liable for any obligations of any of the programs established under KRS 304.17B-001 to 304.17B-031. No member or employee of the authority shall be liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under KRS 304.17B-001 to 304.17B-031, unless the act or omission constitutes willful or wanton misconduct. The authority may provide in its policies and procedures for indemnification of, and legal representation for, its members and employees.
 - (8) The authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of KRS 304.17B-001 to 304.17B-031, including, but not limited to, retaining the staff it deems necessary for the proper performance of its duties.
 - (9) The authority shall meet at least quarterly and at other times upon call of the chair or a majority of the authority.

➔Section 1275. KRS 304.17B-005 is amended to read as follows:

- (1) There is hereby created Kentucky Access, which shall ensure that health coverage is made available to each Kentucky individual resident applying and qualifying for coverage. Any health coverage provided under this section shall begin no sooner than January 1, 2001. Kentucky Access is designed for the purpose of implementing an acceptable alternative mechanism within the meaning of 42 U.S.C. sec. 300gg-44(a)(1) so that Kentucky may preserve the flexibility over the regulation of health coverage allowed by federal law.
- (2) Kentucky Access shall operate under the Division of Kentucky Access in the *Department*{~~Office~~} of Insurance. The division shall be headed by a division director appointed by the secretary of the ~~{Environmental and~~ Public Protection Cabinet in accordance with KRS 12.050.
- (3) Neither the *department*{~~office~~} nor its employees shall be liable for any obligations of Kentucky Access. No member or employee of the *department*{~~office~~} shall be liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under KRS 304.17B-001 to 304.17B-031, unless such act or omission constitutes willful or wanton misconduct. The *department*{~~office~~} may provide in its policies and procedures for indemnification of, and legal representation for, its members and employees.

➔Section 1276. KRS 304.17B-007 is amended to read as follows:

In its duties to operate and administer Kentucky Access, the *department*{~~office~~} shall, through itself or designated agents:

- (1) Establish administrative and accounting procedures for the operation of Kentucky Access;
- (2) Enter into contracts as necessary;
- (3) Take legal action necessary:
 - (a) To avoid the payment of improper claims against Kentucky Access or the coverage provided by or through Kentucky Access;
 - (b) To recover any amounts erroneously or improperly paid by Kentucky Access;

- (c) To recover any amounts paid by the Kentucky Access as a result of mistake of fact or law;
 - (d) To recover other amounts due Kentucky Access; or
 - (e) To operate and administer its obligations under the provisions of KRS 304.17B-001 to 304.17B-031;
- (4) Establish, and modify as appropriate, rates, rate schedules, rate adjustments, premium rates, expense allowances, claim reserve formulas, and any other actuarial function appropriate to the administration and operation of Kentucky Access. Premium rates and rate schedules may be adjusted for appropriate factors, including, but not limited to, age and sex, and shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices;
 - (5) Establish procedures under which applicants and participants in Kentucky Access shall have an internal grievance process and a mechanism for external review through an independent review organization in accordance with this chapter;
 - (6) Select a third-party administrator in accordance with KRS 304.17B-011;
 - (7) Require that all health benefit plans, riders, endorsements, or other forms and documents used to administer Kentucky Access meet the requirements of Subtitles 12, 14, 17, 17A, and 38 of this chapter;
 - (8) Adopt nationally recognized uniform claim forms in accordance with this chapter;
 - (9) Develop and implement a marketing strategy to publicize the existence of Kentucky Access, including, but not limited to, eligibility requirements, procedures for enrollment, premium rates, and a toll-free telephone number to call for questions;
 - (10) Establish and review annually provider reimbursement rates that ensure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under Kentucky Access at least to the extent that such care and services are available to the general population. The ~~department~~~~office~~ shall only authorize contracts with health care providers that prohibit the provider from collecting from the enrollee any amounts in excess of copayment amounts, coinsurance amounts, deductible amounts, and amounts for noncovered services;
 - (11) Conduct periodic audits to assure the general accuracy of the financial and claims data submitted to the ~~department~~~~office~~ and be subject to an annual audit of its operations;
 - (12) Issue health benefit plans January 1, 2001, or thereafter, in accordance with the requirements of KRS 304.17B-001 to 304.17B-031;
 - (13) Require a referral fee of fifty dollars (\$50) to be paid to agents who refer applicants who are subsequently enrolled in Kentucky Access. The referral fee shall be paid only on the initial enrollment of an applicant. Referral fees shall not be paid on any enrollments of enrollees who have been previously enrolled in Kentucky Access, or for renewals for enrollees;
 - (14) Bill and collect premiums from enrollees in the amount determined by the ~~department~~~~office~~;
 - (15) Assess insurers and stop-loss carriers in accordance with KRS 304.17B-021;
 - (16) Reimburse GAP participating insurers for GAP losses pursuant to KRS 304.17B-021;
 - (17) Establish a provider network for Kentucky Access by developing a statewide provider network or by contracting with an insurer for a statewide provider network. In the event the ~~department~~~~office~~ contracts with an insurer, the ~~department~~~~office~~ may take into consideration factors including, but not limited to, the size of the provider network, the composition of the provider network, and the current market rate of the provider network. The provider network shall be made available to the third-party administrator specified in KRS 304.17B-011 and shall be limited to Kentucky Access enrollees.
 - (18) Be audited by the Auditor of Public Accounts;
 - (19) By administrative regulation, amend the definition of high-cost conditions provided in KRS 304.17B-001 by adding other high-cost conditions;
 - (20) The ~~department~~~~office~~ shall report on an annual basis to the Interim Joint Committee on Banking and Insurance the separation plan pursuant to KRS 304.17A-080 for the division of duties and responsibilities between the operation of the ~~Department~~~~Office~~ of Insurance and the operation of Kentucky Access; and

- (21) Any other actions as may be necessary and proper for the execution of the *department's*~~{office's}~~ powers, duties, and obligations under KRS 304.17B-001 to 304.17B-031.

➔Section 1277. KRS 304.17B-009 is amended to read as follows:

In its duties to operate and administer Kentucky Access, the *department*~~{office}~~ may, through itself or third parties:

- (1) Exercise any and all powers granted to insurers under this chapter; and
- (2) Sue or be sued.

➔Section 1278. KRS 304.17B-011 is amended to read as follows:

- (1) The *department*~~{office}~~ shall select a third-party administrator, through the state competitive bidding process, to administer Kentucky Access. The third-party administrator shall be an administrator licensed by the *department*~~{office}~~. The *department*~~{office}~~ shall consider criteria in selecting a third-party administrator that shall include, but not be limited to, the following:
 - (a) A third-party administrator's proven ability to demonstrate performance of the operations of an insurer to include the following: enrollee enrollment, eligibility determination, provider enrollment and credentialing, utilization management, quality improvement, drug utilization review, premium billing and collection, claims payment, and data reporting;
 - (b) The total cost to administer Kentucky Access;
 - (c) A third-party administrator's proven ability to demonstrate that Kentucky Access shall be administered in a cost-efficient manner;
 - (d) A third-party administrator's proven ability to demonstrate experience in two (2) or more states administering a risk pool for a minimum of a three (3) year period; and
 - (e) A third-party administrator's financial condition and stability.
- (2) The *department*~~{office}~~ may contract with the third-party administrator for a period of four (4) years with an option for a two (2) year extension as approved by the *department*~~{office}~~ on a year-by-year contract basis. At least one (1) year prior to the expiration of the third-party administrator's contract, the *department*~~{office}~~ may solicit third-party administrators, including the current third-party administrator, to submit bids to serve as the third-party administrator for the succeeding four (4) year period.
- (3) In addition to any duties and obligations set forth in the contract with the third-party administrator, the third-party administrator shall:
 - (a) Develop and establish policies and procedures for enrollee enrollment, eligibility determination, provider enrollment and credentialing, utilization management, case management, disease management, quality improvement, drug utilization review, premium billing and collection, data reporting, and other responsibilities determined by the *department*~~{office}~~;
 - (b) Develop and establish policies and procedures for paying the agent referral fee under KRS 304.17B-001 to 304.17B-031;
 - (c) Develop and establish policies and procedures to ensure timely and efficient payment of claims to include, but not limited to, the following:
 1. Develop and provide a claims billing manual to health care providers enrolled in Kentucky Access that includes information relating to the proper billing of a claim and the types of claim forms to use;
 2. Payment of all claims in accordance with the provisions of this chapter and the administrative regulations promulgated thereunder; and
 3. Notification to an enrollee through an explanation of benefits if a claim is denied or if there is enrollee financial responsibility of a paid claim for deductible or coinsurance amounts;
 - (d) Issue denial letters under KRS 304.17A-540 for denial of preauthorization and precertification requests for medical necessity and medical appropriateness determinations;
 - (e) Submit information to the *department*~~{office}~~ under KRS 304.17A-330;

- (f) Submit reports to the *department*{office} regarding the operation and financial condition of Kentucky Access. The frequency, content, and form of the reports shall be determined by the *department*{office};
 - (g) Submit an annual report to the *department*{office} three (3) months after the end of each calendar year. The annual report shall include:
 - 1. Earned premium;
 - 2. Administrative expenses;
 - 3. Incurred losses for the year;
 - 4. Paid losses for the year;
 - 5. Number of enrollees enrolled in Kentucky Access by category of eligibility; and
 - 6. Any other information requested by the *department*{office}; and
 - (h) Be subject to examination by the *department*{office} under Subtitles 2 and 3 of this chapter.
- (4) The third-party administrator shall be paid for necessary and reasonable expenses, as provided in the contract between the *department*{office} and the third-party administrator.

➔Section 1279. KRS 304.17B-013 is amended to read as follows:

- (1) The schedule of rates, premium rates charged to enrollees, deductible amounts, copayment amounts, coinsurance amounts, and other cost-sharing amounts shall be established by the *department*{office}. Premium rates charged to enrollees are not intended to fully cover the cost of providing health care coverage to Kentucky Access enrollees, and any claims in excess of premium rates shall be covered by the Kentucky Access fund.
- (2) Premium rates for health benefit plans provided under Kentucky Access shall bear a reasonable relationship to each other. Premium rates shall be varied based on age and gender. The initial premium rates for plan coverage shall not exceed one hundred fifty percent (150%) of the applicable individual standard risk rates, as established by the *department*{office}. In no event shall premium rates exceed one hundred seventy-five percent (175%) of the rates applicable to individual standard risks.
- (3) Premium rates for coverage issued by Kentucky Access shall be established annually by the *department*{office}, using reasonable actuarial principles, and shall reflect anticipated experience and expenses for risks under Kentucky Access.

➔Section 1280. KRS 304.17B-015 is amended to read as follows:

- (1) Any individual who is an eligible individual is eligible for coverage under Kentucky Access, except as specified in paragraphs (a), (b), (d), and (e) of subsection (4) of this section.
- (2) Any individual who is not an eligible individual who has been a resident of the Commonwealth for at least twelve (12) months immediately preceding the application for Kentucky Access coverage is eligible for coverage under Kentucky Access if one (1) of the following conditions is met:
 - (a) The individual has been rejected by at least one (1) insurer for coverage of a health benefit plan that is substantially similar to Kentucky Access coverage;
 - (b) The individual has been offered coverage substantially similar to Kentucky Access coverage at a premium rate greater than the Kentucky Access premium rate at the time of enrollment or upon renewal; or
 - (c) The individual has a high-cost condition listed in KRS 304.17B-001.
- (3) A Kentucky Access enrollee whose premium rates exceed claims for a three (3) year period shall be issued a notice of insurability. The notice shall indicate that the Kentucky Access enrollee has not had claims exceed premium rates for a three (3) year period and may be used by the enrollee to obtain insurance in the regular individual market.
- (4) An individual shall not be eligible for coverage under Kentucky Access if:
 - (a) The individual has, or is eligible for, on the effective date of coverage under Kentucky Access, substantially similar coverage under another contract or policy, unless the individual was issued coverage from a GAP participating insurer as a GAP qualified individual prior to January 1, 2001. A

GAP qualified individual shall be automatically eligible for coverage under Kentucky Access without regard to the requirements of subsection (2) of this section. An individual who is ineligible for coverage pursuant to this paragraph shall not preclude the individual's spouse or dependents from being eligible for Kentucky Access coverage. As used in this paragraph, "eligible for" includes any individual who was eligible for coverage but waived that coverage. That individual shall be ineligible for Kentucky Access coverage through the period of waived coverage;

- (b) The individual is eligible for coverage under Medicaid or Medicare;
 - (c) The individual previously terminated Kentucky Access coverage and twelve (12) months have not elapsed since the coverage was terminated, unless the individual demonstrates a good faith reason for the termination;
 - (d) Except for covered benefits paid under the standard health benefit plan as specified in KRS 304.17B-019, Kentucky Access has paid two million dollars (\$2,000,000) in covered benefits per individual. The maximum limit under this paragraph may be increased by the *department*~~{office}~~; or
 - (e) The individual is confined to a public institution or incarcerated in a federal, state, or local penal institution or in the custody of federal, state, or local law enforcement authorities, including work release programs.
- (5) The coverage of any person who ceases to meet the requirements of this section or the requirements of any administrative regulation promulgated under this subtitle may be terminated.

➔Section 1281. KRS 304.17B-017 is amended to read as follows:

- (1) At least annually, the *department*~~{office}~~ shall evaluate and revise as necessary rates to be charged to Kentucky Access enrollees.
- (2) Except as provided in KRS 304.17B-019, the *department*~~{office}~~ may revise its health benefit plans, cost-sharing arrangements, plan delivery rules, schedule of benefits, rates, and cost-containment features provided under Kentucky Access at the time of the health benefit plan renewal as necessary to ensure that Kentucky Access maintains adequate resources for continued operation.

➔Section 1282. KRS 304.17B-019 is amended to read as follows:

- (1) Kentucky Access shall offer at least three (3) health benefit plans to enrollees, which shall be similar to the health benefit plans currently being marketed to individuals in the individual market. One (1) plan shall be the standard health benefit plan set forth in KRS 304.17A-250.
- (2) At least one (1) plan shall be offered in a traditional fee-for-service form. At least one (1) plan may be offered in a managed-care form at such time as the *department*~~{office}~~ can establish an appropriate provider network in available service areas.
- (3) The *department*~~{office}~~ shall provide for utilization review and case management for all health benefit plans issued under Kentucky Access.
- (4) The *department*~~{office}~~ shall review and compare health benefit plans provided under Kentucky Access to health benefit plans provided in the individual market. Based on the review, the *department*~~{office}~~ may amend or replace the health benefit plans issued under Kentucky Access, except for the standard health benefit plan as specified in subsection (1) of this section.
- (5) Individuals who apply and are determined eligible for health benefit plans issued under Kentucky Access shall have coverage effective the first day of the month after the application month.
- (6) For eligible individuals, health benefit plans issued under Kentucky Access shall not impose any pre-existing condition exclusions. In all other cases, a pre-existing condition exclusion may be imposed in accordance with KRS 304.17A-230.
- (7) Health benefit plans issued under Kentucky Access shall be guaranteed renewable except as otherwise specified in KRS 304.17B-015 and KRS 304.17A-240.
- (8) All health benefit plans issued under Kentucky Access shall provide that, upon the death or divorce of the individual in whose name the contract was issued, every other person covered in the contract may elect within sixty-three (63) days to continue under the same or a different contract.

- (9) Health benefit plans issued under Kentucky Access shall coordinate benefits with other health benefit plans and be the payor of last resort.
- (10) Except for the standard health benefit plan specified in subsection (1) of this section, health benefit plans issued under Kentucky Access shall pay covered benefits up to a lifetime limit of two million dollars (\$2,000,000) per covered individual. The maximum limit under this subsection may be increased by the *department*~~{office}~~.

➔Section 1283. KRS 304.17B-021 is amended to read as follows:

- (1) In addition to the other powers enumerated in KRS 304.17B-001 to 304.17B-031, the *department*~~{office}~~ shall assess insurers in the amounts specified in this section. The assessment shall be used for the purpose of funding GAP losses and Kentucky Access.
- (a) The amount of the assessment for each calendar year shall be as follows:
1. From each stop-loss carrier, an amount that is equal to two dollars (\$2) upon each one hundred dollars (\$100) of health insurance stop-loss premiums;
 2. From all insurers, an amount based on the total amount of all health benefit plan premiums earned during the prior assessment period and paid by all insurers who received any of the health benefit plan premiums on which the annual assessment is based. The percentage rate used for the annual assessment shall be the same percentage rate as calculated in the GAP risk adjustment process for the six (6) month period of July 1, 1998, through December 31, 1998;
 3. If determined necessary by the *department*~~{office}~~, a second assessment may be assessed in the same manner as the annual assessment in subparagraph 2. of this paragraph; and
 4. In no event shall the sum of the first assessment provided for in subparagraph 2. of this paragraph and the second assessment provided for in subparagraph 3. of this paragraph be greater than one percent (1%) of the total amount of all assessable health benefit plan premiums earned during the prior assessment period.
- (b) The first assessment shall be for the period from January 1, 2000, through December 31, 2000, and shall be paid on or before March 31, 2001. Subsequent annual assessments shall be paid on or before March 31 of the year following the assessment period.
- (2) Every supporting insurer shall report to the *department*~~{office}~~, in a form and at the time as the *department*~~{office}~~ may specify, the following information for the specified period:
- (a) The insurer's total stop-loss premiums and health benefit plan premiums in the individual, small group, large group, and association markets; and
 - (b) Other information as the *department*~~{office}~~ may require.
- (3) As part of the assessment process, the *department*~~{office}~~ shall establish and maintain the Kentucky Access fund. All funds shall be held at interest, in a single depository designated in accordance with KRS 304.8-090(1) under a written trust agreement in accordance with KRS 304.8-095. All expense and revenue transactions of the fund shall be posted to the Management Administrative Reporting System (MARS) and its successors.
- (4) The Kentucky Access fund shall be funded from the following sources:
- (a) Premiums paid by Kentucky Access enrollees;
 - (b) The funds designated for Kentucky Access in the Kentucky Health Care Improvement fund;
 - (c) Appropriations from the General Assembly;
 - (d) All premium taxes collected under KRS Chapter 136 from any insurer, and any retaliatory taxes collected under KRS 304.3-270 from any insurer, for accident and health premiums that are in excess of the amount of the premium taxes and retaliatory taxes collected for the calendar year 1997;
 - (e) Annual assessments from supporting insurers;
 - (f) A second assessment from supporting insurers;
 - (g) Gifts, grants, or other voluntary contributions;

- (h) Interest or other earnings on the investment of the moneys held in the account; and
 - (i) Any funds remaining on January 1, 2001, in the guaranteed acceptance program account may be transferred to the Kentucky Access fund.
- (5) The *department*~~{office}~~ shall determine on behalf of Kentucky Access the premiums, the expenses for administration, the incurred losses, taking into account investment income and other amounts needed to satisfy reserves, estimated claim liabilities, and other obligations for each calendar year. The *department*~~{office}~~ shall also determine the amount of the actual guaranteed acceptance program plan losses for each calendar year. The *department*~~{office}~~ shall assess insurers as follows:
- (a) On or before March 31 of each year, the amount set forth in subsection (1)(a)1. and (1)(a)2. of this section.
 - (b) If the amount of actual guaranteed acceptance program plan losses exceeds the assessment provided for in paragraph (a) of this subsection, a second assessment shall be authorized under subsection (1)(a)3. of this section. If the amount of GAP losses exceeds the assessments provided under subsection (1)(a)1., subsection (1)(a)2., and subsection (1)(a)3. of this section, moneys received and available from the Kentucky Health Care Improvement Fund after the *department*~~{office}~~ determines available funding for Kentucky Access for the current calendar year pursuant to subsection (6) of this section, shall be used to reimburse GAP participating insurers for any actual guaranteed acceptance program losses. If the amount of GAP losses exceeds the amount in the Kentucky Health Care Improvement Fund after reserving sufficient funds for Kentucky Access for the current year, each GAP participating insurer shall be reimbursed up to the amount of its proportional share of actual guaranteed acceptance program plan losses from the fund. Effective for any assessment on or after January 1, 2001, in calculating GAP losses, total premiums and total claims of the GAP participating insurer shall be used. Actual guaranteed acceptance program losses shall be calculated as the difference between the total GAP claims and the total GAP premiums on an aggregate basis.
 - (c) If GAP losses are fully covered by the assessment process provided for in subsection (1)(a)1. and (1)(a)2. of this section and the second assessment provided for in subsection (1)(a)3. of this section is not necessary to cover GAP losses, and as determined by the *department*~~{office}~~ using reasonable actuarial principles Kentucky Access funding is needed, a second assessment provided for in subsection (1)(a)3. of this section shall be completed.
- (6) After the end of each calendar year, GAP losses shall be reimbursed only after the *department*~~{office}~~ determines that appropriate funding is available for Kentucky Access for the current calendar year. GAP losses shall be reimbursed after reserving sufficient funds for Kentucky Access.
- (7) With respect to a GAP participating insurer who reasonably will be expected both to pay assessments and to receive payments from the assessment fund, the *department*~~{office}~~ shall calculate the net amount owed to or to be received from the fund, and the *department*~~{office}~~ shall only collect assessments for or make payments from the fund based upon net amounts.
- (8) Insurers paying an assessment may include in any health insurance rate filing the amount of these assessments as provided for in Subtitle 17A of this chapter.
- (9) Insurers shall pay any assessment amounts authorized in KRS 304.17B-001 to 304.17B-031 within thirty (30) days of receiving notice from the *department*~~{office}~~ of the assessment amount.
- (10) Any surpluses remaining in the Kentucky Access fund after completion of the assessment process for a calendar year shall be maintained for use in the assessment process for future calendar years and such funds shall not lapse. The general fund appropriations to the Kentucky Access fund shall not lapse.
- (11) Assessments on health benefit plan premiums that are required under KRS 304.17B-001 to 304.17B-031 shall not be applied to premiums received by an insurer for state employees, Medicaid recipients, Medicare beneficiaries, and CHAMPUS insureds.
- (12) The *department*~~{office}~~ shall direct that receipts of Kentucky Access be held at interest, and may be used to offset future losses or to reduce plan premiums in accordance with the terms of KRS 304.17B-001 to 304.17B-031. As used in this subsection, "future losses" may include reserves for incurred but not reported claims.

- (13) The ~~department~~~~office~~ shall conduct examinations of insurers and stop-loss carriers reasonably necessary to determine if the information provided by the insurers or stop-loss carriers is accurate.
- (14) The insurer, as a condition of conducting health insurance business in Kentucky, shall pay the assessments specified in KRS 304.17B-001 to 304.17B-031.
- (15) The stop-loss carrier, as a condition of doing health insurance business in Kentucky, shall pay the assessments specified in KRS 304.17B-001 to 304.17B-031.

➔Section 1284. KRS 304.17B-023 is amended to read as follows:

- (1) After the end of each calendar year, a GAP participating insurer shall report the following information for the previous calendar year:
- The total earned premium in the individual, small group, large group, and association markets;
 - The number of GAP policies in force as of December 31;
 - The amount of the insurer's GAP premiums received during the calendar year covered by the report;
 - The amount of the insurer's GAP claims paid during the calendar year covered by the report;
 - The amount of the insurer's GAP losses; and
 - Other information as the ~~department~~~~office~~ may require to be reported.
- (2) After the end of each calendar year, and based upon the reports filed under subsection (1) of this section, the ~~department~~~~office~~ shall calculate and provide to each insurer who filed a report the following information relating to the calendar year:
- The amount of each reporting insurer's market share;
 - The total amount of GAP premiums for all reporting insurers;
 - The total amount of GAP claims paid by all reporting insurers;
 - The amount of total actual GAP losses;
 - The amount of the insurer's assessment or refund; and
 - Other information as the ~~department~~~~office~~ may elect to calculate and report.

The ~~department~~~~office~~ shall complete its calculation and provide each insurer the results of its calculation within sixty (60) days after receiving all required information.

- (3) The ~~department~~~~office~~ shall pay GAP losses to GAP participating insurers in accordance with this section and KRS 304.17B-021(5).
- (4) The ~~department~~~~office~~ shall conduct examinations of insurers participating in Kentucky Access as are reasonably necessary to determine if the information provided by the insurers is accurate.

➔Section 1285. KRS 304.17B-027 is amended to read as follows:

Kentucky Access and the ~~department~~~~office~~ shall be exempt from all taxes levied by the state or any of its subdivisions.

➔Section 1286. KRS 304.17B-029 is amended to read as follows:

- (1) Sixty (60) days prior to the regular session of the General Assembly in the year 2002, and sixty (60) days prior to each subsequent regular session of the General Assembly thereafter, the ~~department~~~~office~~ shall submit a written report to the Legislative Research Commission and provide a detailed briefing. The report shall contain an evaluation of Kentucky Access, an evaluation of issues concerning high-risk individuals, and other information as the ~~department~~~~office~~ deems necessary.
- (2) Beginning no later than June 30, 2001, and annually thereafter, the Auditor of Public Accounts shall audit Kentucky Access and within sixty (60) days of completion of the audit shall submit a copy of the audit to the Legislative Research Commission and the ~~Department~~~~Office~~ of Insurance.

➔Section 1287. KRS 304.17B-031 is amended to read as follows:

- (1) The ~~department~~~~{office}~~ shall promulgate administrative regulations necessary to carry out the provisions of KRS 304.17B-001 to 304.17B-031.
- (2) Kentucky Access shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:
 - (a) Subtitle 1;
 - (b) Subtitle 2;
 - (c) Subtitle 3;
 - (d) Subtitle 5;
 - (e) Subtitle 8;
 - (f) Subtitle 9;
 - (g) Subtitle 12;
 - (h) Subtitle 14;
 - (i) Subtitle 17;
 - (j) Subtitle 17A;
 - (k) Subtitle 25;
 - (l) Subtitle 38; and
 - (m) Subtitle 47.

➔Section 1288. KRS 304.17B-033 is amended to read as follows:

- (1) No less than annually, the Health Insurance Advisory Council shall review the list of high-cost conditions established under KRS 304.17B-001(14) and recommend changes to the ~~commissioner~~~~{executive director}~~. The ~~commissioner~~~~{executive director}~~ may accept or reject any or all of the recommendations and may make whatever changes by administrative regulation the ~~commissioner~~~~{executive director}~~ deems appropriate. The council, in making recommendations, and the ~~commissioner~~~~{executive director}~~, in making changes, shall consider, among other things, actual claims and losses on each diagnosis and advances in treatment of high-cost conditions.
- (2) The ~~commissioner~~~~{executive director}~~ may by administrative regulation add to or delete from the list of high-cost conditions for Kentucky Access.

➔Section 1289. KRS 304.17C-010 is amended to read as follows:

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

- (1) "At the time of enrollment" means the same as defined in KRS 304.17A-005(2);
- (2) "Enrollee" means an individual who is enrolled in a limited health service benefit plan;
- (3) "Health care provider" or "provider" means the same as defined in KRS 304.17A-005(23);
- (4) "Insurer" means any insurance company, health maintenance organization, self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA, provider-sponsored integrated health delivery network, self-insured employer-organized association, nonprofit hospital, medical-surgical, dental, health service corporation, or limited health service organization authorized to transact health insurance business in Kentucky who offers a limited health service benefit plan; and
- (5) "Limited health service benefit plan" means any policy or certificate that provides services for dental, vision, mental health, substance abuse, chiropractic, pharmaceutical, podiatric, or other such services as may be determined by the ~~commissioner~~~~{executive director}~~ to be offered under a limited health service benefit plan. A limited health service benefit plan shall not include hospital, medical, surgical, or emergency services except as these services are provided incidental to the plan.

➔Section 1290. KRS 304.17C-030 is amended to read as follows:

- (1) An insurer shall disclose in writing to a covered person and an insured or enrollee, in a manner consistent with the provisions of KRS 304.14-420 to 304.14-450, the terms and conditions of its limited health service benefit plan and shall promptly provide the covered person and enrollee with written notification of any change in the terms and conditions prior to the effective date of the change. The insurer shall provide the required information at the time of enrollment and upon request thereafter.
- (2) The information required to be disclosed under this section shall include a description of:
 - (a) Covered services and benefits to which the enrollee or other covered person is entitled;
 - (b) Restrictions or limitations on covered services and benefits;
 - (c) Financial responsibility of the covered person, including copayments and deductibles;
 - (d) Prior authorization and any other review requirements with respect to accessing covered services;
 - (e) Where and in what manner covered services may be obtained;
 - (f) Changes in covered services or benefits, including any addition, reduction, or elimination of specific services or benefits;
 - (g) The covered person's right to the following:
 1. A utilization review and the procedure for initiating a utilization review, if an insurer elects to provide utilization review; and
 2. An internal appeal of a utilization review decision made by or on behalf of the insurer with respect to the denial, reduction, or termination of a limited health service benefit plan or the denial of payment for a health care service, and the procedure to initiate an internal appeal;
 - (h) Measures in place to ensure the confidentiality of the relationship between an enrollee and a health care provider;
 - (i) Other information as the *commissioner*~~{executive director}~~ shall require by administrative regulation;
 - (j) A summary of the drug formulary, including but not limited to a listing of the most commonly used drugs, drugs requiring prior authorization, any restrictions, limitations, and procedures for authorization to obtain drugs not on the formulary, and, upon request of an insured or enrollee, a complete drug formulary; and
 - (k) A statement informing the insured or enrollee that if the provider meets the insurer's enrollment criteria and is willing to meet the terms and conditions for participation, the provider has the right to become a provider for the insurer.
- (3) The insurer shall file the information required under this section with the *department*~~{office}~~.

➔Section 1291. KRS 304.17C-060 is amended to read as follows:

- (1) An insurer shall file with the *commissioner*~~{executive director}~~ sample copies of any agreements it enters into with providers for the provision of health care services. The *commissioner*~~{executive director}~~ shall promulgate administrative regulations prescribing the manner and form of the filings required. The agreements shall include the following:
 - (a) A hold harmless clause that states that the provider may not, under any circumstance, including:
 1. Nonpayment of moneys due to providers by the insurer;
 2. Insolvency of the insurer; or
 3. Breach of the agreement,

bill, charge, collect a deposit, seek compensation, remuneration, or reimbursement from, or have any recourse against the subscriber, dependent of subscriber, enrollee, or any persons acting on their behalf, for services provided in accordance with the provider agreement. This provision shall not prohibit collection of deductible amounts, copayment amounts, coinsurance amounts, and amounts for noncovered services;
 - (b) A survivorship clause that states the hold harmless clause and continuity of care clause shall survive the termination of the agreement between the provider and the insurer; and

- (c) A clause requiring that if a provider enters into any subcontract agreement with another provider to provide health care services to the subscriber, dependent of the subscriber, or enrollee of a limited health service benefit plan, the subcontract agreement must meet all requirements of this subtitle and that all such subcontract agreements shall be filed with the *commissioner*~~[executive director]~~ in accordance with this subsection.
- (2) An insurer that enters into any risk-sharing arrangement or subcontract agreement shall file a copy of the arrangement with the *commissioner*~~[executive director]~~. The insurer shall also file the following information regarding the risk-sharing arrangement:
- (a) The number of enrollees affected by the risk-sharing arrangement;
 - (b) The health care services to be provided to an enrollee under the risk-sharing arrangement;
 - (c) The nature of the financial risk to be shared between the insurer and entity or provider, including but not limited to the method of compensation;
 - (d) Any administrative functions delegated by the insurer to the entity or provider. The insurer shall describe a plan to ensure that the entity or provider will comply with the requirements of this subtitle in exercising any delegated administrative functions; and
 - (e) The insurer's oversight and compliance plan regarding the standards and method of review.
- (3) Nothing in this section shall be construed as requiring an insurer to submit the actual financial information agreed to between the insurer and the entity or provider. The *commissioner*~~[executive director]~~ shall have access to a specific risk-sharing arrangement with an entity or provider upon request to the insurer. Financial information obtained by the *department*~~[office]~~ shall be considered to be a trade secret and shall not be subject to ~~the~~ KRS 61.872 to 61.884.

➔Section 1292. KRS 304.18-020 is amended to read as follows:

- (1) "Group health insurance" is hereby declared to be that form of health insurance covering groups of persons as defined in this section, with or without one (1) or more members of their families or one (1) or more of their dependents, or covering one (1) or more members of the families or one (1) or more dependents of such groups of persons, and issued upon the following basis:
- (a) Under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer (except as to policies insuring only against aviation or transportation hazards). The term "employees" as used in this paragraph shall be deemed to include the officers, directors, managers and employees of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, directors, managers and employees of subsidiary or affiliated corporations, the individual proprietors, partners and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract or otherwise. The term "employees" as used in this paragraph may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officers. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.
 - (b) Under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees. The term "employees" as used in this paragraph may include directors of corporate members and retired employees.
 - (c) Under a policy issued to the trustees of a fund established by two (2) or more employers in the same or related industry or by one (1) or more labor unions or by one (1) or more employers and one (1) or more labor unions or by an association as defined in paragraph (b), which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or of such association, or employees of members of such association, for the benefit of persons other than the employers or the unions or such association. The term "employees" as used in this paragraph may include the officers, directors, managers, and employees of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used in this paragraph may

include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

- (d) Under a policy issued to a creditor insuring a group of debtors, as defined in KRS 304.16-040, and under the same conditions and limitations as specified in such section, but the amount in indemnity payable with respect to any person insured thereunder shall not at any time exceed the aggregate of the periodic scheduled unpaid installments.
 - (e) Under a policy issued to any other person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy.
 - (f) Under a policy issued to cover any other substantially similar group which, in the discretion of the **commissioner**~~executive director~~, may be subject to the issuance of a group health policy or contract.
- (2) Any group health policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical, or surgical services for members of the family or dependents of a person in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of the person in the insured group.

→Section 1293. KRS 304.18-060 is amended to read as follows:

"Blanket health insurance" is that form of health insurance covering groups of persons as enumerated in one (1) of the following subsections under a policy or contract issued to:

- (1) Any common carrier or to any operator, owner, or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group of persons who may become passengers defined by reference to their travel status on the common carrier or the means of transportation.
- (2) An employer, who shall be deemed the policyholder, covering any group of employees, dependents, or guests, defined by reference to specified hazards incident to an activity or activities or operations of the policyholder.
- (3) A college, school or other institution of learning; a school district or districts; a school jurisdictional unit; or to the head, principal, or governing board of any such educational unit, who or which shall be deemed the policyholder, covering students, teachers, or employees.
- (4) A religious, charitable, recreational, educational or civic organization or branch thereof, which shall be deemed the policyholder covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.
- (5) A sports team, camp, or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials, or supervisors.
- (6) A volunteer fire department, first aid, emergency management agency, or other such volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by the policyholder.
- (7) A newspaper or other publisher, which shall be deemed the policyholder, covering its carriers.
- (8) An association, including a labor union, which has a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by the policyholder.
- (9) Any other person or group covering any other risk or class of risks which, in the discretion of the **commissioner**~~executive director~~, may be properly eligible for blanket health insurance. The discretion of the **commissioner**~~executive director~~ may be exercised on an individual risk basis or class of risks, or both.

→Section 1294. KRS 304.18-070 is amended to read as follows:

Any insurer authorized to write health insurance in this state shall have the power to issue blanket health insurance. No such blanket policy, except as provided in subsection (4) of KRS 304.14-120, may be issued or delivered in this state unless a copy of the form thereof has been filed in accordance with KRS 304.14-120. Every such blanket policy shall contain provisions which in the opinion of the **commissioner**~~executive director~~ are not less favorable to the policyholder and the individual insured than the following:

- (1) A provision that the policy, including indorsements and a copy of the application, if any, of the policyholder and the persons insured shall constitute the entire contract between the parties, and that any statement made by the policyholder or by a person insured shall in the absence of fraud be deemed a representation and not a warranty, and that no such statements shall be used in defense to a claim under the policy, unless contained in a written application. Such person, his *or her* beneficiary or assignee shall have the right to make a written request to the insurer for a copy of such application, and the insurer shall within fifteen (15) days after the receipt of such request at its principal office or any branch office of the insurer, deliver or mail to the person making such request a copy of such application. If such copy is not so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action based upon or involving any statements contained therein.
- (2) A provision that written notice of sickness or of injury must be given to the insurer within twenty (20) days after the date when such sickness or injury occurred. Failure to give notice within such time shall not invalidate or reduce any claim if it is shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.
- (3) A provision that the insurer will furnish either to the claimant or to the policyholder for delivery to the claimant such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of fifteen (15) days after giving such notice, the claimant shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.
- (4) A provision that in the case of a claim for loss of time for disability, written proof of such loss must be furnished to the insurer within ninety (90) days after the commencement of the period for which the insurer is liable, and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of a claim for any other loss, written proof of such loss must be furnished to the insurer within ninety (90) days after the date of such loss. Failure to furnish such proof within such time shall not invalidate or reduce any claim if it is shown not to have been reasonably possible to furnish such proof and that such proof was furnished as soon as was reasonably possible.
- (5) A provision that all benefits payable under the policy other than benefits for loss of time will be payable immediately upon receipt of due written proof of such loss, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof.
- (6) A provision that the insurer at its own expense shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy where it is not prohibited by law.
- (7) A provision that no action at law or in equity shall be brought to recover under the policy prior to the expiration of sixty (60) days after written proof of loss has been furnished in accordance with the requirements of the policy and that no such action shall be brought after the expiration of three (3) years after the time written proof of loss is required to be furnished.

➔Section 1295. KRS 304.18-085 is amended to read as follows:

The ~~commissioner~~~~executive director~~ shall prescribe guidelines for coordination of benefits by group health insurance policies. All group health insurance policies delivered, issued for delivery, or renewed in Kentucky after July 15, 1986, shall comply with the guidelines prescribed by the ~~commissioner~~~~executive director~~.

➔Section 1296. KRS 304.18-110 is amended to read as follows:

- (1) As used in this section:
 - (a) "Group policy" means group health insurance policies as defined in KRS 304.18-020 and blanket health insurance policies which the ~~commissioner~~~~executive director~~, in his *or her* discretion, designates as subject to this section, which:
 1. Affect the rights of a Kentucky insured and bear a reasonable relation to Kentucky, regardless of whether delivered or issued for delivery in Kentucky;

2. Provide hospital or surgical expenses benefits, other than for a specific disease or accidental injury only; and
 3. Are delivered, issued for delivery, or renewed after July 15, 2002;
- (b) "Medicare" means Title XVIII of the United States Social Security Act as amended or superseded.
- (2) Persons insured under group policies have the right upon termination of group membership to continue coverage for themselves and their dependents upon meeting the following conditions:
- (a) The group member has been covered by the group policy or any group policy it replaced for at least three (3) months; and
 - (b) Notice is given to the insurer and payment of the group rate is made to the insurer, by the group member, within thirty-one (31) days after notice pursuant to subsection (7) of this section.
- (3) Continued group health insurance coverage shall terminate on the earlier of:
- (a) The date eighteen (18) months after the date on which the group coverage would otherwise have terminated because of termination of group membership;
 - (b) If the group member fails to make timely payment of premium to the insurance company, the end of the period for which premium payment was made; or
 - (c) The date the group policy is terminated and is not replaced by another group policy within thirty-one (31) days.
- (4) If a group policy is replaced, by a succeeding insurer, persons under the continued group health insurance shall remain covered under the prior insurer's policy until it terminates in accordance with subsection (3) of this section.
- (5) The right to continue group health insurance coverage shall also be available:
- (a) To the surviving spouse, at the death of the group member, with respect to the spouse and such children whose coverage under the group policy would terminate or terminates by reason of the death of the group member;
 - (b) To a child solely with respect to himself *or herself* upon termination of membership in the group or his *or her* coverage by reason of operation of the limiting age of coverage under the group policy while covered as a dependent thereunder; or
 - (c) To a former spouse for himself *or herself* and such children of whom he *or she* is awarded custody when coverage under the group policy would terminate or terminates by reason of termination of dependency as defined in the group policy and resulting from an order dissolving the marriage entered by a court of competent jurisdiction.
- (6) Continuation of group health insurance coverage need not be granted in the following situations:
- (a) On the effective date of coverage, the applicant is or could be covered by Medicare;
 - (b) On the effective date of coverage, the applicant is or could be covered by another group coverage (insured or uninsured).
- (7) Notice of the right to continue group health insurance coverage shall be given as follows:
- (a) For group policies delivered, issued for delivery, or renewed after July 15, 2002, the insurer shall give written notice of the right to continue group health insurance coverage to any group member entitled to continue coverage under this section upon notice from the group policyholder that the group member has terminated membership in the group. The thirty-one (31) day period of subsection (2)(b) of this section shall not begin to run until the notice required by this paragraph is mailed or delivered to the last known address of the group member;
 - (b) If a group member becomes entitled to obtain continued health insurance coverage, pursuant to this section, and the insurer fails to give the group member written notice of the right, pursuant to this subsection, the insurer shall give written notice to the former group member as soon as practicable after being notified of the insurer's failure to give written notice of continuation rights to the group member and such group member shall have an additional period within which to exercise continuation or conversion rights. The additional period shall expire sixty (60) days after written notice is received from

the insurer. Written notice delivered or mailed to the last known address of the group member shall constitute the giving of notice for the purpose of this paragraph. If a group member makes application and pays the premium for continued health insurance coverage within the additional period allowed by this paragraph, the effective date of continued health insurance coverage shall be the date of termination from the group. However, nothing in this subsection shall require an insurer to give notice or provide continuation coverage to a former group member ninety (90) days after termination of the former group member's group coverage.

➔Section 1297. KRS 304.18-120 is amended to read as follows:

- (1) A converted policy issued pursuant to the conversion privilege contained in a group policy providing hospital or surgical expense insurance shall not impose a lifetime maximum benefit of less than five hundred thousand dollars (\$500,000).
- (2) The *commissioner*~~[executive director]~~ by administrative regulation shall establish minimum benefits for a converted policy issued pursuant to the conversion privilege contained in a group health policy.

➔Section 1298. KRS 304.18-124 is amended to read as follows:

As used in KRS 304.18-124 to 304.18-127, "group policy" means group health insurance policies as defined in KRS 304.18-020 and blanket health insurance policies which the *commissioner*~~[executive director]~~, in his *or her* discretion, designates as subject to KRS 304.18-124 to 304.18-127, which:

- (1) Affect the rights of a Kentucky insured and bear a reasonable relation to Kentucky, regardless of whether delivered or issued for delivery in Kentucky;
- (2) Provide hospital or surgical expenses benefits or indemnities, other than for a specific disease or accidental injury only, or benefits for loss of time from employment; and
- (3) Are delivered, issued for delivery, or renewed after July 13, 1990.

➔Section 1299. KRS 304.18-130 is amended to read as follows:

- (1) Except as otherwise expressly provided herein, no contract providing major medical or outpatient care benefits, issued pursuant to Subtitles 18, 32, and 38 of KRS Chapter 304, shall be sold or offered for sale in the Commonwealth of Kentucky unless such contract offers the master policyholder the option to purchase in new contracts the minimum benefits for treatment of alcoholism as specified in KRS 304.18-140.
- (2) Coverage for treatment shall be divided into three (3) distinct phases:
 - (a) Emergency detoxification treatment;
 - (b) Residential treatment; and
 - (c) Outpatient treatment.

Such contracts shall contain a stipulation that no payment shall be made by the carrier to the provider except upon completion of the phase of program of treatment by the patient, under the guidance and direction of a physician licensed to practice in the Commonwealth or a professional, designated by such physician, who is a recognized staff member of a treatment facility licensed by the *department*~~[office]~~ or accredited by the Joint Commission on the Accreditation of Hospitals.

- (3) Disability and accident income benefits and basic health care contracts that do not provide major medical or outpatient care are excluded from KRS 304.18-130 to 304.18-180.

➔Section 1300. KRS 304.18-140 is amended to read as follows:

Group contracts providing major medical or outpatient care benefits issued pursuant to KRS 304.18-130 for treatment of alcoholism shall require:

- (1) That the patient be under the supervision of a physician licensed to practice in the Commonwealth or a professional designated by such physician, and who is a recognized staff member of a treatment facility licensed by the *department*~~[office]~~ or accredited by the Joint Commission on the Accreditation of Hospitals;

- (2) That the patient receive appropriate emergency detoxification treatment, residential treatment and outpatient treatment at facilities licensed by the ~~department~~~~office~~ or accredited by the Joint Commission on the Accreditation of Hospitals, for alcoholism treatment; and
- (3) That the following minimum benefits per patient be provided:
 - (a) Emergency detoxification - 3 days, \$40 per day
 - (b) Residential treatment - 10 days, \$50 per day
 - (c) Outpatient treatment - 10 visits, \$10 per visit.

➔Section 1301. KRS 304.18-180 is amended to read as follows:

The ~~commissioner~~~~executive director~~ of insurance shall administer the provisions of KRS 304.18-130 to 304.18-170 and may adopt rules and regulations to implement the provisions of KRS 304.18-130 to 304.18-170.

➔Section 1302. KRS 304.19-080 is amended to read as follows:

- (1) All such policies, certificates of insurance, notices of proposed insurance, applications for insurance, indorsements and riders delivered or issued for delivery in this state and the schedule of premium rates pertaining thereto shall be filed with the ~~commissioner~~~~executive director~~.
- (2) All life insurance and all health insurance in connection with loans or other credit transactions shall be subject to the provisions of this subtitle, except health insurance in connection with a loan or other credit transaction of more than five (5) years' duration or life insurance in connection with a loan or other credit transaction of more than ten (10) years' duration; nor shall insurance be subject to provisions of this subtitle where the issuance of such insurance is an isolated transaction on the part of the insurer not relating to an agreement or a plan for insuring debtors of the creditor; nor shall insurance issued for an amount in excess of forty thousand dollars (\$40,000) be subject to this subtitle.
- (3) (a) Credit life insurance. The premium rates set forth hereunder, or actuarially equivalent, shall not exceed:
 1. For decreasing term credit life insurance, a single premium of sixty cents (\$0.60) per annum per one hundred dollars (\$100) of scheduled indebtedness, or sixty-five cents (\$0.65) per annum per one hundred dollars (\$100) of scheduled indebtedness if dismemberment benefits are included in the policy.
 2. Single premium rates for indebtedness repayable in monthly installments other than twelve (12) in number shall not exceed one-twelfth (1/12) of the above premium rate multiplied by the number of full months in the scheduled period.
 3. A premium payable monthly at the rate of ninety-two cents (\$0.92) per one thousand dollars (\$1,000) of outstanding unpaid insured indebtedness or one dollar (\$1) per one thousand dollars (\$1,000) of outstanding unpaid insured indebtedness if dismemberment benefits are included in the policy, will be deemed the actuarial equivalent of the foregoing rates.
 4. For level term credit life insurance, a single premium of one dollar and twenty cents (\$1.20) per annum per one hundred dollars (\$100) of indebtedness or one dollar and thirty cents (\$1.30) per one hundred dollars (\$100) of indebtedness if dismemberment benefits are included in the policy.
- (b)
 1. The standards set forth above are applicable to a plan of death benefits with or without requirements for evidence of insurability which contain no exclusions except for suicide; other exclusions must receive the approval of the ~~commissioner~~~~executive director, and~~
 2. Coverage shall be offered to all debtors regardless of age; or to all debtors not older than the applicable age limit which shall be not less than sixty-five (65) at the inception of the indebtedness or sixty-six (66) at the scheduled maturity date of the transaction, provided that each company's right to underwrite risks on an individual basis shall not be restricted by this subparagraph. Appropriate adjustments may be made with the approval of the ~~commissioner~~~~executive director~~ if premium rates are determined according to the age of the insured debtor or by age brackets.
 3. Rates for use with forms which are more restrictive in any material respect shall reflect such variations in lower rates. Similarly, forms providing more extensive benefits than set forth above may carry appropriately higher charges.

4. The standards set forth above shall be applicable to contracts which may contain a provision excluding or denying a claim for death, resulting from pre-existing illness, disease or physical condition for which the debtor received medical advice, consultation or treatment during the twelve (12) month period immediately preceding the effective date of the debtor's coverage and which would ordinarily be expected to affect materially the debtor's health during the period of coverage; provided, however, that after such coverage has been in force for six (6) months (twelve (12) months for contracts of more than three (3) years), this pre-existing exclusion clause shall not operate to deny coverage for any death thereafter. The contract shall contain no other provision which excludes or restricts liability in the event of death caused in a certain specified manner, except provisions excluding or restricting coverage in the event of intentionally self-inflicted injuries, foreign travel or residence, flight in nonscheduled aircraft, war or military service.

(4) (a) Credit health insurance. The following premium rates, or actuarially equivalent rates, shall be charged for the coverages set forth hereunder:

Single Premium Per \$100 of Initial Indebtedness

Number of Monthly Installments	Nonretroactive Basis		Retroactive Basis	
	14-Day Wait	30-Day Wait	14-Day Wait	30-Day Wait
1-6 months	\$ 1.51	\$.69	\$2.02	\$.92
7-12 months	2.02	.91	2.69	1.22
13-19 months	2.50	1.56	3.33	2.08
20-24 months	2.93	1.84	3.91	2.45
25-30 months	3.28	2.34	4.37	3.12
31-36 months	3.85	2.77	5.14	3.70
37-48 months	4.77	3.67	6.36	4.89
49-60 months	5.68	4.58	7.58	6.11

(b) 1. The standards set forth above shall be applicable to contracts which may contain a provision excluding or denying a claim for disability, resulting from pre-existing illness, disease or physical condition for which the debtor received medical advice, consultation or treatment during the twelve (12) month period immediately preceding the effective date of the debtor's coverage and which would ordinarily be expected to affect materially the debtor's health during the period of coverage; provided, however, that after such coverage has been in force for six (6) months (twelve (12) months for contracts of more than three (3) years), this pre-existing exclusion clause shall not operate to deny coverage for any disability commencing thereafter. The contract shall contain no other provision which excludes or restricts liability in the event of disability caused in a certain specified manner, except provisions excluding or restricting coverage in the event of pregnancy, intentionally self-inflicted injuries, foreign travel or residence, flight in nonscheduled aircraft, war or military service.

2. Coverage shall be offered to all debtors regardless of age, or to all debtors not older than the applicable age limit which shall be not less than sixty-five (65) at the inception of the indebtedness or sixty-six (66) at the scheduled maturity date of the transaction, provided that each company's right to underwrite risks on an individual basis shall not be restricted by this subparagraph. Appropriate adjustments may be made with the approval of the

commissioner~~{executive director}~~ if premium rates are determined according to the age of the insured debtor or by age brackets.

3. Rates for use with forms which are more restrictive in any material respect shall reflect such variations in lower rates. Similarly, forms providing more extensive benefits than set forth above may carry appropriately higher charges.
- (5) Statistical reporting. Each insurer writing credit life or credit health insurance within this state shall keep and maintain statistical data of its experience on these kinds of insurance. The insurer shall, on or before May 1 of each year, file with the **commissioner**~~{executive director}~~ its statistical experience data for the year ending December 31 immediately preceding. Such experience shall be reported on forms conforming to those now or hereafter from time to time adopted by the National Association of Insurance Commissioners.
- (6) If a group policy has been delivered in this state before June 18, 1980, or has been or is delivered in another state before or on or after June 18, 1980, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this state as specified in subsections (2) and (4) of KRS 304.19-070, and such forms shall be approved by the **commissioner**~~{executive director}~~ if they conform with the requirements specified in such subsections and if the schedules of premium rates applicable to the insurance evidenced by such certificate or notice are not in excess of the insurer's schedules of premium rates filed with the **commissioner**~~{executive director}~~. The premium rate in effect on existing group policies may be continued until the first policy anniversary date following June 18, 1980. After June 18, 1980, no borrower shall be added to an existing group policy at rates higher than those set forth in subsections (3) and (4) of this section.
- (7) The foregoing rates and procedures are deemed to be legislative prerogatives and shall not be subject to administrative or executive change or modification.

➔Section 1303. KRS 304.19-082 is amended to read as follows:

- (1) Notwithstanding KRS 304.19-080, an insurer issuing credit health insurance coverage to credit union borrowers, when the coverage is not required as a condition of the loan, may use higher credit health insurance premium rates for specific credit unions if the rates for those credit unions have been filed with the **commissioner**~~{executive director}~~, and within thirty (30) days of the filing the **commissioner**~~{executive director}~~ has not disapproved the rate as excessive in relation to the benefits provided.
- (2) In determining whether to disapprove any rate, the **commissioner**~~{executive director}~~ shall give due consideration to the morbidity costs with respect to the insurance, a reasonable margin for underwriting expenses, profits, contingencies and other reasonable costs and expenses attributable to the insurer, and costs and compensation to the creditor for providing and servicing the insurance, plus the premium taxes payable on the insurance.

➔Section 1304. KRS 304.19-090 is amended to read as follows:

- (1) Any insurer may revise its schedules of premium rates from time to time, and shall file such revised schedules with the **commissioner**~~{executive director}~~. No insurer shall issue any credit life insurance or credit health insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the **commissioner**~~{executive director}~~.
- (2) Each individual policy or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto. The **commissioner**~~{executive director}~~ shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing such refund shall be filed with and approved by the **commissioner**~~{executive director}~~. Nothing contained in this section shall require the debtor to surrender any policy or group certificate for cancellation or termination solely because the indebtedness has been paid in full prior to the scheduled maturity date nor require the insurer to return any premiums.
- (3) When a debtor purchases credit life insurance or credit health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.
- (4) The amount charged to a debtor for any credit life insurance or credit health insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

- (5) Nothing in this subtitle shall be construed to authorize any payments for insurance now prohibited under any statute, or rule thereunder, governing credit transactions.

➔Section 1305. KRS 304.19-100 is amended to read as follows:

All policies of credit life insurance and credit health insurance shall be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business herein, and shall be issued only through holders of licenses, or authorization issued by the *commissioner*~~[executive director]~~.

➔Section 1306. KRS 304.19-130 is amended to read as follows:

Whenever the *commissioner*~~[executive director]~~ finds that there has been a violation of this subtitle or any administrative regulations promulgated pursuant thereto, *the commissioner*~~[he]~~ shall conduct a hearing in accordance with this chapter and KRS Chapter 13B.

➔Section 1307. KRS 304.20-020 is amended to read as follows:

- (1) No automobile liability or motor vehicle liability policy of insurance insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in KRS 304.39-110 under provisions approved by the *commissioner*~~[executive director]~~, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided that the named insured shall have the right to reject in writing such coverage; and provided further that, unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him *or her* by the same insurer.
- (2) For the purpose of this coverage the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency; an insured motor vehicle with respect to which the amounts provided, under the bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such motor vehicle, are less than the limits described in KRS 304.39-110; and an insured motor vehicle to the extent that the amounts provided in the liability coverage applicable at the time of the accident is denied by the insurer writing the same.
- (3) Protection against an insurer's insolvency shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tortfeasor becomes insolvent within one (1) year after such an accident. Nothing herein contained shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided hereunder.
- (4) In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

➔Section 1308. KRS 304.20-040 is amended to read as follows:

- (1) As used in this section:
 - (a) "Policy" means an automobile liability insurance policy, delivered or issued for delivery in this state, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:
 1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others;

2. Any other four-wheel motor vehicle with a load capacity of one thousand five hundred (1,500) pounds or less which is not used in the occupation, profession, or business of the insured; provided, however, that this section shall not apply:
 - a. To any policy issued under an automobile assigned risk plan;
 - b. To any policy insuring more than four (4) automobiles; or
 - c. To any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards;
 - (b) "Automobile liability insurance policy" includes only coverage for bodily injury and property damage liability, basic reparations benefits, and the provisions therein, if any, relating to medical payments, uninsured motorists coverage, underinsured motorists coverage, and automobile physical damage coverage;
 - (c) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than three (3) months shall for the purpose of this section be considered as if written for a policy period or term of three (3) months. Provided, further, that any policy written for a term longer than one (1) year or any policy with no fixed expiration date, shall for the purpose of this section, be considered as if written for successive policy periods or terms of one (1) year, and the policy may be terminated at the expiration of any annual period upon giving seventy-five (75) days' notice of nonrenewal prior to the anniversary date;
 - (d) "Nonpayment of premium" means failure of the named insured to discharge when due any of his *or her* obligations in connection with the payment of premiums on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;
 - (e) "Declination" or "decline" means either the refusal of an insurer to issue an automobile liability insurance policy upon receipt of a written nonbinding application or written request for coverage from its agent or an applicant, or refusal of an agent to transmit to an insurer a written nonbinding application or written request for coverage received from an applicant. The offering of insurance coverage with a company within an insurance group that is different from the company requested on the nonbinding application or written request for coverage, or the offering of insurance upon different terms than requested in the nonbinding application or written request for coverage, shall be considered to be a declination; and
 - (f) "Agent" includes, but is not limited to, surplus lines broker.
- (2) (a) A notice of cancellation of a policy shall be effective only if it is based on one (1) or more of the following reasons:
 1. Nonpayment of premium;
 2. The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date;
 3. Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;
 4. Discovery of willful acts or omissions on the part of the named insured that increase any hazard insured against; or
 5. A determination by the *commissioner*~~{executive director}~~ that the continuation of the policy would place the insurer in violation of this chapter or the rules or administrative regulations of the *commissioner*~~{executive director}~~.
 - (b) This subsection shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

- (c) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars (\$100) shall not be deemed a cancellation of the coverage or of the policy.
 - (d) This subsection shall not apply to nonrenewal.
- (3) No notice of cancellation of a policy to which subsection (2) of this section applies shall be effective unless mailed or delivered by the insurer to the named insured at least twenty (20) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least fourteen (14) days' notice of cancellation accompanied by the reason therefor shall be given. This subsection shall not apply to renewals.
- (4) No insurer or agent shall decline, refuse to renew, or cancel a policy of automobile insurance solely because:
- (a) Of the credit history, or lack of credit history, of the applicant or insured;
 - (b) The applicant or insured has previously obtained automobile coverage through a residual market mechanism or from a carrier providing nonstandard coverage;
 - (c) The applicant or insured has sustained one (1) or more losses that immediately result from a natural cause without the intervention of any person and that could not have been prevented by the exercise of prudence, diligence, and care;
 - (d) Of the race, religion, nationality, ethnic group, age, sex, or marital status of the applicant or named insured; or
 - (e) Another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.
- (5) No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least seventy-five (75) days' advance notice of its intention not to renew. If notice is not provided, coverage shall be deemed to be renewed for the ensuing policy period upon payment of the appropriate payment under the same terms and conditions, until the named insured has accepted replacement coverage with another insurer, or until the named insured has agreed to the nonrenewal.
- (6) The transfer of a policyholder between companies within the same insurance group shall be considered a nonrenewal.
- (7) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of the renewal.
- (8) If the insurer has manifested its willingness to renew by mailing or delivering a renewal notice, bill, certificate, or policy to the first-named insured at his *or her* last known address at least thirty (30) days before the end of the current policy period with the amount of the renewal premium charge and its due date clearly set forth therein, then the policy shall expire and terminate without further notice to the insured on the due date, unless the renewal premium is received by the insurer or its authorized agent on or before that date. When any policy terminates pursuant to this subsection because the renewal premium was not received on or before the due date, the insurer shall, within fifteen (15) days, deliver or mail to the first-named insured at his *or her* last known address a notice that the policy was not renewed and the date on which the coverage under it ceased to exist.
- (9) (a) Proof of mailing of renewal premium to the insurer or its agent, when authorized, on or before the due date, shall constitute a presumption of receipt pursuant to subsection (8) of this section.
- (b) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation or nonrenewal to the named insured at the address shown in the policy shall be sufficient proof of notice.
- (10) No insurer shall impose or request an additional premium higher than its standard premium for automobile insurance, cancel or refuse to issue a policy, or refuse to renew a policy solely because the insured or the applicant is an individual with a disability, so long as the disability does not substantially impair the person's mechanically assisted driving ability.
- (11) When an automobile liability insurance policy is canceled other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance, the insurer shall notify the named insured of his *or her* possible eligibility for automobile liability insurance coverage through the Kentucky automobile assigned risk plan. The notice shall accompany or be included in the notice of cancellation or the notice of

intent not to renew. The notice shall also inform the insured that he *or she* may, within seven (7) days, request the **commissioner**~~{executive director}~~ in writing to determine whether there is sufficient reason to cancel or not to renew the policy. Within fourteen (14) days of receiving such a written request, the **commissioner**~~{executive director}~~ shall send his *or her* findings to the insurer and to the insured. When he *or she* sends ~~his~~ findings, the **commissioner**~~{executive director}~~ shall notify both parties of their right to request a hearing under KRS 304.2-310(2)(b) and KRS Chapter 13B. The party requesting the hearing shall give the **commissioner**~~{executive director}~~ written confirmation of attendance at the hearing not more than five (5) days before, nor less than forty-eight (48) hours before, the scheduled hearing. If the requesting party fails to give the required written confirmation, the **commissioner**~~{executive director}~~ shall cancel the hearing.

- (12) The reason for nonrenewal or cancellation shall accompany or be included in the notice of nonrenewal or cancellation.
- (13) Except where the maximum limits of coverage have been purchased, every notice of first renewal shall include a provision or be accompanied by a notice stating in substance that added uninsured motorists, underinsured motorists, and personal injury protection coverages may be purchased by the insured.
- (14) There shall be no liability on the part of and no cause of action of any nature shall arise against the **commissioner**~~{executive director}~~ or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other communication, oral or written, specifying the reasons for cancellation or nonrenewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.
- (15) (a) If the **commissioner**~~{executive director}~~ determines that an insurer has violated any provision of this section, the **commissioner**~~{executive director}~~ may require the insurer to:
 1. Accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;
 2. Reinstate insurance coverage to the end of the policy period; or
 3. Continue insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated.
- (b) As to any person who has violated any provisions of this section, the **commissioner**~~{executive director}~~ may:
 1. Issue a cease and desist order to restrain the person from engaging in practices that violate this section;
 2. Suspend or revoke the person's license or certificate of authority;
 3. Assess a civil penalty against the person in accordance with KRS 304.99-020; or
 4. Take any combination of the actions specified in this paragraph.

➔Section 1309. KRS 304.20-045 is amended to read as follows:

- (1) No insurer shall increase the premium on an automobile liability insurance policy solely as a result of a claim for an automobile accident filed by an insured if the insured was not at fault nor contributorily negligent.
- (2) An insured may notify in writing the **commissioner**~~{executive director of insurance}~~ if the insured believes that an insurer has increased his *or her* premium in violation of subsection (1) of this section. The **commissioner**~~{executive director}~~ shall investigate the complaint, take appropriate action, and send written notice of his *or her* actions to the insured.

➔Section 1310. KRS 304.20-080 is amended to read as follows:

Any public housing authority created pursuant to KRS Chapter 80 may self-insure, subject to approval of the **commissioner**~~{executive director}~~ by filing with the **commissioner**~~{executive director}~~ in satisfactory form:

- (1) A continuing undertaking by the owner or other appropriate person to pay tort liabilities;
- (2) Evidence that appropriate provision exists for prompt and efficient administration of all claims; and

- (3) Evidence that reliable financial arrangements, deposits, or commitments exist providing coverage substantially equivalent to that afforded by a policy of insurance for payment of claims against a public housing authority.

➔Section 1311. KRS 304.20-090 is amended to read as follows:

Any insurer providing workers' compensation insurance coverage for a Kentucky location shall provide proof of coverage to the **commissioner**~~[executive director]~~ of the **Department**~~[Office]~~ of Workers' Claims in the ~~[Department of]~~ Labor **Cabinet** in accordance with the requirements of the chapter.

➔Section 1312. KRS 304.20-150 is amended to read as follows:

- (1) As used in KRS 304.20-160 to 304.20-190, "authorized agencies" shall mean:
- (a) State **commissioner**~~[executive director]~~ of insurance;
 - (b) The state fire marshal when authorized or charged with the investigation of fires at the place where the fire actually took place;
 - (c) The state Attorney General when authorized or charged with the investigation of fires at the place where the fire actually took place;
 - (d) The commissioner of the Department of Kentucky State Police;
 - (e) The full-time Commonwealth's or county attorney responsible for prosecutions in the county where the fire occurred;
 - (f) The Federal Bureau of Investigation or any other federal agency having the authority to investigate federal offenses arising from arson; and
 - (g) Any United States' attorney's office authorized or charged with investigation or prosecution of the fire in question or the violation of any statute arising from said fire.
- (2) As used in KRS 304.20-160 to 304.20-190, "relevant" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.
- (3) For the purposes of KRS 304.20-160 to 304.20-190, information will be "deemed important" if such information is requested by an authorized agency.
- (4) "Insurer," as used in KRS 304.20-160 to 304.20-190, shall be defined in the same manner as it is defined in KRS 304.1-040, and shall include the Kentucky FAIR plan and reinsurance association, and all authorized persons acting on behalf of an insurer.

➔Section 1313. KRS 304.20-330 is amended to read as follows:

After coverage has been in effect more than sixty (60) days or after the effective date of a renewal policy a notice of cancellation shall not be issued unless it is based on at least one (1) of the following reasons:

- (1) Nonpayment of premium;
- (2) Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;
- (3) Discovery of willful or reckless acts or omissions on the part of the named insured which increase any hazard insured against;
- (4) The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed;
- (5) A violation of any local fire, health, safety, building, or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;
- (6) The insurer is unable to reinsure the risk covered by the policy; or
- (7) A determination by the **commissioner**~~[executive director]~~ that the continuation of the policy would place the insurer in violation of the Kentucky insurance code or regulations of the **commissioner**~~[executive director]~~.

➔Section 1314. KRS 304.20-350 is amended to read as follows:

If the **commissioner**~~[executive director]~~ determines that:

- (1) An insurer has violated KRS 304.20-320, 304.20-330 or 304.20-340, the **commissioner**~~[executive director]~~ may require the insurer to:
 - (a) Accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;
 - (b) Reinstate insurance coverage to the end of the policy period; or
 - (c) Continue insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;
- (2) Any person has violated any provisions of KRS 304.20-320 to this section, the **commissioner**~~[executive director]~~ may:
 - (a) Issue a cease and desist order to restrain such person from engaging in practices which violate KRS 304.20-320 to this section;
 - (b) Suspend or revoke such person's license or certificate of authority;
 - (c) Assess a civil penalty against such person pursuant to KRS 304.99-020; or
 - (d) Take any combination of the actions specified in this section.

➔Section 1315. KRS 304.20-380 is amended to read as follows:

Every property insurer, as defined in this chapter, authorized to do business in this state shall include a premium credit or discount provision in its rates filed with the **commissioner**~~[executive director]~~ for buildings equipped with an automatic sprinkler system. The amount of the discount shall reflect the cost savings the insurer expects to realize in insuring property equipped with automatic sprinkler systems.

➔Section 1316. KRS 304.21-020 is amended to read as follows:

- (1) Whenever an insurer has been granted a certificate of authority to transact surety insurance in this state, the **commissioner**~~[executive director]~~ shall on or before the first day of the next succeeding month send to the county clerk of each county in this state his *or her* certificate, over the seal of *the department*~~[his office]~~, stating that such insurer has complied with the laws of this state and is authorized to transact a business as surety in this state. The county clerk shall record the certificate and it shall become a permanent part of the records of the county clerk.
- (2) The **commissioner**~~[executive director]~~ shall on or before the first day of March of each year forward to each county clerk a list containing the names of all surety insurers, foreign and domestic, which are then authorized to transact business in the state.
- (3) The county clerks shall preserve such list on the files of the court, open to public inspection.

➔Section 1317. KRS 304.21-030 is amended to read as follows:

If a theretofore authorized surety insurer withdraws from this state or if its certificate of authority is terminated, the **commissioner**~~[executive director]~~ shall give notice thereof forthwith by mailing a certificate of such fact to the county clerk of each county in this state. Upon receipt of the certificate the county clerk shall enter a notation across the face of the record of the certificate of authority of the insurer as referred to in KRS 304.21-020, showing the withdrawal of the insurer or the termination of its certificate of authority, as the case may be, together with the date thereof.

➔Section 1318. KRS 304.21-040 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ is authorized to issue to any person applying therefor, a certificate showing that any surety insurer that has complied with the laws of this state, is qualified to do a surety business in this state, and stating the general terms of the risks authorized to be so written.
- (2) Any such certificate or any certified copy of any uncanceled certificate shall be received in evidence as a sufficient justification of such surety and its authority to do business in this state; provided, however, that the certificate of the county clerk to any such certified copy, or any certificate furnished directly by the **commissioner**~~[executive director]~~ to an applicant therefor, must bear a date the same as, or later than the date of the bond, undertaking or obligation upon which justification is being made.

➔Section 1319. KRS 304.21-090 is amended to read as follows:

Whenever any licensed company writing blanket bonds on banks or credit unions in the Commonwealth intends to cancel, terminate or not renew the bond of any bank or credit union, it shall notify the **Department**~~{Office}~~ of Financial Institutions of its intention to cancel, terminate or not renew any such bond not less than thirty (30) days prior to the effective date of such action.

➔Section 1320. KRS 304.22-020 is amended to read as follows:

- (1) Every title insurer shall, before use in this state, file with the **commissioner**~~{executive director}~~ its schedule of the risk portion of premium rates for title insurance, and thereafter every modification or amendment thereof.
- (2) Rates for title insurance shall not be excessive, inadequate, or unfairly discriminatory.
- (3) The insurer shall adhere to the rates as so filed by it.

➔Section 1321. KRS 304.22-040 is amended to read as follows:

An insurer shall not in any manner guarantee the payment of the principal or the interest of bonds or other obligations executed by others, other than (a) in connection with the handling of litigation relating to losses or claims involving the insurer, its insureds, its agents or its attorneys, or (b) in connection with the settlement of such losses or claims, or (c) in the event such guarantee is specifically approved by the **commissioner**~~{executive director}~~.

➔Section 1322. KRS 304.24-050 is amended to read as follows:

- (1) Upon receipt of the articles of incorporation of the proposed insurer, the **commissioner**~~{executive director}~~ shall submit such articles to the Attorney General for examination. Within ten (10) days after receipt thereof the Attorney General shall return the articles to the **commissioner**~~{executive director}~~ with a written statement as to whether the articles comply with law.
- (2) If the Attorney General has found the articles to be in compliance with law and has so stated to the **commissioner**~~{executive director}~~, the **commissioner**~~{executive director}~~ shall stamp or otherwise certify his **or her** approval thereon, retain one (1) copy of the articles for his **or her** files and deliver the remaining three (3) copies of the articles to the incorporators for filing as provided by laws governing business corporations generally.
- (3) The incorporators shall concurrently file with the **commissioner**~~{executive director}~~ duplicates of filings made on behalf of the corporation with the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Financial Institutions pursuant to KRS Chapter 292, and upon compliance with the provisions of such chapter governing sale of securities, the incorporators may open books to receive subsections for capital stock of the corporation.
- (4) After all stock stated by the articles as to the amount of capital with which the corporation will begin business (which shall not be less than the applicable minimum amounts required by the provisions of this code to qualify for authority to transact the kind of insurance specified by the articles) has been subscribed and paid for either in cash or in assets of the kind eligible for investment of a domestic insurer under this code, the incorporators shall make application for a certificate of authority as provided in Subtitle 3.
- (5) In addition to the requirements of this subtitle, the incorporators shall also comply with such other applicable laws governing the organization of domestic business corporations as are not in conflict with the provisions of this subtitle.

➔Section 1323. KRS 304.24-060 is amended to read as follows:

- (1) Upon receiving the application provided for in subsection (4) of KRS 304.24-050, the **commissioner**~~{executive director}~~ shall make an examination of the affairs of the proposed corporation to ascertain whether it has complied with requirements of law and has fully paid-in capital stock and assets in amount necessary to qualify for authority to transact the kind or kinds of insurance proposed to be transacted. As a part of such examination the **commissioner**~~{executive director}~~ shall require the incorporators or directors to certify, under oath, that assets exhibited to him **or her** are the bona fide property of the proposed corporation.
- (2) If after such examination the **commissioner**~~{executive director}~~ finds that the proposed corporation is fully entitled thereto, **the commissioner**~~{he}~~ shall issue to it his **or her** certificate of authority to transact the kind or kinds of insurance for which it has qualified.

➔Section 1324. KRS 304.24-070 is amended to read as follows:

The incorporation of an insurer shall be effective as of the date of issuance by the Secretary of State of its articles of incorporation; and thereupon the corporation shall be vested with all the powers, rights and privileges, and be subject to all the duties, liabilities and restrictions applicable to insurer corporations; subject, however, to qualification and application for, and issuance to the corporation of, a certificate of authority as an insurer by the **commissioner**~~{executive director}~~ under the provisions of this code.

➔Section 1325. KRS 304.24-080 is amended to read as follows:

- (1) A domestic mutual insurer heretofore or hereafter formed may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at any regular annual meeting of its members, or at any special meeting of members called for the purpose. Written notice of the proposed amendment shall be given members at least thirty (30) days prior to the meeting, and may be given in the same manner and at the same time as notice of the meeting is given or in any other appropriate manner.
- (2) Upon adoption of the amendment the insurer shall prepare articles of amendment in quadruplicate, setting forth the amendment and the date and manner of the adoption thereof. The articles of amendment shall be executed by the insurer's president or vice president and secretary or assistant secretary, and be acknowledged by them before an officer authorized by law to take acknowledgments of deeds.
- (3) The quadruplicate originals of the articles of amendment shall be delivered to the **commissioner**~~{executive director}~~, shall be subject to examination and certification by the Attorney General, to approval by the **commissioner**~~{executive director}~~, and to filing, all as provided for original articles of incorporation under KRS 304.24-040. For filing articles of amendment of the articles of incorporation of a domestic mutual insurer the Secretary of State shall charge and collect a fee of ten dollars (\$10), for credit to the general fund.

➔Section 1326. KRS 304.24-090 is amended to read as follows:

- (1) A domestic stock insurer may amend its articles of incorporation for any lawful purpose through the same procedures prescribed in KRS Chapter 271B.
- (2) Quadruplicate originals of articles of amendment shall be delivered to the **commissioner**~~{executive director}~~, shall be subject to examination and certification by the Attorney General, to approval by the **commissioner**~~{executive director}~~, and to filing, all as provided for original articles of incorporation under KRS 304.24-040.

➔Section 1327. KRS 304.24-110 is amended to read as follows:

- (1) Before soliciting any applications for insurance required under KRS 304.24-100 as qualification for the original certificate of authority, the incorporators of the proposed insurer shall file with the **commissioner**~~{executive director}~~ a corporate surety bond in the penal sum of \$100,000, in favor of the state and for the use and benefit of the state and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:
 - (a) For the prompt return to applicant members of all premiums collected in advance,
 - (b) For payment of all indebtedness of the corporation,
 - (c) For payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the corporation,

all in the event the corporation fails to complete its organization and secure a certificate of authority within one (1) year after the date of its certificate of incorporation, and

 - (d) That it is not subject to cancellation unless thirty (30) days' advance notice in writing of cancellation is given both the incorporators and the **commissioner**~~{executive director}~~.
- (2) In lieu of such bond, the incorporators may deposit with the **commissioner**~~{executive director}~~ \$100,000 in cash or United States government bonds negotiable and payable to the bearer, with a market value of not less than \$100,000, to be held in trust upon the same conditions as required for the bond.
- (3) Any such bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement and termination of all liabilities against it.
- (4) In addition to the bond the proposed insurer shall file with the **commissioner**~~{executive director}~~ copies of any proposed form or policy to be offered and schedule of premium rates therefor, copies of all advertising and

sales literature proposed to be used in such solicitation, and such other information relative to the solicitation of such insurance or procuring of such funds as the **commissioner**~~executive director~~ may reasonably require, all of which must comply with the law.

➔Section 1328. KRS 304.24-120 is amended to read as follows:

- (1) Upon receipt of the **commissioner's**~~executive director's~~ approval of the bond or deposit as provided in KRS 304.24-110, the directors and officers of the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as they may accept, and may receive deposits of premiums thereon.
- (2) All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located or to be performed in this state.
- (3) All such applications shall provide that:
 - (a) Issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;
 - (b) No insurance is in effect unless and until the certificate of authority has been issued; and
 - (c) The prepaid premium or deposit, and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date, which date shall be not later than one (1) year after the date of the certificate of incorporation.
- (4) All qualifying premiums collected shall be in cash.
- (5) Solicitation for such qualifying applicants for insurance shall be by licensed agents of the corporation, and the **commissioner**~~executive director~~ shall, upon the corporation's application therefor, issue temporary agent's licenses expiring on the date specified pursuant to paragraph (c) of subsection (3) of this section to individuals qualified as for a resident's license except as to the taking or passing of an examination. The **commissioner**~~executive director~~ may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agent's in general under Subtitle 9.

➔Section 1329. KRS 304.24-130 is amended to read as follows:

- (1) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement consistent with this section and with paragraph (c) of subsection (3) of KRS 304.24-120 and 304.24-140. The corporation shall file an executed copy of such trust agreement with the **commissioner**~~executive director~~.
- (2) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority or thereafter as provided by the respective policies.

➔Section 1330. KRS 304.24-140 is amended to read as follows:

If the proposed domestic insurer fails to complete its organization and to secure its original certificate of authority within one (1) year after the date of its certificate of incorporation, its corporate powers shall cease, and the **commissioner**~~executive director~~ shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under KRS 304.24-130.

➔Section 1331. KRS 304.24-150 is amended to read as follows:

After being authorized to transact one (1) kind of insurance a mutual insurer may be authorized by the **commissioner**~~executive director~~ to transact additional kinds of insurance by compliance with the applicable financial requirements set forth in KRS 304.24-100 and by otherwise complying with the applicable provisions of this code.

➔Section 1332. KRS 304.24-170 is amended to read as follows:

- (1) A domestic mutual insurer shall have bylaws for the government of its affairs. The insurer's initial board of directors shall adopt original bylaws, subject to the approval of the insurer's members at the next meeting of members.
- (2) The bylaws shall contain provisions, consistent with this code, relating to:
 - (a) The voting rights of members;
 - (b) Election of directors, and the number, qualifications, terms of office and powers of directors;
 - (c) Annual and special meetings of members;
 - (d) The number, designation, election, terms and powers and duties of the respective corporate officers;
 - (e) Deposit, custody, disbursement and accounting for corporate funds;
 - (f) Fidelity bonds covering officers and employees of the insurer handling its funds, to be issued by the corporate surety and to be in such amount as may be reasonable; and
 - (g) Such other matters as may be customary, necessary, or convenient for the management or regulation of corporate affairs.
- (3) The insurer shall promptly file with the **commissioner**~~{executive director}~~ a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto. The **commissioner**~~{executive director}~~ shall disapprove any bylaw provision deemed by him *or her*, after a hearing held thereon, to be unlawful, unreasonable, inadequate, unfair or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

➔Section 1333. KRS 304.24-190 is amended to read as follows:

- (1) Meetings of members of a domestic mutual insurer shall be held in the city or town of its registered office in this state, except as may otherwise be provided in the insurer's bylaws with the **commissioner's**~~{executive director's}~~ approval.
- (2) Each such insurer shall, during the first six (6) months of each calendar year, hold the annual meeting of its members to fill vacancies existing or occurring in the board of directors, receive and consider reports of the insurer's officers as to its affairs and transact such other business as may properly be brought before it.
- (3) Written notice of the time and place of the annual meeting of members shall be given members not less than thirty (30) days prior to the meeting. Notice may be given by imprinting the notice plainly on the policies issued by the insurer or in any other appropriate manner. Any change of the date or place of the annual meeting shall be made only by an annual meeting of members. Notice of such change, among other appropriate methods may be given:
 - (a) By imprinting such new date or place on all policies which will be in effect as of the date of such changed meeting;
 - (b) Unless the **commissioner**~~{executive director}~~ otherwise orders, notice of the new date or place need be given only through policies issued after the date of the annual meeting at which such change was made and in premium notices and renewal certificates issued during the twenty-four (24) months immediately following such meeting.
- (4) If more than six (6) months are allowed to elapse after an annual meeting of members is due to be held without such annual meeting being held, the **commissioner**~~{executive director}~~ shall, upon written request of any officer, director, or member of the insurer, cause written notice of such meeting to be given to the insurer's members, and the meeting shall be held as soon as reasonably possible thereafter.

➔Section 1334. KRS 304.24-230 is amended to read as follows:

- (1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under this code for authority to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors may, if the same is approved by the **commissioner**~~{executive director}~~, levy an assessment only on its members who held policies providing for contingent liability at any time within the twelve (12) months next preceding the date the levy was authorized by the board of directors, and such members shall be liable to the insurer for the amount so assessed.

- (2) The levy of assessment shall be for such an amount, subject to the **commissioner's**~~executive director's~~ approval, as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed five percent (5%) of the sum of the insurer's liabilities and such minimum required surplus as of the date of the levy.
- (3) As to the respective policies subject to the levy, the assessment shall be computed upon such reasonable basis as may be approved by the **commissioner**~~executive director~~ in writing in advance of the levy.
- (4) No member shall have an offset against any assessment for which he *or she* is liable, on account of any claim for unearned premium or loss payable.
- (5) As to life insurance, any part of such assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the **commissioner**~~executive director~~ as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of the member.

➔Section 1335. KRS 304.24-250 is amended to read as follows:

- (1) A domestic mutual insurer while maintaining unimpaired surplus funds not less in amount than the minimum paid-in capital stock and surplus required to be maintained by a domestic stock insurer, formed under this code, for authority to transact the same kinds or kind of insurance, may, upon receipt of the **commissioner's**~~executive director's~~ order so authorizing, extinguish the contingent liability to assessment of its members as to all its policies in force and may omit provisions imposing contingent liability in all policies currently issued.
- (2) The **commissioner**~~executive director~~ shall not authorize a domestic insurer to extinguish the contingent liability of any of its members or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its members and in all such policies for all kinds of insurance transacted by it.
- (3) A foreign or alien mutual insurer may issue nonassessable policies to its members in this state pursuant to its charter and the laws of its domicile.

➔Section 1336. KRS 304.24-260 is amended to read as follows:

- (1) The **commissioner**~~executive director~~ shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if
 - (a) At any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or
 - (b) The insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked.
- (2) During the absence of such authority the insurer shall not issue any policy without providing therein for the contingent liability of the policyholder, nor renew any policy which is then in force without indorsing the same to provide for such contingent liability.

➔Section 1337. KRS 304.24-280 is amended to read as follows:

- (1) No insurer shall hereafter make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors, or to have the controlling or preemptive right to produce substantially all insurance business for the insurer, or, if an officer, director or otherwise part of the insurer's management, is to receive any commission, bonus or compensation based upon the volume of the insurer's business or transactions, unless the contract is filed with and approved by the **commissioner**~~executive director~~. The contract shall be deemed approved unless disapproved by the **commissioner**~~executive director~~ within twenty (20) days after date of filing, subject to such reasonable extension of time as the **commissioner**~~executive director~~ may require by notice given within such twenty (20) days. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.
- (2) Any such contract shall provide that any such manager or producer of its business shall within ninety (90) days after expiration of each calendar year furnish the insurer's board of directors a written statement of amounts received under or on account of the contract and amounts expended thereunder during such calendar year, including the emoluments received therefrom by the respective directors, officers, and other principal

management personnel of the manager or producer, and with such classification of items and further detail as the insurer's board of directors may reasonably require.

- (3) The **commissioner**~~{executive director}~~ shall disapprove any such contract if he *or she* finds that it:
 - (a) Subjects the insurer to excessive charges; or
 - (b) Is to extend for any unreasonable length of time; or
 - (c) Does not contain fair and adequate standards of performance, or
 - (d) Contains other inequitable provision or provisions which impair the proper interests of stockholders or policyholders of the insurer.
- (4) The **commissioner**~~{executive director}~~ may, after a hearing held thereon, withdraw his *or her* approval of any such contract theretofore approved by him *or her*, if he *or she* finds that the bases of his *or her* original approval no longer exist, or that the contract has in actual operation, shown itself to be subject to disapproval on any of the grounds referred to in subsection (3) of this section.
- (5) This section does not apply as to contracts entered into prior to June 18, 1970, nor to extensions or amendments to such contracts, nor to relationships and agreements between parents, subsidiaries, or affiliates.

→Section 1338. KRS 304.24-290 is amended to read as follows:

The insurer shall establish and maintain in this state its principal office and place of business. The insurer's principal records shall be kept either at its principal office or, with the approval of the **commissioner**~~{executive director}~~, at its place of business in any other state where it, or its affiliate as defined in subsection (4) of KRS 304.37-010, is engaged in the business of entering into contracts of insurance.

→Section 1339. KRS 304.24-300 is amended to read as follows:

- (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan, except that if public offering and sale is made of the loan securities, the insurer may pay the reasonable costs thereof approved by the **commissioner**~~{executive director}~~.
- (2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid. A surplus note shall be reported as surplus and not as debt only if the surplus note contains the following provisions:
 - (a) Subordination to policyholder;
 - (b) Subordination to claimant and beneficiary claims;
 - (c) Subordination to all other classes of creditors other than surplus note holders; and
 - (d) Interest payments and principal repayments require prior approval of the state of domicile.
- (3) Any such loan shall be subject to the **commissioner's**~~{executive director's}~~ approval. The insurer shall in advance of the loan, file with the **commissioner**~~{executive director}~~ a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within fifteen (15) days after date of such filing the insurer is notified of the **commissioner's**~~{executive director's}~~ disapproval and the reasons therefor. The **commissioner**~~{executive director}~~ shall disapprove any proposed loan or agreement if he *or she* finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.
- (4) Any such loan or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made unless approved in advance by the **commissioner**~~{executive director}~~.

- (5) This section shall not apply to other kinds of loans obtained by the insurer in ordinary course of business, nor to loans secured by pledge or mortgage of assets.

➔Section 1340. KRS 304.24-350 is amended to read as follows:

- (1) If the assets of an insurer at any time are less than its liabilities, including its capital stock as a liability, if a stock insurer, or its minimum required surplus if a mutual insurer, the *commissioner*~~{executive director}~~ shall forthwith determine the amount of such deficiency and give notice to the insurer to make good the deficiency within ninety (90) days after the giving of such notice.
- (2) The insurer may cure the deficiency by a decrease of its capital stock or by other lawful means. The deficiency shall be made good in cash or in assets eligible under this code for investment of the insurer's funds or by decrease of the insurer's capital stock to an amount not below the minimum required for the kinds of insurance to be thereafter transacted.
- (3) If the deficiency is not made good and proof thereof filed with the *commissioner*~~{executive director}~~ within such ninety-day period, the *commissioner*~~{executive director}~~ shall revoke the insurer's certificate of authority, the insurer shall be deemed insolvent, and shall be proceeded against as authorized by this code.

➔Section 1341. KRS 304.24-360 is amended to read as follows:

- (1) A stock insurer may become a mutual insurer under such reasonable plan and procedure as may be approved by the *commissioner*~~{executive director}~~ after a hearing thereon.
- (2) The *commissioner*~~{executive director}~~ shall not approve any such plan or procedure of mutualization unless:
 - (a) *The commissioner*~~{He}~~ finds that it is equitable to stockholders and policyholders;
 - (b) It is subject to approval by the holders of not less than three-fourths (3/4) of the insurer's outstanding capital stock having voting rights, and by not less than two-thirds (2/3) of the insurer's policyholders, who vote on such plan in person, by proxy, or by mail, pursuant to such reasonable notice and procedure as may be approved by the *commissioner*~~{executive director}~~;
 - (c) If a life insurer, the right to vote thereon is limited to holders of policies, other than term or group policies, whose policies have been in force for more than one (1) year;
 - (d) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;
 - (e) The plan provides for the purchase of the shares of any dissenting stockholder in the same manner and subject to the same applicable conditions as provided by KRS Chapter 271B as to rights of dissenting stockholders with respect to merger or consolidation of business corporations;
 - (f) The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and
 - (g) The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.
- (3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under Subtitle 33.

➔Section 1342. KRS 304.24-370 is amended to read as follows:

A domestic stock insurer may convert to a Kentucky ordinary business corporation through the following procedures:

- (1) The insurer shall give the *commissioner*~~{executive director}~~ written notice of its intent to convert to an ordinary business corporation;
- (2) The insurer shall bulk reinsure all of its insurance, if any, in force, with another authorized insurer under a bulk reinsurance agreement approved by the *commissioner*~~{executive director}~~ as provided in KRS 304.24-420. The agreement of bulk reinsurance may be made contingent upon approval of stockholders as provided in subsection (4) of this section;

- (3) The insurer shall set aside funds in a special reserve in such amount and subject to such administration as may be found by the **commissioner**~~{executive director}~~ to be reasonable and adequate for the purpose, for payment of all obligations, if any, of the insurer incurred by it and remaining unpaid under its insurance contracts prior to the effective date of such bulk reinsurance, or make other reasonable disposition satisfactory to the **commissioner**~~{executive director}~~ for such payment;
- (4) The proposed conversion shall be approved by affirmative vote of not less than two-thirds (2/3) of each class of outstanding securities of the insurer having voting rights, at a special meeting of holders of such securities called for the purpose; and at such meeting and by a like vote the certificate of organization of the corporation shall be amended to remove therefrom the power to transact an insurance business as an insurer, to provide for such new powers and purposes authorized by the general corporation laws of this state as may be consistent with the purposes for which the corporation is thereafter to exist, and to make such further alterations in the certificate of organization as may be required under such general corporation laws of an ordinary business corporation;
- (5) Security holders of the corporation who dissent from such proposed conversion shall have the same applicable rights as exist under such general corporation laws with respect to dissent from a proposed merger of the corporation; and
- (6) Upon compliance with subsections (1) to (4) of this section, inclusive, and upon filing of the amendment of the certificate of organization with the **commissioner**~~{executive director}~~ and otherwise as required by laws applicable to ordinary business corporations, the conversion shall thereupon become effective.

➔Section 1343. KRS 304.24-390 is amended to read as follows:

- (1) A domestic insurer may merge or consolidate with one (1) or more domestic or foreign insurers, by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of corporations formed for profit, but subject to subsections (2), (3) and (4) of this section.
- (2) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the **commissioner**~~{executive director}~~ and approved in writing by him **or her** after a hearing thereon. The **commissioner**~~{executive director}~~ shall give such approval within a reasonable time after such filing unless **the commissioner**~~{he}~~ finds such plan or agreement:
 - (a) Is contrary to law; or
 - (b) Inequitable to the stockholders or members of the insurers involved; or
 - (c) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere; or
 - (d) Would materially tend to lessen competition in the insurance business in this state or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or
 - (e) Is subject to other material and reasonable objections.
- (3) No director, officer, agent or employee of any insurer party to such merger or consolidation, or member of the family of such director, officer, agent, or employee, shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in such plan or agreement.
- (4) If members of an insurer are entitled to vote, two-thirds (2/3) of the votes cast by such members of such insurer, as are represented at the meeting in person or by proxy, is necessary for the approval of any such agreement or plan.
- (5) If the **commissioner**~~{executive director}~~ does not approve any such plan or agreement he **or she** shall so notify the insurer in writing specifying his **or her** reasons therefor.

➔Section 1344. KRS 304.24-400 is amended to read as follows:

- (1) A domestic stock insurer shall not acquire a controlling interest in the shares of another stock insurer by an exchange of securities or partly in exchange for securities and partly for cash or property, unless the insurer has first submitted the plan for such acquisition and exchange to the **commissioner**~~{executive director}~~ and the **commissioner**~~{executive director}~~ has approved the same.

(2) The **commissioner**~~{executive director}~~ shall not so approve unless he *or she* finds the plan for such acquisition and exchange and the terms and conditions thereof to be fair and equitable to all parties concerned therein, after a hearing to which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear.

(3) Notice and conduct of such hearing shall be as provided in Subtitle 2.

➔Section 1345. KRS 304.24-415 is amended to read as follows:

(1) (a) Every insurer domiciled in this state shall file a report with the **commissioner**~~{executive director}~~ disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the **commissioner**~~{executive director}~~ for review, approval, or information purposes pursuant to other provisions of this chapter.

(b) The report required in paragraph (a) of this subsection is due within fifteen (15) days after the end of the calendar month in which any of the foregoing transactions occur.

(c) One (1) complete copy of the report, including any exhibits or other attachments, shall be filed with:

1. The insurance department of the insurer's state of domicile; and
2. The National Association of Insurance Commissioners.

(d) All reports obtained by or disclosed to the **commissioner**~~{executive director}~~ pursuant to this section shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the **commissioner**~~{executive director}~~, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the **commissioner**~~{executive director}~~, after giving the insurer who would be affected notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by publication, in which event the **commissioner**~~{executive director}~~ may publish all or any part in the manner the **commissioner**~~{executive director}~~ may deem appropriate.

(2) (a) No acquisitions or dispositions of assets need be reported pursuant to subsection (1) of this section if the acquisitions or dispositions are not material. For purposes of this section, a material acquisition, or the aggregate of any series of related acquisitions during any thirty (30) day period, is one that is nonrecurring and not in the ordinary course of business and involves more than five percent (5%) of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance department of the insurer's state of domicile.

(b) 1. Asset acquisitions subject to this section include every purchase, lease exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.

2. Asset dispositions subject to this section include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, or other disposition.

(c) 1. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- a. Date of the transaction;
- b. Manner of acquisition or disposition;
- c. Description of the assets involved;
- d. Nature and amount of the consideration given or received;
- e. Purpose of, or reason for, the transaction;
- f. Manner by which the amount of consideration was determined;
- g. Gain or loss recognized or realized as a result of the transaction; and

- h. Names of the persons from which the assets were acquired or to whom they were disposed.
 - 2. Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.
- (3) (a) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported pursuant to subsection (1) of this section if the nonrenewals, cancellations or revisions are not material. For purposes of this section, a material nonrenewal, cancellation, or revision is one that affects:
- 1. As respects property and casualty business, including accident and health business written by a property and casualty insurer:
 - a. More than fifty percent (50%) of the insurer's total ceded written premium; or
 - b. More than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves.
 - 2. As respects life, annuity, and accident and health business, more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.
 - 3. As respects either property and casualty or life, annuity, and accident and health business, either of the following events shall constitute a material revision which must be reported:
 - a. An authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one (1) or more unauthorized reinsurers; or
 - b. Previously established collateral requirements have been reduced or waived as respects one (1) or more unauthorized reinsurers representing collectively more than ten percent (10%) of a total cession.
- (b) No filing shall be required if:
- 1. As respects property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business; or
 - 2. As respects life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirements prior to any cession.
- (c) The following information is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:
- 1. Effective date of the nonrenewal, cancellation, or revision;
 - 2. The description of the transaction with an identification of the initiator thereof;
 - 3. Purpose of, or reason for, the transaction; and
 - 4. If applicable, the identity of the replacement reinsurers.
- (d) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the

net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

➔Section 1346. KRS 304.24-420 is amended to read as follows:

- (1) A domestic insurer may reinsure all or substantially all of its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the **commissioner**~~[executive director]~~ and approved by him *or her* in writing.
- (2) The **commissioner**~~[executive director]~~ shall approve such agreements within a reasonable time after filing if he *or she* finds:
 - (a) That the plan and agreement are fair and equitable to each insurer and to the policyholders involved;
 - (b) That the reinsurance, if effectuated, would not substantially reduce the protection or service to the policyholders of any domestic insurer involved;
 - (c) That the agreement embodies adequate provisions by which the reinsuring insurer becomes liable to the original insureds for any loss or damage occurring under the policies reinsured in accordance with the original terms of such policies, and that the reinsuring insurer shall duly furnish each such insured with a certificate evidencing such assumption of liability;
 - (d) That the assuming reinsurer is authorized to transact such insurance in this state, or is qualified as for such authorization and will appoint the **commissioner**~~[executive director]~~ and his *or her* successors as its irrevocable attorney for service of process, so long as any policy so reinsured or claim thereunder remains in force or outstanding;
 - (e) That such reinsurance would not materially tend to lessen competition in the insurance business in this state or elsewhere as to the kinds of insurance involved, and would not materially tend to create a monopoly as to such business; and
 - (f) That the proposed bulk reinsurance is free of other reasonable objections.
- (3) If the **commissioner**~~[executive director]~~ does not so approve he *or she* shall forthwith notify each insurer involved in writing, specifying his *or her* reasons therefor.
- (4) If for reinsurance of all or substantially all of the business in force of a mutual insurer at a time when the insurer's surplus is not impaired, the plan and agreement for such reinsurance must be approved by vote of not less than two-thirds (2/3) of the mutual insurer's members voting thereon at a meeting of members called for the purpose, pursuant to such reasonable notice and procedure as is provided for in the agreement. If a life insurer, right to vote may be limited to members whose policies are other than term or group policies, and have been in effect for more than one (1) year.
- (5) No director, officer, agent or employee of any insurer party to such reinsurance, nor any other person shall receive any compensation for arranging such bulk reinsurance other than as provided in the agreement submitted to and approved by the **commissioner**~~[executive director]~~.

➔Section 1347. KRS 304.24-430 is amended to read as follows:

- (1) A solvent domestic stock or mutual insurer, which then is not the subject of a delinquency proceeding under Subtitle 33, may voluntarily dissolve under a plan therefor in writing authorized by its board of directors, approved or adopted by stockholders or members as hereinafter provided, and filed with and approved by the **commissioner**~~[executive director]~~. The plan shall provide for the disposition, by bulk reinsurance or other lawful procedure, of all insurance in force in the insurer, for full discharge of all obligations of the insurer, and designate or provide for trustees to conduct and administer the settlement of the insurer's affairs.
- (2) The **commissioner**~~[executive director]~~ shall approve the plan unless found by him *or her* to be unlawful or unfair or inequitable or prejudicial to the interests of stockholders, policyholders or creditors.
- (3) If a mutual insurer, the plan must have been approved by vote of not less than two-thirds (2/3) of the policyholders voting thereon at a special meeting of such policyholders called and held for the purpose pursuant to such reasonable notice and information as the **commissioner**~~[executive director]~~ may have approved.

- (4) If a stock insurer, the plan must have been adopted by vote of not less than two-thirds (2/3) of all outstanding voting securities of the insurer at a special meeting of such security holders called and held for the purpose.
- (5) Following approval of the dissolution and plan therefor by members or adoption thereof by stockholders as above provided, and approval by the **commissioner**~~[executive director]~~, the trustees designated or provided for in the plan shall proceed to execute the plan. When all liabilities of the corporation have been discharged or otherwise adequately provided for, and all assets of the corporation have been liquidated and distributed in accordance with the plan, the trustees shall so certify in quadruplicate under oath in writing. The trustees shall deliver the original and the three (3) copies of such certificate to the **commissioner**~~[executive director]~~. The **commissioner**~~[executive director]~~ shall make such examination of the affairs of the corporation, and of the liquidation and distribution of its assets and discharge of or provision for its liabilities as **the commissioner**~~[he]~~ deems advisable. If upon such examination **the commissioner**~~[he]~~ finds that the facts set forth in the certificate of the trustees are true, **the commissioner**~~[he]~~ shall inscribe his **or her** approval on the certificate, file the original thereof so inscribed in the office of the Secretary of State, file copy thereof in the **department**~~[office]~~, and return the remaining two (2) copies to the trustees. The trustees shall file one (1) of such copies for recording in the office of the county clerk of the county in which the corporation's principal place of business is located, and retain the fourth copy for the corporate files.
- (6) Upon filing the certificate of the trustees with the Secretary of State as provided in subsection (5) of this section, the Secretary of State shall issue to the trustees his **or her** certificate of dissolution, and the corporate existence of the corporation shall thereupon forever terminate. The Secretary of State shall charge and collect a fee of twenty-five dollars (\$25) for the filing of the trustee's certificate, and shall deposit the same with the State Treasurer for credit to the general fund.

➔Section 1348. KRS 304.24-440 is amended to read as follows:

- (1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration, shall be distributed to currently existing persons who had been members of the insurer for at least one (1) year and who were its members at any time within thirty-six (36) months next preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority whichever date is the earlier; except, that if the **commissioner**~~[executive director]~~ has reason to believe that those in charge of the management of the insurer have caused or encouraged the reduction of the number of members of the insurer in anticipation of liquidation and for the purpose of reducing thereby the number of persons who may be entitled to share in distribution of the insurer's assets, **the commissioner**~~[he]~~ may enlarge the thirty-six (36) month qualification period above provided for by such additional period as he **or she** may deem to be reasonable.
- (2) The insurer shall make a reasonable classification of its policies so held by such members, and a formula based upon such classification for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the **commissioner**~~[executive director]~~.

➔Section 1349. KRS 304.24-500 is amended to read as follows:

- (1) The purpose of this section is to:
- (a) Provide a means whereby any insurer organized under the laws of any other state may become a domestic insurer;
 - (b) Provide a means for any domestic insurer to transfer its domicile to another state; and
 - (c) Provide a means for the continuation of a certificate of authority and other approvals pertaining to any foreign insurer which transfers its corporate domicile to another state by merger, consolidation, or any other lawful method.
- (2) Any insurer which is organized under the laws of any other state and is admitted to do business in this state for the purpose of writing insurance may, upon approval of the **commissioner**~~[executive director]~~, become a domestic insurer by complying with all of the requirements of this chapter relating to the organization and authorization of a domestic insurer of the same type and by designating its principal place of business at a place in this state. The domestic insurer shall be entitled to like certificates of authority to transact business in this state, and shall be subject to the authority and jurisdiction of this state.
- (3) Any domestic insurer may, upon approval of the **commissioner**~~[executive director]~~, transfer its domicile to any other state in which it is admitted to transact the business of insurance. Upon the transfer, the insurer shall cease to be a domestic insurer, and shall be authorized to transact insurance business in this state if qualified as

a foreign insurer. The *commissioner*~~{executive director}~~ shall approve the proposed transfer unless the *commissioner*~~{executive director}~~ shall determine the transfer is not in the interest of the policyholders of this state.

- (4) The certificate of authority, agents' appointments and licenses, rates, and other items which the *commissioner*~~{executive director}~~ allows, in the *commissioner's*~~{executive director's}~~ discretion, which are in existence at the time any insurer authorized to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation, or merger pursuant to KRS 271B.11-070, or any other lawful method, shall continue in full force and effect upon the transfer if the insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the insurer or its new location unless so ordered by the *commissioner*~~{executive director}~~. Every transferring insurer shall file new policy forms with the *commissioner*~~{executive director}~~ on or before the effective date of the transfer but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the *commissioner*~~{executive director}~~. However, every transferring insurer shall notify the *commissioner*~~{executive director}~~ in writing of the details of the proposed transfer and shall file promptly appropriate amendments to corporate documents required to be filed with the *commissioner*~~{executive director}~~.
- (5) (a) Any insurer transferring its domicile in accordance with subsections (2) or (3) of this section shall file an application for redomestication and transfer of domicile with the *commissioner*~~{executive director}~~. This transfer of domicile must be approved by order of the *commissioner*~~{executive director}~~. If the *commissioner*~~{executive director}~~ does not approve the transfer of domicile, the applicant insurer may request a hearing in accordance with KRS 304.2-310(2)(b).
- (b) An applicant filing to become a domestic insurer in accordance with subsection (2) of this section shall include a notice of transfer of domicile to the Secretary of State and the articles, amended articles, or restated articles of incorporation in compliance with KRS 271B.2-020.
- (c) An application filed by a domestic insurer to transfer its domicile to another state in accordance with subsection (3) of this section shall include a copy of the order approving the redomestication issued by the new state of domicile.

➔Section 1350. KRS 304.24-600 is amended to read as follows:

- (1) A domestic mutual insurer may convert to a stock insurer by amendment of its articles of incorporation and upon compliance with the requirements of KRS 304.24-600 to 304.24-625 and the applicable requirements of this subtitle and Subtitle 3 of this chapter.
- (2) A domestic mutual insurer shall only convert to a stock insurer in accordance with a plan of conversion approved by the *commissioner*~~{executive director}~~.

➔Section 1351. KRS 304.24-603 is amended to read as follows:

- (1) The board of directors of the converting mutual shall adopt a resolution proposing the amendment of its articles of incorporation in accordance with KRS 304.24-080 and proposing a plan of conversion.
- (2) The plan of conversion shall:
- (a) Describe the manner in which the proposed conversion shall occur and the insurer and any other business entity that will result from or be directly affected by the conversion, including the former mutual and any affiliate;
 - (b) Provide that the membership interests in the converting mutual shall be extinguished as of the effective date of the conversion;
 - (c) Require the fair and equitable distribution of aggregate consideration to the eligible members, upon the extinguishing of their membership interests, which shall be equal to the fair value of the converting mutual as determined under a fair formula:
 1. Describe the manner in which the fair value of the converting mutual shall be determined or established;
 2. Describe the form or forms of consideration that shall be distributed to the eligible members; and

3. Specify relevant classes, categories, or groups of eligible members, and describe the method or formula that shall be used for the equitable allocation of the aggregate consideration among the eligible members;
 - (d) Provide for the determination and preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends that shall be implemented through establishment of a closed block or other method acceptable to the **commissioner**~~executive director~~ in compliance with KRS 304.24-600 to 304.24-625;
 - (e) Specify the effective date of the plan of conversion and distributions to eligible members; and
 - (f) Include all other provisions that are necessary for, or material to, the implementation of the conversion.
- (3) The plan of conversion may include any other provisions that the converting mutual deems necessary or reasonable.

➔Section 1352. KRS 304.24-605 is amended to read as follows:

- (1) The converting mutual shall file with the **commissioner**~~executive director~~ an application for approval of the plan of conversion.
- (2) The application shall consist of the following:
 - (a) The plan of conversion;
 - (b) A certificate of the secretary of the converting mutual regarding the adoption of the plan of conversion;
 - (c) A statement of the reasons for the proposed conversion and why it is in the best interests of the converting mutual and its eligible members, including an analysis of the risks and benefits to the converting mutual and its members and a comparison of the risks and benefits of reasonable alternatives to a conversion;
 - (d) A five (5) year business plan of the former mutual, including five (5) year financial projections, detailed descriptive narrative, and all relevant assumptions;
 - (e) Any plans or proposals that the former mutual or any affiliate company may have to raise additional capital through the issuance of stock or otherwise; and any other plans that the former mutual or any affiliate company may have to sell or otherwise issue stock to any person, including the adoption of any employee compensation or benefit plan under which stock may be issued;
 - (f) Any plans or proposals that the former mutual or any affiliate company may have to liquidate or dissolve any company, to sell any material assets, or to merge or consolidate with any person, or to make any other material change in investment policy, business, corporate structure, or management;
 - (g) Any plans or arrangement for a delayed distribution of consideration to eligible members, or restrictions on sale or transfer of stock or other securities;
 - (h) A plan of operation for any closed block established for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends;
 - (i) Copies of the current articles of incorporation and bylaws of the converting mutual;
 - (j) Copies of any proposed articles of incorporation and bylaws of the former mutual;
 - (k) A list of individuals who are or have been selected to become directors or officers of the former mutual and of any affiliate, or the individuals who perform or will perform duties customarily performed by a director or officer, including the following information:
 1. The individual's principal occupation;
 2. All offices and positions the individual has held in the preceding five (5) years;
 3. Any criminal convictions of the individual;
 4. Information concerning any personal bankruptcy of the individual or the individual's spouse during the previous seven (7) years;

5. Information concerning the supervision, rehabilitation, or liquidation of any insurer or the bankruptcy of any corporation or other entity of which the individual was an officer or director;
 6. Information concerning any state or federal securities law allegations against the individual that resulted in a determination that the individual violated the state or federal securities law, a plea of nolo contendere, or a consent decree;
 7. Information concerning the revocation of any state or federal license issued to the individual; and
 8. Information as to whether the individual was refused a fidelity or other bond during the previous ten (10) years.
- (l) A fairness opinion addressed to the board of directors of the converting mutual from a qualified independent financial advisor, that the provision of stock, cash, policy benefits, or other forms of consideration upon extinguishing the converting mutual's membership interests under the plan of conversion, is fair and equitable to the eligible members, as a group, from a financial point of view;
 - (m) An actuarial opinion and supporting memorandum;
 - (n) A description of the plans of the former mutual or its affiliates to assure that an active trading market for any stock or other securities distributed to eligible members will develop within a reasonable amount of time after the effective date of the plan of conversion and that eligible members who receive stock or other securities will be able to sell their stock or other securities, subject to any delayed distribution or transfer restrictions, at reasonable cost and effort. These plans may consist of:
 1. Appointing a registrar and transfer agent for the stock or other securities;
 2. Making filings, applications, or registrations for the stock or other securities with the Federal Securities and Exchange Commission and with appropriate state securities regulators;
 3. Listing the stock or other securities on a national or other securities exchange;
 4. Facilitating coverage of the stock or other securities by research analysts and securing the commitment of at least one (1) market maker to make a market in the stock or other securities;
 5. Conducting an underwritten public offering of the same class of stock or other securities, promptly following the effective date of the plan of conversion, in order to facilitate the development of a public market; and
 6. Making available a procedure for eligible members holding small numbers or amounts of stock or other securities to sell their stock or other securities to the former mutual or an affiliate at market value without the payment of brokerage commissions or similar fees, or to sell their stock or other securities in the market through a broker with discounted brokerage commissions or fees;
 - (o) Any additional information, documents, or materials that the converting mutual deems necessary or reasonable; and
 - (p) Any other additional information, documents, or materials that the *commissioner*~~executive director~~ may request in writing.
- (3) (a) The actuarial opinion shall address whether:
 1. The methodology or formulas used to determine the total aggregate consideration to be distributed to eligible members is reasonable and appropriate;
 2. The methodology or formulas used to allocate consideration among the eligible members is reasonable and appropriate;
 3. The financial condition of the former mutual will not be adversely diminished; and
 4. If a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of the policy dividends, the plan of operation, and the sufficiency of the assets allocated to the closed block, is reasonable.

- (b) The actuarial opinion shall be provided by a qualified and independent actuary who is a member of the American Academy of Actuaries. The opinion shall be given in accordance with professional standards and practices generally accepted by the actuarial profession and those other factors as the actuary believes are reasonable and appropriate in the exercise of professional judgment at the time the opinion is given.
- (c) The opinion shall be supported by a memorandum of the actuary, describing the calculations made and the assumptions used in the calculations.

➔Section 1353. KRS 304.24-607 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall have ninety (90) days to review the plan of conversion after it is filed. Upon completion of the review, the **commissioner**~~{executive director}~~ shall schedule a public hearing on the plan of conversion.
- (2) The **commissioner**~~{executive director}~~ shall hold a hearing upon the plan of conversion in accordance with KRS 304.2-310.
- (3) The converting insurer shall present evidence that the plan of conversion complies with KRS 304.24-600 to 304.24-625.
- (4) Persons wishing to make comments and submit information may submit written statements prior to the public hearing and may appear and be heard at the hearing. These comments shall be part of the record and shall be considered by the **commissioner**~~{executive director}~~ before issuing an order on the plan of conversion.
- (5) At least forty-five (45) days prior to the hearing date, the converting mutual shall provide information regarding the hearing to the eligible members and its other policyholders and certificate holders. The information provided shall include a brief statement of the subject of the hearing, the date, time, and location of the hearing, a description of members eligible to vote on the plan of conversion, and a statement indicating the location at which the public portion of the application may be examined. This information shall be provided by mail or by other means approved by the **commissioner**~~{executive director}~~.
- (6) Following the hearing, the **commissioner**~~{executive director}~~ shall, by order, approve, conditionally approve, or disapprove the plan of conversion. The **commissioner**~~{executive director}~~ may require, as a condition of approval of the plan of conversion, modification of the proposed plan of conversion. The insurer shall file the amendments required by the conditional approval within thirty (30) days of the date of the order. The **commissioner**~~{executive director}~~ may grant an extension for filing amendments for good cause shown. If the applicant does not timely file the required amendments, the plan of conversion shall be deemed disapproved.

➔Section 1354. KRS 304.24-609 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall approve the plan of conversion if the **commissioner**~~{executive director}~~ finds, following the hearing, that the plan of conversion:
 - (a) Complies with the provisions of this chapter and all other applicable laws;
 - (b) Is fair and equitable to the eligible members and the other policyholders of the converting mutual;
 - (c) Is actuarially reasonable and appropriate;
 - (d) Will not jeopardize the financial stability of the former mutual or prejudice the interest of its policyholders; and
 - (e) Provides that the former mutual shall be able to satisfy the requirements for issuance of a certificate of authority to write the kinds of insurance for which the converting mutual is presently authorized.
- (2) The **commissioner**~~{executive director}~~ shall, at the converting mutual's expense, hire accountants, actuaries, attorneys, financial advisors, investment bankers, and other experts as may be necessary to assist the **commissioner**~~{executive director}~~ in reviewing all matters under KRS 304.24-600 to 304.24-625 that are related to the plan of conversion and the application. The **commissioner**~~{executive director}~~ may at any time require the converting mutual to deposit an amount of money with the **department**~~{office}~~ in anticipation of expenses to be incurred by the **commissioner**~~{executive director}~~ under this subsection.
- (3) The **commissioner**~~{executive director}~~ may consider the effect of any action taken by the converting insurer within a three (3) year period immediately prior to the filing of the plan of conversion if the action taken by the insurer has a material effect on the fairness and equity of the plan of conversion.

➔Section 1355. KRS 304.24-611 is amended to read as follows:

- (1) The plan of conversion and the proposed amendment to the articles of incorporation of the converting mutual shall be submitted to a vote of the members of the converting mutual, as provided in this section and in KRS 304.24-095.
- (2) The meeting of members shall be held no later than ninety (90) days after the issuance of the **commissioner's**~~executive director's~~ order of approval of the plan of conversion or after the filing of all amendments in compliance with the order of conditional approval of the plan of conversion.
- (3) The converting mutual shall give written notice of the right to vote on the plan of conversion to the members of the converting mutual entitled to vote. The notice shall be accompanied by explanatory information concerning the plan of conversion and may be accompanied by proxy solicitation materials. The notice and accompanying information and materials shall not be provided to the members until approved by the **commissioner**~~executive director~~. The notice and accompanying materials shall include:
 - (a) A brief statement of the subject of the meeting;
 - (b) The date, time, and location of the meeting;
 - (c) A description of the member's right to attend and participate in the meeting;
 - (d) A description of the nature and amount of consideration that will be provided to the eligible members upon completion of the conversion;
 - (e) If reasonably ascertainable by the converting mutual, a description of the form and amount or approximate amount of consideration to be provided to the particular member to whom the notice is addressed;
 - (f) A copy of the plan of conversion and summary of the plan; and
 - (g) A reference to the applicable statutory provisions.
- (4) The notice required by subsection (3) of this section shall achieve a minimum score of forty (40) on the Flesch reading ease test or an equivalent score on a comparable test approved by the **commissioner**~~executive director~~.
- (5) The notice shall be mailed, or provided by some other method or methods as may be approved by the **commissioner**~~executive director~~, not less than thirty (30) days before the date of the meeting of members to vote on the plan of conversion.
- (6) Only persons who are members of the converting mutual on both the date the converting mutual's board of directors adopts the resolution proposing the plan of conversion and the record date for the meeting established by the board of directors shall be entitled to vote on the plan of conversion and the proposed amendment to the articles of incorporation of the converting mutual. Each voting member shall be entitled to vote in accordance with KRS 304.24-210.
- (7) Notwithstanding KRS 304.24-210, a member may vote by proxy only if:
 - (a) The proxy was solicited and obtained from the member for the express and sole purpose of voting on the plan of conversion, amendments to the articles of incorporation and bylaws, and any other matter materially related to the plan of conversion; and
 - (b) The proxy solicitation materials were provided to the **commissioner**~~executive director~~ prior to sending the materials to the members.
- (8) The plan of conversion and the proposed amendment to the converting mutual's articles of incorporation shall be approved by the members upon receiving the affirmative votes of at least two-thirds (2/3) of the members voting at the meeting in person or by proxy.

➔Section 1356. KRS 304.24-615 is amended to read as follows:

- (1) The total aggregate consideration to be distributed to the eligible members shall be determined under a fair formula. The total aggregate consideration shall not be less than the converting mutual's total surplus or surplus as regards policyholders; plus the value of all nonadmitted assets; plus a reasonable present equity in reserves, if any; minus any adjustments for contributed or borrowed surplus.

- (2) The consideration to be distributed to the eligible members shall be cash, stock, or other securities of the former mutual or of an affiliate, additional paid up insurance or annuity benefits, or any combination of these forms of consideration or other forms of consideration described in the plan of conversion and approved by the **commissioner**~~executive director~~.
- (3) The form of consideration to be distributed to a class, category, or group of eligible members may differ from the form of consideration to be distributed to another class, category, or group of eligible members. The choice of the form of consideration may take into account such factors as the type of policies with respect to which the consideration is being distributed, the country or state of residence or tax status of the eligible members, the length of time that eligible members have been members of the converting mutual, or other appropriate factors or circumstances described in the plan of conversion.
- (4) Distribution of all or part of the consideration to some or all of the eligible members may be delayed, or restrictions on sale or transfer of any stock or other securities to be distributed to eligible members may be required, for a reasonable period of time following the effective date of the conversion. That period of time shall not exceed six (6) months, unless approved by the **commissioner**~~executive director~~.

➔Section 1357. KRS 304.24-617 is amended to read as follows:

In determining whether the method or formula in the plan of conversion is fair and equitable, the **commissioner**~~executive director~~ may consider the following factors:

- (1) Voting rights;
- (2) Number of eligible members;
- (3) Length of membership in the converting mutual;
- (4) Premiums paid by members;
- (5) Policy limits;
- (6) Risk of line of insurance;
- (7) Sources of the proportionate contributions to historical surplus, based on such groupings, classification, historical information, assumptions, and projections as are actuarially sound and reasonable;
- (8) For a converting mutual that is a property and casualty company, the net earned premiums each eligible member has paid to the converting mutual, compared to the total net earned premiums paid by all eligible members, in each case during the period of time specified in the plan of conversion; and
- (9) Any other relevant factors the **commissioner**~~executive director~~ may deem appropriate.

➔Section 1358. KRS 304.24-619 is amended to read as follows:

- (1) No dividend preservation provisions shall provide in any way or substitute for the distribution of consideration to eligible members upon extinguishing their membership interests.
- (2) Any dividend preservation provision may be limited to participating individual life insurance policies and participating individual annuity contracts in force or deemed to be in force by the plan of conversion on the effective date of the plan of conversion for which the converting mutual insurer has an experience-based dividend scale due, paid, or accrued by action of the board of directors of the converting mutual in the year in which the plan of reorganization is adopted, except that:
 - (a) Policies that would be included but for the fact that their recent issuance results in no dividends for an initial period, may be included;
 - (b) Policies that are in force as extended term insurance may be included; and
 - (c) Other categories of policies and benefits not described in this subsection may be included or excluded with approval of the **commissioner**~~executive director~~.

➔Section 1359. KRS 304.24-621 is amended to read as follows:

- (1) The provisions of this section apply if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders.
- (2) The converting mutual shall prepare a written plan of operation for the closed block, consistent with the requirements of this section and the other applicable requirements of KRS 304.24-600 to 304.24-625.

- (3) The closed block shall be operated for the exclusive benefit of policies and contracts included in it. No costs or expenses incurred in connection with the conversion shall be charged to the closed block.
- (4) The assets allocated to the closed block, together with the revenue from the closed block, shall be calculated to be reasonably sufficient to support the business in the closed block until the last policy in the closed block has terminated, including payment of claims and those expenses and taxes as are specified in the plan of conversion, and to provide for continuation of dividend scales in effect on the adoption date of the plan of conversion, if the experience underlying those scales continues and for appropriate adjustments in the scales if the experience changes.
- (5) The assets to a closed block shall be specified in the plan of operation and must consist of:
 - (a) A list of designated assets of the converting mutual's general account or specified segments, which list shall change periodically to reflect the acquisition and disposition of assets;
 - (b) A designated portion of each asset of the converting mutual's general account or specified segments thereof, which portion shall change periodically to reflect the cash flows of the closed block; or
 - (c) Assets designated by a combination of the methods described in paragraphs (a) and (b) of this subsection.
- (6) The plan of operation shall specify which of those methods of assignment of closed block assets is being used and shall set forth the methods by which the designations referred to in subsection (5) of this section are changed during the course of closed block operations.
- (7) The former mutual shall submit to the **commissioner**~~{executive director}~~ annual reports, in a form acceptable to the **commissioner**~~{executive director}~~, that account for and describe the operations of the closed block; and as specified in the plan of operation provide for annual reviews of, and reports and opinions on, the closed block by an independent actuary.
- (8) The plan of operation shall provide for the conditions under which the former mutual may terminate the closed block.
- (9) The former mutual shall not distribute any residual assets of the closed block until the plan for distribution of the residual assets is approved by the **commissioner**~~{executive director}~~.

➔Section 1360. KRS 304.24-623 is amended to read as follows:

- (1) Except as specifically provided in the plan of conversion, for a period of five (5) years following the effective date of the conversion, no person or persons acting in concert, other than the former mutual, any affiliate, any employee benefit plans, or trusts sponsored by the former mutual or affiliate, shall directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent (5%) or more of any class of a voting security of the former mutual or any affiliate company without the prior approval by the **commissioner**~~{executive director}~~ of a statement filed by that person with the **commissioner**~~{executive director}~~. The statement shall contain the information required by KRS 304.37-120(2) and any other information required by the **commissioner**~~{executive director}~~.
- (2) The **commissioner**~~{executive director}~~ shall not approve the acquisition if the **commissioner**~~{executive director}~~ finds that:
 - (a) The requirements of KRS 304.37-120(4)(a) have not been satisfied;
 - (b) The acquisition will frustrate the fair and equitable plan of conversion as approved by the members and the **commissioner**~~{executive director}~~;
 - (c) The acquisition or change of control will result in unjust enrichment of the acquiring persons to the detriment of the eligible members of the converting mutual; and
 - (d) The acquisition would not be in the best interest of the present and future policyholders of the former mutual, without regard to any interest of policyholders as shareholders of the former mutual or any affiliate company.
- (3) The requirements of this section shall be in addition and supplemental to any other filings or approvals required by this chapter or otherwise by law.

➔Section 1361. KRS 304.24-625 is amended to read as follows:

During the one (1) year period following the effective date of the plan of conversion, neither the former mutual nor any affiliate company shall sell or issue, or adopt any plan or benefit program providing for the sale or issuance of, any stock or other equity security except:

- (1) As disclosed in the approved plan of conversion; or
- (2) As otherwise approved by the *commissioner*~~{executive director}~~, upon a finding that the stock transaction:
 - (a) Will not frustrate the plan of conversion as approved by the members and the *commissioner*~~{executive director}~~; and
 - (b) Is not adverse to the best interests of the policyholders of the former mutual, without regard to any interests of policyholders as shareholders of the former mutual or any affiliate company.

➔Section 1362. KRS 304.25-020 is amended to read as follows:

- (1) When used in this subtitle, the following terms shall mean and include the following:
 - (a) Acting director. Acting director means an acting director elected or appointed in accordance with this subtitle.
 - (b) Acting officer. Acting officer means an acting officer appointed in accordance with this subtitle.
 - (c) Acute emergency. Acute emergency means a period, as formally declared and proclaimed by the Governor of this state, in which, by reason of loss of life, epidemic disease, destruction or damage of property, contamination of property by radiological, chemical or bacteriological means, or disruption of the means of transportation or communication, resulting from an attack, it is impossible or impractical for the business of insurance in this state to be conducted in strict accord with the provision of law or charter applicable thereto.
 - (d) Attack. Attack means any attack, actual or imminent, or series of attacks by an enemy or a foreign nation upon the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, shell fire, or atomic, radiological, chemical, bacteriological or biological means or other weapons or processes.
 - (e) Board. Board means the board of directors, board of trustees, committee or similar body having control of the affairs of an insurance organization.
 - (f) Charter. Charter means the certificate of organization or incorporation or special law incorporating a corporation together with its bylaws, or the agreement establishing a fund or association together with its constitution and bylaws.
 - (g) *Commissioner*~~{Executive — director}~~. *Commissioner*~~{Executive — director}~~ means the *commissioner*~~{executive director}~~ of the *Department of Insurance* or person duly designated to exercise the powers of that *department*~~{office}~~ during an attack or acute emergency.
 - (h) Director. Director means a director, trustee or member of a board.
 - (i) Domestic organization. Domestic organization means any insurance organization which is domiciled in this state.
 - (j) Insurance organization. Insurance organization means any insurer, rating organization, service or advisory organization, joint underwriting association, which is subject, in whole or in part, to the insurance laws of this state.
 - (k) Officer. Officer means an officer of a domestic insurance organization.
 - (l) Quorum. Quorum means the minimum number of directors required by charter and bylaw, exclusive of the provisions of this subtitle, to be present for valid action to be taken at a meeting of a board with respect to each particular item of business which may come before such meeting.
- (2) This subtitle does not and shall not be construed to limit the powers of, or permit or require, any insurance organization which is not domiciled in this state or of any branch office, or agents of such insurance organization, or the directors, officers, members, policyholders, or stockholders of any such organization to act, or fail to act, in such fashion as would violate the laws of the jurisdiction wherein such organization has its domicile.

➔Section 1363. KRS 304.25-030 is amended to read as follows:

- (1) With the approval of the *commissioner*~~[executive director]~~, any domestic organization may, at any time, adopt, in the same manner as in the case of ordinary bylaws, emergency bylaws to become operative during a period of acute emergency. Emergency bylaws may contain provisions with respect to the number of directors capable of acting which shall constitute its board, the number of such directors which shall constitute a quorum at a meeting of the board, the number of votes necessary for action by such board, the manner in which vacancies on the board shall be filled, the line of succession of its officers, and the interim management of the affairs of the insurance organization; such provisions, if approved by the *commissioner*~~[executive director]~~, need not comply with the requirement of the charter of such domestic organization or of the insurance or incorporation laws of this state.
- (2) KRS 304.25-040 and subsections (2) to (6), inclusive, of KRS 304.25-050, shall not be applicable during a period of acute emergency to any domestic organization operating in accordance with and under emergency bylaws theretofore approved by the *commissioner*~~[executive director]~~.

➔Section 1364. KRS 304.25-040 is amended to read as follows:

- (1) Notwithstanding any provision of its charter, any domestic insurance organization, without complying with any provision of law requiring approval, or application for approval, of a change of location of its principal office may, from time to time, change the location thereof during an acute emergency to a suitable location within the United States, and may carry on its business at such new location during such acute emergency, and for a reasonable time thereafter. Any insurance organization which changes the location of its principal office during an acute emergency shall notify the *commissioner*~~[executive director]~~ thereof in writing as soon as practical, stating the address of the new location, the address of the former location, and the dates when business is ceasing at the former location and commencing at the latter location.
- (2) Notwithstanding any contrary provision of law or its charter, if at any time during an acute emergency affecting any domestic insurance organization, no person otherwise empowered to call meetings of the board is capable of acting, a meeting thereof may be called by any director or acting director or if no director or acting director is capable of acting, by any officer or acting officer. If it shall be impractical or impossible to give notice of a meeting of the board in the manner prescribed by charter and law, other than this subtitle, the person calling such a meeting may give notice thereof by making such reasonable efforts as circumstances may permit to notify each director and acting director of the time and place of the meeting, but need not specify the purposes thereof. Failure of any director or acting director to receive actual notice of a meeting of directors and acting directors shall not affect the power of the directors and acting directors present at such meeting to exercise the powers of an emergency board of directors as prescribed in this section. Nothing in this subtitle shall be construed as requiring a meeting of the board of such an organization to be convened in any manner different from that prescribed by its charter and by the provisions of law other than this subtitle.
- (3) If three (3) or more directors and acting directors of any domestic insurance organization are present at any meeting of its board duly convened during an acute emergency affecting such domestic insurance organization, they shall constitute its emergency board of directors which, notwithstanding any contrary provision of law or of its charter, shall have the power, subject to the limitations prescribed by this subtitle, by a majority of those present, to take any and every action which may be necessary to enable such domestic insurance organization to meet the exigencies of the acute emergency and conduct its business during such period, but no other powers. The powers of an emergency board of directors shall include, but shall not be limited to, the following powers:
 - (a) Fill vacancies and absentees. At any meeting, to elect such acting directors as it may deem necessary, without regard to the number of directors which would otherwise be required, to serve in any positions on such board which are vacant or in place of any directors or acting directors who are absent from such meeting, but not to elect any director on a permanent basis.
 - (b) Acting officers and duties. To elect such acting officers as it may deem necessary, without regard to the number of officers which would otherwise be required, to serve in any offices which are vacant or in place of any officers or acting officers who fail to appear and assume their duties, to fix the compensation and determine the powers and duties of acting officers and to remove acting officers but not to remove any officer or to fill any vacancy on a permanent basis or to cause the insurance organization to enter into any contract of employment for a term in excess of one (1) year.

- (c) Change of location. To cause the insurance organization to change the location of its principal office, pursuant to this section, or any of its places of business, and to authorize such action as it may deem appropriate to acquire space and facilities at new locations, but not to acquire for use of its principal office property in fee or for a term in excess of one (1) year.
 - (d) Postpone meetings. To postpone any meeting of the stockholders, policyholders or members or directors of such organization if, in the judgment of a majority of the members of such emergency board of directors, it would be impracticable to hold such meeting at the time it would otherwise have been held or conducted.
 - (e) Call meetings. If it shall appear to an emergency board of directors that a quorum of the board cannot be assembled within a reasonable time, to call a meeting of the stockholders, policyholders or members of the insurance organization to be held as soon as the circumstances may reasonably permit, at a place to be designated by the emergency board of directors within this state or a contiguous state, for the purpose of electing directors to fill vacancies on the board, but for no other purpose, and to propose nominees for such election. Any such meetings of stockholders, policyholders or members shall be held upon notice given in accordance with the charter of the organization and applicable law other than this section.
- (4) As soon as practicable after each meeting of an emergency board of directors, the person who presided thereat shall notify the **commissioner**~~{executive director}~~ in writing of the time and place of such meeting, of the manner in which notice thereof was given, of the persons present and of all actions taken at such meeting.
 - (5) No person prohibited by law or by the charter of a domestic insurance organization from serving as a member of its board shall be eligible to serve as an acting director except that no person shall be disqualified to serve as an acting director by reason of his **or her** not being a stockholder, policyholder or member of such insurance organization, by reason of his **or her** not being a resident of this state or of a contiguous state, or by reason of the number of directors or acting directors who are officers, acting officers or employees of the insurance organization. Any person may serve as an acting director of a fund who is a director, acting director, officer or acting officer of an organization which is a party to the agreement creating the fund. No oath of acting directors shall be required.
 - (6) Acting directors elected under this section or appointed under KRS 304.25-060 shall be entitled to vote at all meetings of emergency board of directors equally with directors. Acting directors shall not be entitled to take part in the deliberations or to vote at any meeting of the board which is duly convened in accordance with the applicable provisions of its charter and of law other than this subtitle and at which a quorum is present. Each acting director shall serve until the director or acting director in whose place he **or she** was elected or appointed shall attend the meeting of the board or until the director is duly elected to fill the vacancy in which such acting director has been serving, whichever event occurs earlier. An acting director shall be entitled to the compensation, if any, payable to a director.
 - (7) Acting officers elected pursuant to this section shall have powers and duties and receive such compensation as may from time to time be determined by the emergency board of directors. Each acting officer shall serve until the officer in whose place he **or she** was elected shall appear and assume his **or her** duties or until his **or her** successor officer or acting officer shall be elected, whichever event occurs earlier.
 - (8) This section shall not be deemed applicable during a period of acute emergency to any domestic organization operating in accordance with and under emergency bylaws theretofore approved by the **commissioner**~~{executive director}~~.

➔Section 1365. KRS 304.25-050 is amended to read as follows:

- (1) Designate additional acting directors. If at any time during an acute emergency, the number of directors or acting directors of a domestic insurance organization who are capable of acting shall be less than three (3), as determined by the **commissioner**~~{executive director}~~ after a reasonable investigation, the **commissioner**~~{executive director}~~ shall have the power to designate additional acting directors in such number as will bring to three (3) the number of directors and acting directors who are capable of acting.
- (2) Resolve controversies. To resolve controversy as to the power of any group of persons purporting to act as an emergency board of directors so to act, the **commissioner**~~{executive director}~~ shall, upon a determination that such action will tend to promote the safe and sound and orderly conduct of the business of any domestic insurance organization, have power to issue orders declaring that any such group shall or shall not have the

powers of an emergency board of directors, or confirming, modifying or vacating in whole or in part any action taken or purportedly taken by any such group or by removing any acting director.

- (3) (a) Declare provisions of law operative or inoperative. At any time after an attack, upon his determination that such action will tend to promote certainty as to the powers of insurance organizations or individuals pursuant to this subtitle or that such action is desirable to enable insurance organizations to take preparatory precautions prior to the occurrence of an acute emergency, the **commissioner**~~{executive director}~~ shall have power to declare that any provision of this subtitle which he may specify shall be operative with respect to any domestic insurance organization or to the Kentucky business of any other insurance organization which he may designate. Upon such declaration such organization and its directors, officers, acting directors and acting officers shall have all powers conferred by this subtitle. The failure of the **commissioner**~~{executive director}~~ so to declare shall not be deemed to limit the powers of any organization or its directors, officers, acting directors or acting officers where an acute emergency exists in fact.
- (b) At any time after the commencement of an acute emergency or after the **commissioner**~~{executive director}~~ shall have declared any provision of this subtitle operative under this subsection upon his determination that an insurance organization is able, in whole or in part, to carry on its business in compliance with its charter and the laws, other than this subtitle, the **commissioner**~~{executive director}~~ shall have power to declare that any provision of this subtitle which he may specify shall be inoperative with respect to any domestic insurance organization or to the Kentucky business of any other insurance organization which he may designate. Upon such declaration, such organization shall be governed by its charter and the provisions of law other than this subtitle, except insofar as they remain inoperative.
- (4) Possession of business and property. Upon the determination that, as a result of an acute emergency, the business and affairs of an insurance organization cannot otherwise be conducted in a safe and sound manner, the **commissioner**~~{executive director}~~ may forthwith take possession of the business and property of the insurance organization within this state or, if a domestic insurance organization, its business and property wherever situated. This subtitle shall be applicable in any case in which the **commissioner**~~{executive director}~~ takes possession of an insurance organization under this subsection as though the insurance organization were an insurer of which the **commissioner**~~{executive director}~~ had taken possession under this subtitle, except that no such provision shall be applicable which the **commissioner**~~{executive director}~~ shall have declared inapplicable under this subsection. The **commissioner**~~{executive director}~~ shall have power to declare inapplicable any such provision upon his determination that the same is inappropriate or unnecessary to protect the interest of the public or the stockholders or creditors of the insurance organization, in view of the acute emergency and the nature of the organization.
- (5) When powers exercised. The powers given the **commissioner**~~{executive director}~~ by subsections (2) and (4) of this section shall be exercised by him only in the event that there is no court of competent jurisdiction available to which an application can be made for an order permitting him to exercise such powers with respect to a particular insurance organization. The powers conferred by subsection (4) of this section shall not be exercised in a case of an insurance organization which is not insolvent within the meaning of this subtitle, unless the **commissioner**~~{executive director}~~ finds that such insurance organization lacks personnel able to manage its business in the interest of the public, stockholders and policyholders.
- (6) Regulations. The **commissioner**~~{executive director}~~ shall have power to issue general and specific regulations, directives and orders consistent with and in furtherance of the purpose of this subtitle.
- ➔Section 1366. KRS 304.25-060 is amended to read as follows:
- (1) Presumption. In any action or proceeding it shall be presumed that an acute emergency existing within this state constitutes an acute emergency affecting every insurance organization doing business within this state.
- (2) Powers of board. During an acute emergency the board of a domestic insurance organization which has adopted emergency bylaws approved by the **commissioner**~~{executive director}~~ shall have all of the powers conferred by such bylaws, and no other or different powers with respect to the subject matter of this subtitle, and the board of a domestic insurance organization which has not adopted emergency bylaws approved by the **commissioner**~~{executive director}~~ shall have all of the powers of an emergency board of directors as the same are provided for under this subtitle.

➔Section 1367. KRS 304.26-020 is amended to read as follows:

The term "equity security" when used in this subtitle means:

- (1) Any stock or similar security; or
- (2) Any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or
- (3) Any such warrant or right; or
- (4) Any other security which the **commissioner**~~{executive director}~~ deems to be of similar nature and considers necessary or appropriate, by such rules and regulations as **the commissioner**~~{he}~~ may prescribe in the public interest or for the protection of investors, to treat as an equity security.

➔Section 1368. KRS 304.26-030 is amended to read as follows:

Every person who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of any equity security of a domestic stock insurer, or who is a director or an officer of such insurer, shall:

- (1) File in the office of the **commissioner**~~{executive director}~~ within ten (10) days after he **or she** becomes such beneficial owner, director or officer, a statement, in such form as the **commissioner**~~{executive director}~~ may prescribe, of the amount of all equity securities of such insurer of which he **or she** is the beneficial owner; and
- (2) Within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, file in the office of the **commissioner**~~{executive director}~~ a statement, in such form as the **commissioner**~~{executive director}~~ may prescribe, indicating his **or her** ownership at the close of the calendar month and such changes in his **or her** ownership as have occurred during such calendar month.

➔Section 1369. KRS 304.26-040 is amended to read as follows:

- (1) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his **or her** relationship to such insurer, any profit realized by him **or her** from any purchase and sale, or any sale and purchase, of any equity security of such insurer within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the insurer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction or holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months.
- (2) Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the insurer, or by the owner of any security of the insurer in the name and in behalf of the insurer if the insurer fails or refuses to bring such suit within sixty (60) days after request or fails diligently to prosecute the same thereafter; but no such suit shall be brought more than two (2) years after the date such profit was realized.
- (3) This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the **commissioner**~~{executive director}~~ by rules and regulations may exempt as not comprehended within the purpose of this section.

➔Section 1370. KRS 304.26-050 is amended to read as follows:

- (1) It is unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such insurer if the person selling the security or his **or her** principal:
 - (a) Does not own the security sold, or
 - (b) If the owner of the security does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation, but no person shall be deemed to have violated this section if he **or she** proves that notwithstanding the exercise of good faith he **or she** was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.
- (2) The **commissioner**~~{executive director}~~ shall establish, and from time to time amend, regulations with regard to proxies, consents, or authorizations in respect of securities issued by any domestic stock insurer, such regulations to conform to those prescribed by the National Association of Insurance Commissioners.

➔Section 1371. KRS 304.26-060 is amended to read as follows:

- (1) The provisions of KRS 304.26-040 do not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (1) of KRS 304.26-050 do not apply to any sale, of an equity security of a domestic stock insurer not then or theretofore held by him *or her* in an investment account, by a dealer in the ordinary course of his *or her* business and incident to the establishment or maintenance by him *or her* of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security.
- (2) The ~~commissioner~~~~executive director~~ may, by such rules and regulations as he *or she* deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

➔Section 1372. KRS 304.26-070 is amended to read as follows:

The provisions of KRS 304.26-030 and 304.26-040 and subsection (1) of KRS 304.26-050, do not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the ~~commissioner~~~~executive director~~ may adopt in order to carry out the purposes of this subtitle.

➔Section 1373. KRS 304.26-090 is amended to read as follows:

- (1) The ~~commissioner~~~~executive director~~ shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him *or her* by KRS 304.26-030 to 304.26-080, inclusive, and may for such purpose classify domestic stock insurers, securities and other persons or matters within his *or her* jurisdiction.
- (2) No provision of KRS 304.26-030 to 304.26-050, inclusive, imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the ~~commissioner~~~~executive director~~, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

➔Section 1374. KRS 304.27-060 is amended to read as follows:

- (1) Twenty-five (25) or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the ~~commissioner~~~~executive director~~ for a certificate of authority to transact insurance.
- (2) The proposed attorney shall fulfill the requirements of and shall execute and file with the ~~commissioner~~~~executive director~~ when applying for a certificate of authority, a declaration setting forth:
 - (a) The name of the insurer;
 - (b) The location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;
 - (c) The kinds of insurance proposed to be transacted;
 - (d) The names and addresses of the original subscribers;
 - (e) The designation and appointment of the proposed attorney and a copy of the power of attorney;
 - (f) The names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;
 - (g) The powers of the subscribers' advisory committee; and the names and terms of office of the members thereof;
 - (h) A copy of the subscribers' agreement;
 - (i) That all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
 - (j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six (6) months at an adequate rate theretofore filed with the ~~commissioner~~~~executive director~~;

- (k) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by KRS 304.3-120 is on hand; and
 - (l) A copy of each policy, indorsement and application form it then proposes to issue or use.
- (3) The declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds.

➔Section 1375. KRS 304.27-070 is amended to read as follows:

- (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.
- (2) The **commissioner**~~[executive director]~~ may refuse, suspend or revoke the certificate of authority, in addition to other grounds therefor, including those provided in Subtitles 2 and 3 of this chapter, for failure of the attorney to comply with any applicable provision of this code.

➔Section 1376. KRS 304.27-080 is amended to read as follows:

- (1) The rights and powers of attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.
- (2) The power of attorney must set forth:
 - (a) The powers, duties and compensation of the attorney;
 - (b) That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;
 - (c) The general services to be performed by the attorney;
 - (d) The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and
 - (e) Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one (1) nor more than ten (10) times the premium or premium deposit stated in the policy.
- (3) The power of attorney may:
 - (a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;
 - (b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;
 - (c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and
 - (d) Contain other lawful provisions deemed advisable.
- (4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement, or any amendment thereof, shall be used or be effective in this state until approved by the **commissioner**~~[executive director]~~.

➔Section 1377. KRS 304.27-100 is amended to read as follows:

- (1) Concurrently with the filing of the declaration provided for in KRS 304.27-060, the attorney of a domestic reciprocal insurer shall file with the **commissioner**~~[executive director]~~ a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his **or her** bond as set forth in subsection (2) of this section. The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the **commissioner's**~~[executive director's]~~ approval.
- (2) The bond shall be in the penal sum of \$100,000, aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his **or her** hands, and that he **or she** will not withdraw or appropriate to his **or her** own use from the funds of the insurer, any moneys or property to which he **or she** is not entitled under the power of attorney.
- (3) The bond shall provide that it is not subject to cancellation unless thirty (30) days' advance notice in writing of cancellation is given both the attorney and the **commissioner**~~[executive director]~~.

➔Section 1378. KRS 304.27-110 is amended to read as follows:

In lieu of such bond, the attorney may maintain on deposit with the *commissioner*~~[executive director]~~ a like amount in cash or in value of securities qualified under this code as insurer's investments, and subject to the same conditions as the bond.

➔Section 1379. KRS 304.27-140 is amended to read as follows:

The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer, and except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the *commissioner*~~[executive director]~~. This section does not apply to bank loans, or to other loans made upon security.

➔Section 1380. KRS 304.27-150 is amended to read as follows:

- (1) The annual statement of a reciprocal insurer shall be made and filed by its attorney.
- (2) The statement shall be supplemented by such information as may be required by the *commissioner*~~[executive director]~~ relative to the affairs and transactions of the attorney.

➔Section 1381. KRS 304.27-160 is amended to read as follows:

In determining the financial condition of a reciprocal insurer the *commissioner*~~[executive director]~~ shall apply the following rules:

- (1) *The commissioner*~~[He]~~ shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.
- (2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposit delinquent for ninety (90) days shall first be charged against such surplus deposit.
- (3) The surplus deposits of subscribers shall not be charged as a liability.
- (4) All premium deposits delinquent less than ninety (90) days shall be allowed as assets.
- (5) An assessment levied upon subscribers, and not collected shall be allowed as assets.
- (6) The contingent liability of subscribers shall not be allowed as an asset.
- (7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for the compensation of the attorney.

➔Section 1382. KRS 304.27-210 is amended to read as follows:

- (1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the *commissioner*~~[executive director]~~; or by the *commissioner*~~[executive director]~~ in liquidation of the insurer.
- (2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his *or her* aggregate contingent liability as computed in accordance with KRS 304.27-230, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.
- (3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.
- (4) No subscriber shall have an offset against any assessment for which he *or she* is liable, on account of any claim for unearned premium or losses payable.

➔Section 1383. KRS 304.27-220 is amended to read as follows:

Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his *or her* share of any assessment, as computed and limited in accordance with this subtitle, if:

- (1) While his *or her* policy is in force or within one (1) year after its termination, he *or she* is notified by either the attorney or the **commissioner**~~executive director~~ of his *or her* intention to levy such assessment, or
- (2) If an order to show cause why a receiver, conservator, rehabilitator or liquidator of the insurer should not be appointed is issued while his *or her* policy is in force or within one (1) year after its termination.

➔Section 1384. KRS 304.27-240 is amended to read as follows:

- (1) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock and surplus required to be maintained by a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the **commissioner**~~executive director~~ shall issue his *or her* certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.
- (2) Upon impairment of such surplus, the **commissioner**~~executive director~~ shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.
- (3) The **commissioner**~~executive director~~ shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

➔Section 1385. KRS 304.27-260 is amended to read as follows:

Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus, and the return of any unused premium, savings, or credits then standing on subscribers' accounts, shall be distributed to its subscribers who were such within the twelve (12) months prior to the last termination of its certificate of authority, according to such reasonable formula as the **commissioner**~~executive director~~ may approve.

➔Section 1386. KRS 304.27-270 is amended to read as follows:

- (1) A domestic reciprocal insurer upon affirmative vote of not less than two-thirds (2/3) of its subscribers who vote on such merger pursuant to due notice and the approval of the **commissioner**~~executive director~~ of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.
- (2) Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.
- (3) The **commissioner**~~executive director~~ shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his *or her* interest in the reciprocal insurer as determined in accordance with KRS 304.27-260 and a reasonable length of time within which to exercise such right.

➔Section 1387. KRS 304.27-280 is amended to read as follows:

- (1) If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency; but subject to the limitation set forth in the power of attorney or policy.
- (2) If the attorney fails to make up such deficiency or to make the assessment within thirty (30) days after the **commissioner**~~executive director~~ orders him *or her* to do so, or if the deficiency is not fully made up within

sixty (60) days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

- (3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this subtitle, as the **commissioner**~~[executive director]~~ determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons, but including the reasonable cost of the liquidation.

➔Section 1388. KRS 304.28-030 is amended to read as follows:

Underwriters shall file with the **commissioner**~~[executive director]~~ for an original certificate of authority, an application, signed and sworn to by their duly authorized attorney, setting forth in addition to matters required in KRS 304.3-150:

- (1) The name of the attorney and title under which the business is to be conducted, which title shall contain the name Lloyd's and shall not be so similar to any name or title in use in this state as to be likely to confuse or deceive.
- (2) The names and addresses of all the underwriters proposing to engage in the business.
- (3) The number of underwriters, which shall not be less than twenty-five (25), and that each underwriter is worth in his **or her** own right not less than \$20,000 over and above all his **or her** liabilities.
- (4) A copy of each form of policy or contract by which such insurance is to be effected.
- (5) A copy of the form of power of attorney by virtue of which the attorney is to act for and bind the several underwriters and a copy of the articles of agreement entered into between the underwriters themselves and the attorney.
- (6) A financial statement showing in detail the assets contributed or accumulated in the hands of the attorney, committee of underwriters, trustees and/or other officers of such underwriters at Lloyd's, together with the liabilities incurred and outstanding and the income received and disbursements made by the attorney for the underwriters.
- (7) An instrument executed by each and all of the underwriters specially empowering the attorney to accept services of process for each underwriter in any action on any policy or contract of insurance and an instrument from the attorney to the **commissioner**~~[executive director]~~, delegating the attorney's powers in this respect to the **commissioner**~~[executive director]~~.

➔Section 1389. KRS 304.28-040 is amended to read as follows:

- (1) Upon the filing of the documents required, the **commissioner**~~[executive director]~~ shall examine them. If it appears that all the statements made are true and that the rights of the policyholders will be protected thereunder, and that the insurer is otherwise qualified therefor, **the commissioner**~~[he]~~ shall issue a certificate of authority to the underwriters under the name chosen and approved, authorizing them to transact the business of insurance as specified in the application.
- (2) Prior to the issuance of an original certificate of authority, a Lloyd's organization shall submit to examination of its affairs, by the **commissioner**~~[executive director]~~, or, if acceptable to the **commissioner**~~[executive director]~~, shall file with **the commissioner**~~[him]~~ a certified copy of an examination of its affairs made within two (2) years by the proper supervising official of some other state.

➔Section 1390. KRS 304.28-050 is amended to read as follows:

Additional or substituted underwriters shall be bound in the same manner and to the same extent as original subscribers to the articles of agreement and power of attorney on file with the **commissioner**~~[executive director]~~, and the acts of the duly appointed deputy or substitute attorney of any attorney licensed under this subtitle in accepting powers of attorney from underwriters and in making and issuing policies and contracts of insurance and in doing any additional acts incident thereto shall be deemed authorized by the license issued to the original attorney.

➔Section 1391. KRS 304.29-101 is amended to read as follows:

A domestic society organized on or after January 1, 1989, shall be formed as follows:

- (1) Seven (7) or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:
 - (a) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;
 - (b) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. The purposes shall not include more liberal powers than are granted by this subtitle; and
 - (c) The names and residences of the incorporators and the names, residences and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme governing body, which election shall be held not later than one (1) year from the date of issuance of the permanent certificate of authority.
- (2) The articles of incorporation, duly certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one (1) year shall be filed with the **commissioner**~~{executive director}~~, who may require further information. The bond with sureties approved by the **commissioner**~~{executive director}~~ shall be in an amount, not less than three hundred thousand dollars (\$300,000) nor more than one million five hundred thousand dollars (\$1,500,000), as required by the **commissioner**~~{executive director}~~. All documents filed shall be in the English language. If the purposes of the society conform to the requirements of this subtitle and all provisions of the law have been complied with, the **commissioner**~~{executive director}~~ shall so certify, retain and file the articles of incorporation and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members.
- (3) No preliminary certificate of authority granted under the provisions of this section shall be valid after one (1) year from its date or after such further period, not exceeding one (1) year, as may be authorized by the **commissioner**~~{executive director}~~ upon cause shown, unless the five hundred (500) applicants hereinafter required have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings thereunder shall become null and void in one (1) year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business.
- (4) Upon receipt of a preliminary certificate of authority from the **commissioner**~~{executive director}~~, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one (1) regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any benefit to any person until:
 - (a) Actual bona fide applications for benefits have been secured on not less than five hundred (500) applicants, and any necessary evidence of insurability has been furnished to and approved by the society;
 - (b) At least ten (10) subordinate lodges have been established into which the five hundred (500) applicants have been admitted;
 - (c) There has been submitted to the **commissioner**~~{executive director}~~, under oath of the president or secretary, or corresponding officer of the society, a list of the applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted and premiums therefor; and
 - (d) It shall have been shown to the **commissioner**~~{executive director}~~, by sworn statement of the treasurer, or corresponding officer of the society, that at least five hundred (500) applicants have each paid in cash at least one (1) regular monthly premium, which premiums in the aggregate shall amount to at least one hundred fifty thousand dollars (\$150,000). The advance premiums shall be held in trust during the period of organization; and if the society has not qualified for a certificate of authority within one (1) year, the premiums shall be returned to the applicants.
- (5) The **commissioner**~~{executive director}~~ may make examination and require further information as he *or she* deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the

provisions of law, the **commissioner**~~{executive director}~~ shall issue to the society a certificate of authority to that effect and that the society is authorized to transact business pursuant to the provisions of KRS Chapter 304. The certificate of authority shall be prima facie evidence of the existence of the society at the date of the certificate. The **commissioner**~~{executive director}~~ shall cause a record of the certificate of authority to be made. A certified copy of the record may be given in evidence with like effect as the original certificate of authority.

- (6) Any incorporated society authorized to transact business in this state at the time this subtitle becomes effective shall not be required to reincorporate.
- (7) No unincorporated or voluntary association shall be permitted to transact business in this state as a fraternal benefit society.

➔Section 1392. KRS 304.29-111 is amended to read as follows:

- (1) A domestic society may amend its laws in accordance with the provisions thereof by action of its supreme governing body at any regular or special meeting or, if its laws so provide, by referendum. The referendum may be held in accordance with the provisions of its laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum shall be adopted unless, within six (6) months from the date of submission, a majority of the members voting shall have signified their consent to the amendment by one (1) of the methods herein specified.
- (2) No amendment to the laws of any domestic society shall take effect unless approved by the **commissioner**~~{executive director}~~, who shall approve the amendment if he *or she* finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects and purposes of the society. Unless the **commissioner**~~{executive director}~~ shall disapprove any amendment within sixty (60) days after the filing, the amendment shall be considered approved. The approval or disapproval of the **commissioner**~~{executive director}~~ shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case the **commissioner**~~{executive director}~~ disapproves the amendment, the reasons therefor shall be stated in the written notice.
- (3) Within ninety (90) days from the approval by the **commissioner**~~{executive director}~~, all amendments, or a synopsis, shall be furnished to all members of the society, either by mail or by publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that the amendments or synopsis, have been furnished the addressee.
- (4) Every foreign or alien society authorized to do business in this state shall file with the **commissioner**~~{executive director}~~ a duly certified copy of all amendments of, or additions to, its laws within ninety (90) days after the enactment of same.
- (5) Printed copies of the laws as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

➔Section 1393. KRS 304.29-131 is amended to read as follows:

- (1) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make reinsurance and authorized to do business in this state, or if not so authorized, one (1) which is approved by the **commissioner**~~{executive director}~~; but no society may reinsure substantially all of its insurance in force without the written permission of the **commissioner**~~{executive director}~~. It may take credit for the reserves on the ceded risks to the extent reinsured; but no credit shall be allowed as an admitted asset or as a deduction from liability, to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after January 1, 1989, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.
- (2) Notwithstanding the limitation in subsection (1) of this section, a society may reinsure the risks of another society in a consolidation or merger approved by the **commissioner**~~{executive director}~~ under KRS 304.29-141.

➔Section 1394. KRS 304.29-141 is amended to read as follows:

- (1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the **commissioner**~~{executive director}~~:
 - (a) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;
 - (b) A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the **commissioner**~~{executive director}~~ but not earlier than December 31, next preceding the date of the contract;
 - (c) A certificate of the officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds (2/3) vote of the supreme governing body of each society, the vote being conducted at a regular or special meeting of each body, or, if the society's laws so permit, by mail; and
 - (d) Evidence that at least sixty (60) days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.
- (2) If the **commissioner**~~{executive director}~~ finds that the contract is in conformity with the provisions of this section, that the financial statements are correct and that the consolidation or merger is just and equitable to the members of each society, the **commissioner**~~{executive director}~~ shall approve the contract and issue a certificate to that effect. Upon approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. If the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of the state or territory and a certificate of approval filed with the **commissioner**~~{executive director}~~ of this state or, if the laws of the state or territory contain no such provision, the consolidation or merger shall not become effective unless and until it has been approved by the commissioner of insurance of the state or territory and a certificate of the approval filed with the **commissioner**~~{executive director}~~ of this state.
- (3) Upon the consolidation or merger becoming effective, all the rights, franchises and interests of the consolidated or merged societies in and to every species of property, real, personal or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by proper deeds; and the title to any real estate or interest therein, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after the consolidation or merger.
- (4) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that the notice or document has been duly addressed and mailed, shall be prima facie evidence that the notice or document has been furnished the addressees.

➔Section 1395. KRS 304.29-151 is amended to read as follows:

Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of the insurance laws of this state for mutual life insurance companies. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds (2/3) of all members of the supreme governing body at a regular or special meeting shall be necessary for the approval of the plan. No conversion shall take effect unless and until approved by the **commissioner**~~{executive director}~~ who may give approval if he *or she* finds that that proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

➔Section 1396. KRS 304.29-191 is amended to read as follows:

- (1) Every society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this provision shall be void.
- (2) Any changes, additions or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate, shall bind the owner and the beneficiaries, and shall govern and control the benefit

contract in all respects the same as though the changes, additions or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.

- (3) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.
- (4) A society shall provide in its laws that, if its reserves as to all or any class of certificates become impaired, its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of the deficiency as ascertained by its board, and that if the payment is not made either:
 - (a) It shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or
 - (b) In lieu of or in combination with paragraph (a), the owner may accept a proportionate reduction in benefits under the certificate.

The society may specify the manner of the election and which alternative is to be presumed if no election is made.

- (5) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received as evidence of the terms and conditions thereof.
- (6) No certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with and approved by the **commissioner**~~executive director~~ in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one (1) year from January 1, 1989 shall meet the standard contract provision requirements not inconsistent with this subtitle for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one (1) full month in its certificates. The certificates shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.
- (7) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and may provide in all other respects for the regulation, government and control of certificates and all rights, obligations and liabilities incident thereto and connected therewith. Ownership rights prior to transfer shall be specified in the certificate.
- (8) A society may specify the terms and conditions on which benefit contracts may be assigned.

➔Section 1397. KRS 304.29-251 is amended to read as follows:

- (1) Standards of valuation for certificates issued prior to one (1) year after January 1, 1989, shall be those provided by the laws applicable immediately prior to January 1, 1989.
- (2) The minimum standards of valuation for certificates issued on or after one (1) year from January 1, 1989, shall be based on the following tables:
 - (a) For certificates of life insurance -- the commissioner's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers;
 - (b) For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancellable accident and health benefits -- such tables as are authorized for use by life insurers in this state.

All of the above shall be under valuation methods and standards, including interest assumptions, in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits.

- (3) The **commissioner**~~{executive director}~~ may, in his *or her* discretion, accept other standards for valuation if he *or she* finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The **commissioner**~~{executive director}~~ may, in his *or her* discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this state.
- (4) Any society, with the consent of the commissioner of insurance of the state of domicile of the society and under the conditions, if any, which the **commissioner**~~{executive director}~~ may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any benefit member shall not be affected thereby.

➔Section 1398. KRS 304.29-261 is amended to read as follows:

- (1) Every society transacting business in this state shall annually, on or before the first day of March, file with the **commissioner**~~{executive director}~~ a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay the fee required under KRS 304.4-010 for filing it. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the **commissioner**~~{executive director}~~.
- (2) As part of the annual statement, each society shall, on or before the first day of March, file with the **commissioner**~~{executive director}~~ a valuation of its certificates in force on December 31 last preceding. The **commissioner**~~{executive director}~~ may, in his *or her* discretion for cause shown, extend the time for filing the valuation for not more than two (2) calendar months. The valuation shall be done in accordance with the standards specified in KRS 304.29-251. The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.
- (3) A society failing to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars (\$100) for each day during which the default continues; and, upon notice by the **commissioner**~~{executive director}~~, its authority to do business in this state shall cease while the default continues.
- (4) Each society authorized to transact business in this state pursuant to this subtitle shall comply with KRS 304.2-205.

➔Section 1399. KRS 304.29-271 is amended to read as follows:

Societies which are now authorized to transact business in this state may continue to do business until May 1 next succeeding January 1, 1989. The authority of the societies, and all societies hereafter licensed, may be renewed annually, but in all cases shall terminate on the succeeding April 30. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused. For each license or renewal, the society shall, prior to May 1, pay to the **commissioner**~~{executive director}~~ a fee as specified in Subtitle 4 of this chapter. A duly certified copy or duplicate of the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this subtitle.

➔Section 1400. KRS 304.29-291 is amended to read as follows:

No foreign or alien society shall transact business in this state without a license issued by the **commissioner**~~{executive director}~~. Any society desiring admission to this state shall comply substantially with the requirements and limitations of this subtitle applicable to domestic societies. Any society may be licensed to transact business in this state upon filing with the **commissioner**~~{executive director}~~:

- (1) A duly certified copy of its articles of incorporation;
- (2) A copy of its bylaws, certified by its secretary or corresponding officer;
- (3) A power of attorney to the **commissioner**~~{executive director}~~ as prescribed in KRS 304.29-351;
- (4) A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the **commissioner**~~{executive director}~~, duly verified by an examination made by the supervising

insurance official of its home state or other state, territory, province or country, satisfactory to the **commissioner**~~{executive director}~~;

- (5) Certification from the proper official of its home state, territory, province or country that the society is legally incorporated and licensed to transact business therein;
- (6) Copies of its certificate forms; and
- (7) Such other information as the **commissioner**~~{executive director}~~ may deem necessary; and upon a showing that its assets are invested in accordance with the provisions of this subtitle.

➔Section 1401. KRS 304.29-301 is amended to read as follows:

- (1) If the **commissioner**~~{executive director}~~, upon investigation, finds that a domestic society:
 - (a) Has exceeded its powers;
 - (b) Has failed to comply with any provision of this subtitle;
 - (c) Is not fulfilling its contracts in good faith;
 - (d) Has a membership of less than four hundred (400) after an existence of one (1) year or more; or
 - (e) Is conducting business fraudulently or in a manner hazardous to its members, creditors, the public or the business,

the **commissioner**~~{executive director}~~ shall notify the society of the deficiency or deficiencies and state in writing the reasons for his *or her* dissatisfaction. The **commissioner**~~{executive director}~~ shall issue a written notice to the society requiring that the deficiency or deficiencies which exist be corrected. After the notice, the society shall have a thirty (30) day period in which to comply with the **commissioner's**~~{executive director's}~~ request for correction; and if the society fails to comply, the **commissioner**~~{executive director}~~ shall notify the society of the findings of noncompliance and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected, or why an action in Franklin Circuit Court should not be commenced against the society.

- (2) If on that date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the **commissioner**~~{executive director}~~ may present the facts to the Attorney General who shall, if he *or she* deems the circumstances warrant, commence an action to enjoin the society from transacting business.
- (3) The court shall notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order. No society so enjoined shall have the authority to do business until:
 - (a) The **commissioner**~~{executive director}~~ finds that the violation complained of has been corrected;
 - (b) The costs of the action shall have been paid by the society, if the court finds that the society was in default as charged;
 - (c) The court has dissolved its injunction; and
 - (d) The **commissioner**~~{executive director}~~ has reinstated the certificate of authority.
- (4) If the court orders the society liquidated, it shall be enjoined from carrying on any further business. The receiver of the society shall take possession of the books, papers, money and other assets of the society, and, under the direction of the court, close the affairs of the society and distribute its funds to those entitled to them.
- (5) No action under this section shall be recognized in any court of this state unless brought by the Attorney General upon request of the **commissioner**~~{executive director}~~. If a receiver is to be appointed for a domestic society, the court shall appoint the **commissioner**~~{executive director}~~ as receiver.
- (6) The provisions of this section relating to hearing by the **commissioner**~~{executive director}~~, action by the Attorney General at the request of the **commissioner**~~{executive director}~~ of insurance, hearing by the court, injunction and receivership shall be applicable to a society which shall voluntarily determine to discontinue business.

➔Section 1402. KRS 304.29-311 is amended to read as follows:

- (1) If the **commissioner**~~[executive director]~~ upon investigation finds that a foreign or alien society transacting or applying to transact business in this state:
- (a) Has exceeded its powers;
 - (b) Has failed to comply with any of the provisions of this subtitle;
 - (c) Is not fulfilling its contracts in good faith; or
 - (d) Is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public,

the **commissioner**~~[executive director]~~ shall notify the society of the deficiency or deficiencies and state in writing the reasons for his *or her* dissatisfaction. The **commissioner**~~[executive director]~~ shall issue a written notice to the society requiring that the deficiency or deficiencies which exist are corrected. After the notice, the society shall have a thirty (30) day period in which to comply with the **commissioner's**~~[executive director's]~~ request for correction; and if the society fails to comply, the **commissioner**~~[executive director]~~ shall notify the society of the findings of noncompliance and require the society to show cause on a date named why its license should not be suspended, revoked or refused. If on that date the society does not present good and sufficient reason why its authority to do business in this state should not be suspended, revoked or refused, the **commissioner**~~[executive director]~~ may suspend or refuse the license of the society to do business in this state until satisfactory evidence is furnished to the **commissioner**~~[executive director]~~ that suspension or refusal should be withdrawn or the **commissioner**~~[executive director]~~ may revoke the authority of the society to do business in this state.

- (2) Nothing contained in this section shall be taken or construed as preventing any society from continuing in good faith all contracts made in this state during the time the society was legally authorized to transact business herein.

➔Section 1403. KRS 304.29-321 is amended to read as follows:

No application or petition for injunction against any domestic, foreign or alien society, or lodge thereof, shall be recognized in any court of this state unless made by the Attorney General upon request of the **commissioner**~~[executive director]~~.

➔Section 1404. KRS 304.29-351 is amended to read as follows:

- (1) Every society authorized to do business in this state shall appoint in writing the Secretary of State and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree that any lawful process against it which is served on the attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of the appointment, certified by the **commissioner**~~[executive director]~~, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original might be admitted.
- (2) Service of process in any action may be made by service upon the Secretary of State as provided in KRS 304.3-230.

➔Section 1405. KRS 304.29-361 is amended to read as follows:

All decisions and findings of the **commissioner**~~[executive director]~~ made under the provisions of this subtitle shall be subject to review by proper proceedings in any court of competent jurisdiction in this state.

➔Section 1406. KRS 304.29-371 is amended to read as follows:

- (1) Nothing contained in this chapter shall be so construed as to affect or apply to:
 - (a) Grand or subordinate lodges of societies, orders or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges;
 - (b) Orders, societies or associations which admit to membership only persons engaged in one (1) or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies societies or ladies' auxiliaries to such orders, societies or associations;
 - (c) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than four hundred

dollars (\$400) or disability benefits of not more than three hundred fifty dollars (\$350) to any person in any one (1) year, or both; or

- (d) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than four hundred dollars (\$400) or for disability benefits of not more than three hundred fifty dollars (\$350) to any one (1) person in any one (1) year, or both.
- (2) Any society or association described in paragraphs (c) or (d) of subsection (1) of this section which provides for death or disability benefits for which benefit certificates are issued, and any society or association included in paragraph (d) of subsection (1) of this section which has more than one thousand (1000) members, shall not be exempted from the provisions of this subtitle but shall comply with all requirements therein.
- (3) No society which, by the provisions of this section, is exempt from the requirements of this subtitle, except any society described in paragraph (b) of subsection (1) of this section, shall give or allow, or promise to give or allow to any person any compensation for procuring new members.
- (4) Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits, shall have all of the privileges and be subject to all the applicable provisions and regulations of this subtitle except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to the society.
- (5) The **commissioner**~~{executive director}~~ may require from any society or association, by examination or otherwise, such information as will enable the **commissioner**~~{executive director}~~ to determine whether the society or association is exempt from the provisions of this subtitle.
- (6) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of this state.

➔Section 1407. KRS 304.30-020 is amended to read as follows:

For the purpose of this subtitle:

- (1) The term "insurance premium finance company" or "premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.
- (2) The term "premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent in payment of premiums on an insurance contract together with a service charge as authorized and limited by this subtitle.
- (3) The term "licensee" means a premium finance company, holding a license issued by the **commissioner**~~{executive director}~~ under this subtitle.

➔Section 1408. KRS 304.30-030 is amended to read as follows:

- (1) No person shall engage in the business of financing insurance premiums in this state without first having obtained a license as a premium finance company from the **commissioner**~~{executive director}~~.
- (2) The annual license fee shall be as specified in Subtitle 4 of this chapter. Licenses may be renewed from year to year as of the first day of May of each year upon payment of the fee.
- (3) The person to whom the license or the renewal thereof may be issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the **commissioner**~~{executive director}~~ may require. The **commissioner**~~{executive director}~~ shall have authority, at any time, to require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees and he *or she* may, in his *or her* discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if *the commissioner*~~he~~ is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this subtitle.

➔Section 1409. KRS 304.30-040 is amended to read as follows:

- (1) Upon the filing of an application and the payment of the license fee, the **commissioner**~~{executive director}~~ shall make an investigation of each applicant and shall issue a license if the applicant is qualified in accordance with this subtitle. If the **commissioner**~~{executive director}~~ does not so find, he *or she* shall, within sixty (60)

days after he *or she* has received the application, at the request of the applicant, give the applicant an administrative hearing. Hearings under this subtitle shall be conducted in accordance with KRS Chapter 13B.

- (2) The **commissioner**~~{executive director}~~ shall issue or renew a license as may be applied for when he *or she* is satisfied that the person to be licensed:
- (a) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;
 - (b) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for; and
 - (c) If a corporation, is a corporation incorporated under the laws of this state or a foreign corporation authorized to transact business in this state.

➔Section 1410. KRS 304.30-050 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may revoke or suspend the license of any premium finance company when and if, after investigation, it appears to the **commissioner**~~{executive director}~~ that:
- (a) Any license issued to the company was obtained by fraud,
 - (b) There was any misrepresentation in the application for the license,
 - (c) The holder of the license has otherwise shown himself *or herself* untrustworthy or incompetent to act as a premium finance company,
 - (d) The company has violated any of the provisions of this chapter, or
 - (e) The company has been rebating part of the service charge as allowed and permitted by KRS 304.30-090 to any insurance agent or any employee of an insurance agent or to any other person as an inducement to the financing of any insurance policy with the premium finance company.
- (2) Before the **commissioner**~~{executive director}~~ shall revoke, suspend, or refuse to renew the license of any premium finance company, he *or she* shall give to the person an opportunity for a hearing to be conducted in accordance with KRS Chapter 13B. In lieu of or in addition to revoking or suspending the license for any of the causes enumerated in the section, after hearing as provided in this subsection, the **commissioner**~~{executive director}~~ may subject the company to a penalty specified in Subtitle 99 of this chapter when *the commissioner determines*~~{in his judgment he finds}~~ that the public interest would not be harmed by the continued operation of the company. The amount of any penalty shall be paid by the company through the **department**~~{office}~~ of the **commissioner**~~{executive director}~~ to the State Treasurer.
- (3) If any applicant or licensee is aggrieved by any final order of the **commissioner**~~{executive director}~~, the applicant or licensee shall have the right to appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

➔Section 1411. KRS 304.30-060 is amended to read as follows:

- (1) Every licensee shall maintain records of its premium finance transactions and the records shall be open to examination and investigation by the **commissioner**~~{executive director}~~.
- (2) Every licensee shall preserve its records of premium finance transactions, including cards used in a card system, for at least five (5) years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement.
- (3) For the purpose of determining market conduct, business practices, financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations and compliance with law, the **commissioner**~~{executive director}~~ shall examine the affairs, transactions, accounts, records and assets of each licensed premium finance company as often as reasonably necessary.
- (4) Premium finance companies shall be subject to the provisions of KRS 304.2-220, 304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practices.

➔Section 1412. KRS 304.30-070 is amended to read as follows:

The *commissioner*~~{executive director}~~ shall have the authority to make and enforce such reasonable rules and regulations as may be necessary to make effective the provisions of this subtitle and to establish the manner in which licensees shall conduct their business, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this subtitle.

➔Section 1413. KRS 304.32-045 is amended to read as follows:

- (1) Any nonprofit hospital, medical-surgical, dental and health service corporation subject to the provisions of this subtitle, possessed of admitted assets in excess of all liabilities at least equal to the original surplus required of a domestic mutual insurance company transacting the same kind or kinds of business may, at its option and without reincorporation, adopt and become subject to the provisions of Subtitle 24 of this chapter governing domestic mutual insurers in lieu of this subtitle; provided, however, that upon becoming subject to the provisions of Subtitle 24 of this chapter, as hereinafter provided, such companies may continue to provide services to their present or like services to future members and subscribers and may make provision for the payment for health care services directly to hospitals or other agencies or institutions or persons rendering such health care service or related services or may make direct payment to the member or subscriber.
- (2) Any nonprofit hospital, medical-surgical, dental and health service corporation subject to the provisions of this subtitle may adopt and become subject to the provisions of Subtitle 24 of this chapter by the adoption of a resolution by its board of directors declaring the election of said nonprofit hospital, medical-surgical, dental and health service corporation to become subject to the provisions of Subtitle 24 of this chapter governing domestic mutual insurers, and after the adoption of such resolution the board of directors shall adopt such amendments to the articles of incorporation and bylaws of the nonprofit hospital, medical-surgical, dental and health service corporation as shall be necessary and file the same with the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance of the Commonwealth of Kentucky. Upon such filing, said nonprofit hospital, medical-surgical, dental and health service corporation shall no longer be subject to the provisions of this subtitle, but shall be subject to Subtitle 24 of this chapter governing domestic mutual insurers and shall honor all legitimate claims presented by its member policyholders under the terms and conditions of its policy who have incurred claims in any private hospital with acute care in the State of Kentucky as long as the hospital is duly licensed and certified by the State of Kentucky; provided, however, that group certificate holders may also be members of the insurer, if so specified in the bylaws of the insurer; and further provided that the conversion of a nonprofit hospital, medical-surgical, dental and health service corporation, subject to this subtitle, into a domestic mutual insurance company shall not impair the rights or obligations of the nonprofit hospital, medical-surgical, dental and health service corporation or its members on any contract heretofore or hereafter made.

➔Section 1414. KRS 304.32-050 is amended to read as follows:

- (1) Whenever any number of persons shall associate to form a corporation for any of the purposes in KRS 304.32-030, they shall submit proposed articles of incorporation in triplicate to the *commissioner*~~{executive director}~~ for examination. After being approved by the *commissioner*~~{executive director}~~ and the Attorney General, the articles shall be filed in the office of the Secretary of State, who shall issue a certificate of incorporation pursuant to the provisions of KRS Chapter 273.
- (2) When not less than the amount required by KRS 304.32-140 is deposited with the *commissioner*~~{executive director}~~, he *or she* shall cause an examination to be made either by *the commissioner*~~{himself}~~ or some disinterested person, especially appointed by him *or her* for the purpose, who shall certify that the corporation has complied with the provisions of this subtitle. The certificate shall be filed in the office of the *commissioner*~~{executive director}~~, who shall issue a certificate of authority to the corporation.
- (3) Whenever any such corporation shall desire to amend its articles of incorporation, it shall file its articles of amendment with the *commissioner*~~{executive director}~~ before filing them with the Secretary of State. When the *commissioner*~~{executive director}~~ shall find the articles of amendment to have been legally adopted, the articles of amendment shall be filed with the Secretary of State.

➔Section 1415. KRS 304.32-090 is amended to read as follows:

- (1) Corporations subject to the provisions of this subtitle doing business in this state on June 18, 1970, or which thereafter do business in this state, shall make and file annually with the *commissioner*~~{executive director}~~, on or before the first day of March of each year, a statement under oath upon a form to be prescribed by the *commissioner*~~{executive director}~~, stating the amount of all membership dues, or subscriber fees, collected in

this state by the corporation during the year ending the last day of December next preceding; the amounts actually paid during the year for hospital, medical-surgical, dental and other health services for the subscribers or members of the corporation, and the amounts placed in established reserves for cases billed but not yet paid, unreported and unbilled cases, retroactive cost adjustments, and membership dues or fees paid in advance but not yet earned.

- (2) The **commissioner**~~{executive director}~~ shall require that domestic companies subject to this subtitle file quarterly statements according to the form and instructions approved by the National Association of Insurance Commissioners.

➔Section 1416. KRS 304.32-110 is amended to read as follows:

No corporation subject to the provisions of this subtitle shall transact any business in this state unless it shall first procure from the **commissioner**~~{executive director}~~ a certificate of authority stating that the requirements of the laws of this state have been complied with and authorizing it to do business. The certificate of authority shall expire on the last day of February of each year and shall be renewed annually if the corporation has continued to comply with the provisions of this subtitle.

➔Section 1417. KRS 304.32-120 is amended to read as follows:

When the annual statement of a corporation subject to the provisions of this subtitle shall have been filed and all fees due from the corporation shall have been paid, the corporation's certificate of authority to do business in this state shall automatically be extended until such time as the **commissioner**~~{executive director}~~ refuses to relicense the corporation.

➔Section 1418. KRS 304.32-130 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall not issue or renew a certificate of authority to any corporation operating or proposing to operate a nonprofit hospital, medical-surgical, dental, or other health service plan unless:

- (1) The subscription or membership certificates which the corporation offers to its subscribers or members, together with a schedule of the dues and fees to be paid by subscribers or members, or the formula for developing dues or fees, has been filed with the **commissioner**~~{executive director}~~ in accordance with the provisions of KRS 304.32-160.
- (2) The schedule of the dues and fees to be paid by subscribers or members is one which will enable the corporation to meet the expenses of the hospital, medical-surgical, and other health services which are made available to its subscribers or members without impairing the guarantee fund required by KRS 304.32-140, and one which will not result in an accumulation of excess reserves over and above reserves established for claims in process, unreported and unbilled claims, retroactive cost adjustment to the purveyors of hospital, medical-surgical, and other health services and membership dues or fees received in advance but not yet earned. So long as a corporation's unencumbered reserve or surplus over and above the required reserves specified in this section do not exceed a sum equal to one-half (1/2) of the corporation's total membership dues or subscription fees received during the immediate preceding calendar year, the unencumbered reserve or surplus shall not be deemed an excessive accumulation for the purposes of this section.

➔Section 1419. KRS 304.32-140 is amended to read as follows:

- (1) No corporation subject to provisions of this subtitle shall be permitted to do any business in this state unless, in addition to the other requirements of law, it shall have and maintain liquid reserves in an amount not less than five percent (5%) of the corporation's subscription income collected in the preceding year not exceeding two million dollars (\$2,000,000), plus two and one-half percent (2.5%) of income exceeding two million dollars (\$2,000,000) but not exceeding ten million dollars (\$10,000,000), plus one percent (1%) of income exceeding ten million dollars (\$10,000,000); but in no event shall reserves be less than five hundred thousand dollars (\$500,000). All corporations subject to the provisions of this subtitle shall place on deposit with the **commissioner**~~{executive director}~~ a guarantee fund of cash or approved securities in an amount determined by this formula, but not less than five hundred thousand dollars (\$500,000) nor more than one million five hundred thousand dollars (\$1,500,000). Any amount of liquid reserves required by this subsection in excess of one million five hundred thousand dollars (\$1,500,000) shall be maintained by the corporation at all times, but shall not be required to be placed on deposit, provided that the corporation shall be allowed a period of five (5) years after July 15, 1982, to establish the liquid reserves and deposit the guarantee fund with the **commissioner**~~{executive director}~~. A corporation subject to the provisions of this subtitle shall at all times

comply with the risk-based capital requirements as established in administrative regulations promulgated by the *commissioner*~~{executive director}~~.

- (2) The cash or securities representing the guarantee fund required by this section shall be acceptable to the *commissioner*~~{executive director}~~ and the securities shall be negotiable securities.
- (3) The investments of a corporation subject to the provisions of this subtitle shall be the same kind of investments which life insurance companies are authorized to have.

➔Section 1420. KRS 304.32-160 is amended to read as follows:

- (1) On or after June 18, 1970, no corporation subject to the provisions of this subtitle shall deliver or issue for delivery in this state any subscription certificate or membership certificate describing health benefits available, or any indorsement, rider, or application which becomes a part thereof, or the schedule of rates, dues, fees, or other periodic charges, to be paid by subscribers or members, until a copy of such form has been filed with and approved by the *commissioner*~~{executive director}~~.
- (2) At the expiration of thirty (30) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the *commissioner*~~{executive director}~~, or a hearing has been scheduled by order of the *commissioner*~~{executive director}~~. In the event that a hearing is held, the thirty (30) day waiting period shall begin anew after the close of such hearing. Approval of any such form by the *commissioner*~~{executive director}~~ shall constitute a waiver of any unexpired portion of such waiting period. The *commissioner*~~{executive director}~~ may extend by not more than an additional thirty (30) day period within which *the commissioner*~~{he}~~ may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial thirty (30) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The *commissioner*~~{executive director}~~ may at any time withdraw any such approval. Any notice of the *commissioner*~~{executive director}~~ withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonable to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at the expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the *commissioner*~~{executive director}~~ shall in such notice prescribe.
- (3) The *commissioner's*~~{executive director's}~~ order disapproving any form or withdrawing previous approval shall state the grounds for disapproval or withdrawal.
- (4) The *commissioner*~~{executive director}~~ may, by order, exempt from the requirements of this section for so long as he *or she* deems proper, any document or form specified in the order, to which in his *or her* opinion this section may not practicably be applied, or the filing and approval of which are, in his *or her* opinion, not desirable or necessary for the protection of the public.

➔Section 1421. KRS 304.32-210 is amended to read as follows:

- (1) Nonprofit hospital, medical-surgical, dental, and health service corporations shall be subject to the provisions of KRS 304.2-210, 304.2-220, 304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practice.
- (2) Each corporation subject to the provisions of this subtitle may own and invest or have invested any of its funds in its principal office building not to exceed an amount which would reduce its surplus, exclusive of the investment, below \$50,000, unless approved by the *commissioner*~~{executive director}~~.

➔Section 1422. KRS 304.32-240 is amended to read as follows:

Any individual subscriber or member of a corporation subject to the provisions of this subtitle who believes himself *or herself* to be aggrieved by any act or omission of a corporation or its officers, trustees, directors, agents, or representatives, may file a statement in writing of his *or her* grievance in the office of the *commissioner*~~{executive director}~~, and the *commissioner*~~{executive director}~~ in his *or her* discretion may make an investigation of the grievance. Investigation by the *commissioner*~~{executive director}~~ shall not act as a bar to any suit in a court of competent jurisdiction instituted by any member or subscriber, or as a bar to any defense by the corporation.

➔Section 1423. KRS 304.32-250 is amended to read as follows:

The ~~commissioner~~~~executive director~~ may promulgate reasonable rules and regulations not inconsistent with the provisions of this subtitle that ~~the commissioner~~~~he~~ deems necessary for the proper administration of this subtitle.

➔Section 1424. KRS 304.32-260 is amended to read as follows:

Nothing contained in this subtitle shall be construed to affect or apply to hospitals, or other licensed health care institutions, nor to any individuals, partnerships, associations, or corporations which are the direct purveyors of health services; nor shall it be construed to limit in any way the rights of hospitals, or other licensed health care institutions or purveyors of health services to establish methods of payment directly with purchasers of their services; but the ~~commissioner~~~~executive director~~ may require from any institution or purveyor of medical services information that will enable him *or her* to determine whether arrangements for payment of medical services are subject to the provisions of this subtitle.

➔Section 1425. KRS 304.32-270 is amended to read as follows:

Nonprofit hospital, medical-surgical, dental, and health service corporations shall be subject to the provisions of this subtitle, and to the following provisions of this code, to the extent applicable and not in conflict with the express provisions of this subtitle:

- (1) Subtitle 1 -- Scope -- General Definitions and Provisions;
- (2) Subtitle 2 -- *Commissioner of the Department of Insurance*~~Executive Director~~;
- (3) Subtitle 7 -- Investments;
- (4) Subtitle 8 -- Administration of Deposits;
- (5) Subtitle 12 -- Trade Practices and Frauds;
- (6) Subtitle 25 -- Continuity of Management;
- (7) Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- (8) Subtitle 18 -- KRS 304.18-110, 304.18-120 -- Group Conversion and KRS 304.18-045;
- (9) Subtitle 4 -- Fees and Taxes;
- (10) Subtitle 99 -- Penalties;
- (11) Subtitle 14 -- KRS 304.14-500 to 304.14-560;
- (12) Subtitle 17A -- Health Benefit Plans;
- (13) Subtitle 17B -- Kentucky Access;
- (14) Subtitle 9 -- Agents, Consultants, Solicitors and Adjusters; and
- (15) Subtitle 3 -- Authorization of Insurers and General Requirements.

➔Section 1426. KRS 304.32-315 is amended to read as follows:

Any private employer doing business in this state who provides for his employees, on a self-insured basis, hospital or surgical benefits shall be subject to KRS 304.14-135. Failure to accept forms prescribed by the ~~commissioner~~~~executive director~~ shall be punishable pursuant to KRS 304.99-010.

➔Section 1427. KRS 304.32-320 is amended to read as follows:

Any private employer doing business in this state who provides for his *or her* employees on a self-insured basis hospital or surgical benefits shall notify the *Department*~~Office~~ of Insurance of the existence of the program within sixty (60) days of June 17, 1978. Any employer doing business in this state who implements for his *or her* employees on a self-insured basis a plan for providing hospital or surgical benefits shall notify the *Department*~~Office~~ of Insurance not less than thirty (30) days prior to implementing such plan, and shall include in the notice the name of any outside third-party administrator. Any change in third-party administrators shall be reported to the *Department*~~Office~~ of Insurance within thirty (30) days of the change. The *Department*~~Office~~ of Insurance shall make this information available upon request.

➔Section 1428. KRS 304.33-010 is amended to read as follows:

- (1) Short title. This subtitle may be cited as the "Insurers Rehabilitation and Liquidation Law."

- (2) Construction. No limitation of powers. This subtitle shall not be interpreted to limit the powers granted the **commissioner**~~[executive director]~~ by other provisions of the law.
- (3) Liberal construction. This subtitle shall be liberally construed to effect the purpose stated in subsection (4) of this section.
- (4) Purpose. The purpose of this subtitle is the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogative of proprietors, through:
 - (a) Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures, neither unduly harsh nor subject to the kind of publicity that would needlessly damage or destroy the insurer;
 - (b) Improved methods for rehabilitating insurers, by enlisting the advice and management expertise of the insurance industry;
 - (c) Enhanced efficiency and economy of liquidation, through the consolidation of matters relating to the liquidation under the supervision of a single court so as to avoid divergent rulings by a multiplicity of judicial tribunals and through clarification and specification of the law, to minimize legal uncertainty and litigation;
 - (d) Equitable apportionment of any unavoidable loss;
 - (e) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extension of the scope of personal jurisdiction over debtors of the insurer outside this state;
 - (f) Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business; and
 - (g) Provision for a comprehensive scheme for the supervision, rehabilitation, and liquidation of insurance companies and those subject to this subtitle as part of the regulation of the business of insurance, insurance industry, and insurers in this state. Proceedings in cases of insurer insolvency and delinquency shall be deemed an integral aspect of the business of insurance and are of vital public interest and concern.
- (5) All persons who voluntarily transact business with an insurer which is subsequently the subject of a delinquency proceeding under this subtitle shall be conclusively presumed to have transacted business with the intent that the provisions of this subtitle would control if there is any delinquency proceeding in this state.
- (6) If there is a delinquency proceeding under this subtitle, the provisions of this subtitle shall govern those proceedings, and all conflicting contractual provisions contained in any contract between the insurer which is subject to the delinquency proceeding and any third party shall be deemed subordinated to the provisions of this subtitle. However, notwithstanding the foregoing, in any delinquency proceeding commenced against an insurer after July 15, 1996, nothing in this subtitle shall be construed to subordinate or restrict the rights of parties to submit their disputes to arbitration pursuant to a contractual arbitration clause contained in a reinsurance agreement.

➔Section 1429. KRS 304.33-030 is amended to read as follows:

For the purposes of this subtitle:

- (1) "Agent" means all persons who have collected or are holding premiums or other assets of the insurer, including, but not limited to, brokers, intermediaries, managing general agents, underwriting managers, and reinsurance managers, and any other persons who have entered into a fiduciary relationship with the insurer subject to delinquency proceedings, including, but not limited to, persons holding licenses under Subtitles 9, 32, 38, and 43 of KRS Chapter 304.
- (2) "**Commissioner**~~[Executive director]~~" means the **commissioner**~~[executive director]~~ of *the Department of Insurance* of this state.
- (3) "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the context requires.
- (4) "Insurer" has the meaning defined in Subtitle 1 of this chapter. For purposes of this subtitle, all other persons included under KRS 304.33-020 shall be deemed to be insurers.

- (5) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer, and any summary proceeding under KRS 304.33-110 to 304.33-130, inclusive.
- (6) "State" has the meaning defined in Subtitle 1 of this chapter.
- (7) "Foreign country" means territory not in any state.
- (8) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, the state in which the insurer has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and on deposit for the benefit of policyholders and creditors in the United States.
- (9) "Ancillary state" means any state other than a domiciliary state.
- (10) "Reciprocal state" means any state other than this state in which in substance and effect subsection (1) of KRS 304.33-200, subsections (1) and (3) of KRS 304.33-530, KRS 304.33-540, and KRS 304.33-560 to 304.33-590, inclusive, are in force, and in which provisions are in force requiring that the ~~commissioner~~~~executive director~~ be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.
- (11) "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or limited classes of persons, and as to specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sums secured thereby, except as otherwise expressly provided in this subtitle. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.
- (12) "Reinsurance intermediary" means any person who acts as a broker in soliciting, negotiating, or procuring the making of any reinsurance contract or binder, or acts as an agent in accepting any reinsurance contract or binder on behalf of an insurer.
- (13) "Court" means the Franklin Circuit Court.
- (14) "Preferred claim" means any claim with respect to which the law accords priority of payment from the general assets of the insurer.
- (15) "Special deposit claim" means any claim secured by a deposit made pursuant to law for the security or benefit of one (1) or more limited classes of persons, but not including any claim secured by general assets.
- (16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not including special deposit claims or claims against general assets including, but not limited to, claims of setoff, counterclaim, or recoupment against obligations to pay premiums to the insurer. The term also includes claims which have become liens upon specific assets by reason of judicial process, except where they have been invalidated.
- (17) "Premium" has the meaning set forth in Subtitle 14 of this chapter.
- (18) "Insolvency" means that the insurer is unable to pay its debts or meet its obligations as they mature or that its assets do not exceed its liabilities plus the greater of:
 - (a) Any capital and surplus required by law to be constantly maintained, or
 - (b) Its authorized and issued capital stock. For purposes of this subsection, "assets" includes one-half (1/2) of the maximum total assessment liability of the policyholders of the insurer, and "liabilities" includes reserves required by law. For policies issued on the basis of unlimited assessment liability, the maximum total liability, for purposes of determining solvency only, shall be deemed to be that amount that could be obtained if there were one hundred percent (100%) collection of an assessment at the rate of ten (10) mills.
- (19) "Fair consideration" is given for property or an obligation:
 - (a) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or obligation is incurred or an antecedent debt is satisfied; or

- (b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.
- (20) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.
- (21) "Transfer" includes the sale and every other method, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.
- (22) "Doing business" has the meaning designated in Subtitle 1.
- (23) "Guaranty association" means the Kentucky Insurance Guaranty Association, the Kentucky Life and Health Insurance Guaranty Association and any other similar entity now or hereafter created by the Legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in, or hereafter created by the legislature of, any other state.

➔Section 1430. KRS 304.33-040 is amended to read as follows:

- (1) Actions by **commissioner**~~{executive director}~~. Except as provided in subsection (2) of this section, and subsection (1) of KRS 304.33-230, no delinquency proceeding shall be commenced under this subtitle by anyone other than the **commissioner**~~{executive director}~~ and no court shall have jurisdiction to entertain, hear or determine any proceeding commenced by any other person.
- (2) Action by judgment creditors:
- (a) The judgment creditors of three (3) or more unrelated judgments may commence proceedings under the conditions and in the manner prescribed in this subsection, by serving notice upon the **commissioner**~~{executive director}~~ and the insurer of intention to file a petition for liquidation under KRS 304.33-190 or 304.33-520. Each of the judgments must:
1. Have been rendered against the insurer by a court in this state having jurisdiction over the subject matter and the insurer;
 2. Have been entered more than sixty (60) days before the service of notice;
 3. Not have been paid in full;
 4. Not be the subject of a valid contract between the insurer and any judgment creditor for payment of the judgment, unless the contract has been breached by the insurer; and
 5. Not be a judgment on which an appeal or review is pending.
- (b) If any one (1) of the judgments in favor of a petitioning creditor remains unpaid for thirty (30) days after service of the notice, and the **commissioner**~~{executive director}~~ has not then filed a petition for liquidation, the creditor may file in the name of the **commissioner**~~{executive director}~~ a verified petition for liquidation of the insurer under KRS 304.33-190 or 304.33-520 alleging the conditions stated in this subsection. The **commissioner**~~{executive director}~~ shall be served and joined in the action.
- (3) Exclusiveness of proceedings.
- (a) The court shall have exclusive jurisdiction to entertain, hear, or determine all matters in any way relating to any delinquency proceeding under this subtitle, including, but not limited to, all disputes involving purported assets of the insurer.
- (b) Notwithstanding the provisions of paragraph (a) of this subsection, the court may authorize the receiver to seek injunctive or other appropriate relief from other courts, either within or without this state, if, in the opinion of the court, this action will be an aid to any delinquency proceeding.
- (c) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this subtitle. No provisions in this subtitle shall be construed to preclude the court from, on

its own motion, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules or to prevent an abuse of process.

- (4) Change of venue. Venue for proceedings arising under this subtitle shall be laid initially as specified in the sections providing for such proceedings. All other actions and proceedings initiated by the receiver may be commenced and tried where the delinquency proceedings are then pending, or where venue would be laid by KRS Chapter 452 or other applicable law. All other actions and proceedings against the receiver shall be commenced and tried in the county where the delinquency proceedings are pending. At any time upon motion of any party, venue may be changed by order of the court or the presiding judge thereof to any other Circuit Court in this state, as the convenience of the parties and witnesses and the ends of justice may require. This subsection relates only to venue and is not jurisdictional.
- (5) Personal jurisdiction, grounds for. In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter shall have jurisdiction over a person served in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:
 - (a) If the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any action on or incident to the obligation;
 - (b) If the person served is a reinsurer who has at any time issued a contract of reinsurance to an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract;
 - (c) If the person served is or has been an officer, manager, trustee, organizer, promoter or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from the relationship with the insurer;
 - (d) If the person served is or was at the time of the institution of the delinquency proceedings holding assets in which the receiver claims an interest on behalf of the insurer;
 - (e) If the person served has filed a claim against the insurer under the provisions of KRS 304.33-360;
 - (f) If the person served is otherwise amenable to the exercise of personal jurisdiction by the courts of this state under the provisions of the due process clause of the Fourteenth Amendment to the United States Constitution; or
 - (g) If the person served is obligated to the insurer in any way in any action on or incident to the obligation.
- (6) Service of process.
 - (a) If personal jurisdiction is authorized by this section, service of process may be made on the person, or any agent of the person, in the county of this state where he *or she* may be found, or on the Secretary of State who, for this purpose, shall be deemed to be the statutory agent of the person.
 - (b) The clerk of the court in which the action is brought shall issue a summons against the defendant named in the complaint. The clerk shall execute the summons by sending by certified mail a true copy to the Secretary of State and shall also mail with the summons an attested copy of the complaint. The Secretary of State shall, within seven (7) days of receipt thereof in his *or her* office, mail the copy of the summons and complaint to the defendant at the address given in the complaint. The letter shall be posted by certified mail, return receipt requested, and shall bear the return address of the Secretary of State. The clerk shall make the usual return to the court, and, in addition, the Secretary of State shall make a return to the court showing that the acts contemplated by this statute have been performed, and shall attach to his *or her* return the registry receipt, if any. Summons shall be deemed to be served upon the return of the Secretary of State and the action shall proceed as provided in the Rules of Civil Procedure.
 - (c) The clerk mailing the summons to the Secretary of State shall mail to him *or her*, at the same time, a fee of ten dollars (\$10), which shall be taxed as costs in the action.
- (7) Forum non conveniens. If the court on motion of any party finds that any action commenced under subsection (5) of this section should as a matter of substantial justice be tried in a forum outside this state, the court may enter an order to stay further proceedings on the action in this state.

➔Section 1431. KRS 304.33-070 is amended to read as follows:

- (1) Duty to cooperate. Any officer, manager, trustee or agent of any insurer, and any other person with executive authority over or in charge of any segment of the insurer's affairs or in possession of property to which the **commissioner**~~[executive director]~~ has a claim shall cooperate with the **commissioner**~~[executive director]~~, or anyone acting on behalf of the **commissioner**~~[executive director]~~, in any delinquency proceeding. "To cooperate" includes, but is not limited to, the following:
 - (a) To reply promptly in writing to any inquiry from the **commissioner**~~[executive director]~~ requesting such a reply; and
 - (b) To make available and deliver to the **commissioner**~~[executive director]~~ any books, accounts, documents, or other records, or information or property of or pertaining to the insurer and in his **or her** possession, custody or control.
- (2) Duty not to obstruct. No person shall obstruct or interfere with the **commissioner**~~[executive director]~~ in the conduct of any delinquency proceeding.
- (3) Any person who fails to cooperate with or obstructs the efforts of the **commissioner**~~[executive director]~~ in the conduct of any delinquency proceeding shall have denied any claims the person has filed pursuant to KRS 304.33-360 and shall also be subject to such other sanctions as the court may impose.
- (4) Right to defend. This section shall not render it illegal to resist by legal proceedings the petition for liquidation or other delinquency proceedings, or other orders.

➔Section 1432. KRS 304.33-080 is amended to read as follows:

In any proceeding under this subtitle the **commissioner**~~[executive director]~~ and his **or her** deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may at any time require an additional bond from the **commissioner**~~[executive director]~~ or his **or her** deputies.

➔Section 1433. KRS 304.33-100 is amended to read as follows:

Every proceeding commenced before June 18, 1970, is deemed to have commenced under this subtitle for the purpose of conducting the proceeding thereafter, except that in the discretion of the **commissioner**~~[executive director]~~ the proceeding may be continued, in whole or in part, as it would have been continued had this subtitle not been enacted.

➔Section 1434. KRS 304.33-105 is amended to read as follows:

Every proceeding heretofore commenced under the laws in effect before July 13, 1990, shall be deemed to have commenced under this subtitle for the purpose of conducting the proceeding henceforth, except that in the discretion of the **commissioner**~~[executive director]~~ the proceeding may be continued, in whole or in part, as it would have been continued had this subtitle not been enacted.

➔Section 1435. KRS 304.33-110 is amended to read as follows:

- (1) Whenever the **commissioner**~~[executive director]~~ has reasonable cause to believe, and determines that any insurer has committed or engaged in, or is committing or engaging in or is about to commit or engage in any act, practice, or transaction that would subject it to formal delinquency proceedings under this subtitle, **the commissioner**~~[he]~~ may make and serve upon the insurer and any other persons involved an emergency order in accordance with KRS 13B.125, other than seizure orders under KRS 304.33-120, as is reasonably necessary to correct, eliminate, or remedy the conduct, condition, or ground. If the emergency order is for a restoration of or addition to capital, it shall be carried out as provided in KRS 304.24-350.
- (2) The **commissioner**~~[executive director]~~ may apply for and any court of general jurisdiction may grant, restraining orders, temporary and permanent injunctions, and other orders as are deemed necessary to enforce an emergency order.

➔Section 1436. KRS 304.33-115 is amended to read as follows:

The **commissioner**~~[executive director]~~, **the commissioner's**~~[his]~~ special deputies, and all others appointed to act on **the commissioner's**~~[his]~~ behalf in connection with any delinquency proceedings under this subtitle shall not be liable for any acts or omissions done in good faith and within the scope of their authority during the course of the

delinquency proceedings, including, but not limited to, the settlement of disputed claims, and shall be immune from any civil or criminal liability that might otherwise be incurred or imposed based upon the acts or omissions.

➔Section 1437. KRS 304.33-120 is amended to read as follows:

- (1) Issuance. Upon the filing by the **commissioner**~~{executive director}~~ in any Circuit Court in this state of a verified petition alleging any ground that would justify a court order for a formal delinquency proceeding against an insurer under this subtitle and that the interests of policyholders or creditors will be endangered by delay, and setting out the order deemed necessary by the **commissioner**~~{executive director}~~, the court may issue forthwith, ex parte and without a hearing, the requested order which may (a) direct the **commissioner**~~{executive director}~~ to take possession and control of all or a part of the property, books, accounts, documents and other records of an insurer and of the premises occupied by it for the transaction of its business, and (b) until further order of the court, enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from transaction of its business except with the written consent of the **commissioner**~~{executive director}~~.
- (2) Duration. The court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the **commissioner**~~{executive director}~~ to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten or modify the terms of the seizure order. The court shall vacate the seizure order if the **commissioner**~~{executive director}~~ fails to commence a formal proceeding under this subtitle after having had a reasonable opportunity to do so. The issuance of an order of the court pursuant to a formal proceeding under this subtitle vacates the seizure order.
- (3) Anticipatory breach. Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

➔Section 1438. KRS 304.33-130 is amended to read as follows:

- (1) Confidentiality of **commissioner's**~~{executive director's}~~ hearings. The **commissioner**~~{executive director}~~ shall hold all hearings in summary proceedings privately unless the insurer requests a public hearing, in which case the hearing shall be public.
- (2) Confidentiality of court hearings. The court may hold all hearings in summary proceedings and judicial reviews thereof privately in chambers, and shall do so on request of the insurer proceeded against.
- (3) Records. In all summary proceedings and judicial reviews thereof, all records of the company, other documents, and all **Department**~~{Office}~~ of Insurance files and court records and papers, so far as they pertain to or are a part of the record of the summary proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless the court, after hearing arguments from the parties in chambers, shall order otherwise, or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the court shall be held by him **or her** in a confidential file.
- (4) Parties. If at any time it appears to the court that any person whose interest is or will be substantially affected by an order did not appear at the hearing and has not been served, the court may order that notice be given and the proceedings be adjourned to give him **or her** opportunity to appear on such terms as may be just.

➔Section 1439. KRS 304.33-140 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may apply by verified petition to the court for an order directing **the commissioner**~~{him}~~ to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one (1) or more of the following grounds:
 - (a) Any ground on which **the commissioner**~~{he}~~ may apply for an order of liquidation under KRS 304.33-190, whenever **the commissioner**~~{he}~~ believes that the insurer may be successfully rehabilitated without substantial increase in the risk of loss to creditors of the insurer or to the public.
 - (b) That the **commissioner**~~{executive director}~~ has reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer, that if established would endanger assets in an amount threatening the solvency of the insurer.
 - (c) That any one (1) of the following circumstances has occurred and the **commissioner**~~{executive director}~~ has reasonable cause to believe that the insurer is insolvent or that assets are endangered in an amount threatening the solvency of the insurer:

1. That information coming into the **commissioner's**~~{executive director's}~~ possession has disclosed substantial and not adequately explained discrepancies between the insurer's records and the most recent annual report or other official company reports;
 2. That the insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found by the **commissioner**~~{executive director}~~ after notice and hearing to be dishonest or untrustworthy in a way affecting the insurer's business;
 3. That control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in one (1) or more persons found by the **commissioner**~~{executive director}~~ after notice and hearing to be dishonest or untrustworthy;
 4. That any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, has refused to be examined under oath by the **commissioner**~~{executive director}~~ concerning its affairs, whether in this state or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and status of the person and all his *or her* influence on management;
 5. That the insurer has refused to submit its books, accounts, documents, or other records to the reasonable examination or inspection of the **commissioner**~~{executive director}~~ or *the commissioner's*~~{his}~~ authorized representative.
- (d) That the insurer is or is about to become insolvent.
 - (e) That the insurer is engaging in a systematic practice of reaching settlements with and obtaining releases from policyholders or third-party claimants and then unreasonably delaying payment of or failing to pay the agreed upon settlements.
 - (f) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.
 - (g) That within the previous twelve (12) months the insurer has systematically attempted to compromise with its creditors on the ground that it is financially unable to pay its claims in full.
 - (h) That without first obtaining the written consent of the **commissioner**~~{executive director}~~, the insurer has transferred, or attempted to transfer, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.
 - (i) That the insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under this subtitle, and that such appointment has been made or is imminent, and that such appointment might oust the courts of this state of jurisdiction or prejudice orderly delinquency proceedings under this subtitle.
 - (j) That within the previous year the insurer has willfully violated its charter or articles of incorporation or any insurance law or regulation of this state, or having become aware within the previous year of an unintentional violation has failed to take all reasonable steps to remedy the situation resulting from the violation and to prevent future violations.
 - (k) That the directors of the insurer are deadlocked in the management of the insurer's affairs and that the members or shareholders are unable to break the deadlock and that irreparable injury to the insurer, its creditors or its policyholders is threatened by reason thereof.
 - (l) That the insurer has failed to file its annual report or other report within the time allowed by law, and after written demand by the **commissioner**~~{executive director}~~ has failed to give an adequate explanation immediately.
 - (m) That two-thirds (2/3) of the board of directors, or the holders of a majority of the shares entitled to vote, or a majority of members or policyholders of an insurer subject to control by its members or policyholders, consent to rehabilitation under this subtitle.

- (2) Upon the issuance of an order directing the **commissioner**~~{executive director}~~ to rehabilitate a domestic insurer, the court shall have exclusive jurisdiction over all matters relating to the rehabilitation, including, but not limited to, the proper scope and application of the provisions of this subtitle to the rehabilitation as well as all interpretation and enforceability of all contracts of insurance to which the insurer is a party.

➔Section 1440. KRS 304.33-150 is amended to read as follows:

- (1) Appointment of rehabilitator. An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the **commissioner**~~{executive director}~~ and his **or her** successors in office rehabilitator and shall direct the rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the orders of the court. The filing or recording of the order with any county clerk in the state shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that county clerk.
- (2) Any order issued under this section shall require accountings to the court by the rehabilitator. Accountings shall be at such intervals as the court specifies in its order, but no less frequently than semiannually. Each accounting shall include a report concerning the rehabilitator's opinion as to the likelihood that a plan under KRS 304.33-160(5) will be prepared by the rehabilitator and the timetable for doing so.
- (3) Anticipatory breach. Entry of an order of rehabilitation shall not constitute an anticipatory breach of any contracts of the insurer, and it shall not be grounds for revocation or cancellation of any contracts of the insurer.

➔Section 1441. KRS 304.33-160 is amended to read as follows:

- (1) Special deputy~~{director}~~. The **commissioner**~~{executive director}~~ as rehabilitator shall appoint one (1) or more special deputies, who are active or retired senior executives from a successful insurer, and who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the **commissioner**~~{executive director}~~ may employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the **commissioner**~~{executive director}~~, with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the **commissioner**~~{executive director}~~. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the **commissioner**~~{executive director}~~ may advance the costs so incurred out of any appropriation for the maintenance of the **Department**~~{Office}~~ of Insurance. Any amounts so advanced for expenses of administration shall be repaid to the **commissioner**~~{executive director}~~ for the use of the **Department**~~{Office}~~ of Insurance out of the first available money of the insurer.
- (2) General power. The rehabilitator may take action as he **or she** deems necessary or appropriate to reform and revitalize the insurer. He **or she** shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He **or she** shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.
- (3) Advice from experts. The rehabilitator may consult with and obtain formal or informal advice and aid of insurance experts.
- (4) Pursuit of insurer's claims against insiders. If the rehabilitator finds that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, employee, or other person, he **or she** may pursue all appropriate legal remedies on behalf of the insurer.
- (5) Reorganization plan. The rehabilitator may prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer. Upon application of the rehabilitator for approval of the plan, and after the notice and hearing as the court prescribes, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. If it is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the equities of policyholders of the insurer, if all rights of shareholders are first extinguished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights upon policies, for such period and to such an extent as are necessary.
- (6) Fraudulent transfers. The rehabilitator shall have the power to avoid fraudulent transfers under KRS 304.33-290 and 304.33-300.

➔Section 1442. KRS 304.33-190 is amended to read as follows:

- (1) The **commissioner**~~executive director~~ may apply by petition to the Circuit Court for Franklin County or for the county in which the principal office of the insurer is located for an order directing him *or her* to liquidate a domestic insurer or an alien insurer domiciled in this state on any one (1) or more of the following grounds:
- (a) Any ground on which *the commissioner*~~he~~ may apply for an order of rehabilitation under KRS 304.33-140, whenever he *or she* believes that attempts to rehabilitate the insurer would substantially increase the risk of loss to its creditors, its policyholders or the public, or would be futile, or that rehabilitators would serve no useful purpose;
 - (b) That the insurer has commenced, or within the previous year has attempted to commence, voluntary liquidation otherwise than under the insurance laws of this state;
 - (c) That the holders of two-thirds (2/3) of the shares entitled to vote, or two-thirds (2/3) of the members or policyholders entitled to vote in an insurer controlled by its members or policyholders, have consented to a petition.
- (2) Upon the issuance of an order directing the **commissioner**~~executive director~~ to liquidate a domestic insurer, the court shall have exclusive jurisdiction over all matters relating to the liquidation, including, but not limited to, the proper scope and application of the provisions of this subtitle to the liquidation as well as all interpretation and enforceability of all contracts of insurance to which the insurer is a party.

➔Section 1443. KRS 304.33-200 is amended to read as follows:

- (1) Order to liquidate. An order to liquidate the business of a domestic insurer shall appoint the **commissioner**~~executive director~~ and his *or her* successors in office liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the orders of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the date of the filing of the petition for liquidation. He *or she* may recover and reduce the same to possession except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are prescribed in subsection (3) of KRS 304.33-540 for ancillary receivers appointed in this state as to assets located in this state. The filing or recording of the order with any county clerk in this state shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that county clerk.
- (2) Fixing of rights.
 - (a) Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate are fixed as of the date of filing of the petition for liquidation, except as provided in KRS 304.33-210 and 304.33-380.
 - (b) Entry of an order of liquidation shall not constitute an anticipatory breach of any contracts of the insurer, and it shall not be grounds for rescission, revocation, or cancellation of any contracts of the insurer in force as of the date of liquidation, except as provided in KRS 304.33-210.
- (3) Alien insurer. An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included under the order.
- (4) Declaration of insolvency. At the time of petitioning for an order of liquidation, or at any time thereafter, the **commissioner**~~executive director~~ may petition the court to declare the insurer insolvent, and after such notice and hearing as it deems proper, the court may make the declaration.

➔Section 1444. KRS 304.33-220 is amended to read as follows:

The **commissioner**~~executive director~~ may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time *the commissioner* ~~he~~ applies for a liquidation order. If the court issues a liquidation order, it also shall order dissolution if the **commissioner**~~executive director~~ has petitioned for it. The court shall order dissolution of the corporation upon petition by the **commissioner**~~executive director~~ at any time after a liquidation order has been granted. If the dissolution has not previously occurred, it shall be effected by operation of law upon the discharge of the liquidator.

➔Section 1445. KRS 304.33-230 is amended to read as follows:

- (1) Petition for federal receiver. Whenever in the *commissioner's*~~executive director's~~ opinion, liquidation of a domestic insurer or an alien insurer domiciled in this state would be facilitated by a federal receivership, and when any ground exists upon which the *commissioner*~~executive director~~ might petition the court for an order of rehabilitation or liquidation under KRS 304.33-140 or 304.33-190, or if an order of rehabilitation or liquidation has already been entered, the *commissioner*~~executive director~~ may request the *insurance* commissioner or other willing resident of another state to petition any appropriate federal District Court for the appointment of a federal receiver. The *commissioner*~~executive director~~ may intervene in any such action to support or oppose the petition, and may accept appointment as the receiver if he *or she* is so designated. So much of this subtitle shall apply to the receivership as can be made applicable and is appropriate. Upon motion of the *commissioner*~~executive director~~, the courts of this state shall relinquish all jurisdiction over the insurer for purposes of rehabilitation or liquidation.
- (2) Compliance with federal requirements. If the *commissioner*~~executive director~~ is appointed receiver under this section, he *or she* shall comply with any requirements necessary to give him *or her* title to and control over the assets and affairs of the insurer.

➔Section 1446. KRS 304.33-240 is amended to read as follows:

The liquidator shall report to the court monthly, or at other intervals specified by the court, on the progress of the liquidation in whatever detail the court orders. The liquidator may:

- (1) Appoint a special deputy to act for him *or her* under this subtitle, and, subject to the court's approval, determine his *or her* compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.
- (2) Appoint or engage employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel he *or she* deems necessary to assist in the liquidation.
- (3) Fix the compensation of persons under subsection (2) of this section, subject to the control of the court.
- (4) Defray all expenses of taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the liquidator may advance the costs so incurred out of any available appropriation. Any amounts so paid shall be deemed expense of administration and shall be repaid for the credit of the *Department*~~Office~~ of Insurance out of the first available moneys of the insurer.
- (5) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to his *or her* testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, record, or other documents which he *or she* deems relevant to the inquiry.
- (6) Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose institute timely action in other jurisdictions to marshal the assets of the insurer; forestall garnishment and attachment proceedings against such debts; do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including sell, compound, compromise or assign for purposes of collection, subject to court approval and upon such terms and conditions as *the liquidator*~~he~~ deems best, any disputed claims; and pursue any creditor's remedies available to enforce his *or her* claims. In lieu of collecting funds representing unearned premium of a policyholder which are in the possession of the insurer's agent with respect to the kinds of direct insurance protected under KRS 304.36-030, the liquidator may authorize the use of such funds to replace the insurance coverage terminated pursuant to KRS 304.33-210, upon receipt from the agent of appropriate notice of such replacement of the insurance coverage with an insurer within sixty (60) days after the date of the liquidation order.
- (7) Audit the books and records of all agents of the insurer insofar as these records relate to the business activities of the insurer.
- (8) Conduct public and private sales of the property of the insurer in a manner prescribed by the court.
- (9) Use assets of the estate to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under KRS 304.33-430.
- (10) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable, except that no transaction involving property the market value of which exceeds ten thousand dollars (\$10,000)

shall be concluded without express permission of the court. **The liquidator**~~[He]~~ also may execute, acknowledge, and deliver any deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation. In cases where real property sold by the liquidator is located other than in the county where the liquidation is pending, the liquidator shall cause to be filed with the county clerk for the county in which the property is located a certified copy of the order appointing him *or her*.

- (11) Borrow money, subject to court approval, on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.
- (12) Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.
- (13) Continue to prosecute and institute in the name of the insurer or in his *or her* own name any suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he *or she* deems unprofitable to pursue further. If the insurer is dissolved under KRS 304.33-220, he *or she* may apply to any court in this state or elsewhere for leave to substitute himself *or herself* for the insurer as plaintiff.
- (14) Prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person.
- (15) Remove any records and property of the insurer to the offices of the **commissioner**~~[executive director]~~ or to such other place as is convenient for the purposes of efficient and orderly execution of the liquidation.
- (16) Deposit in one (1) or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions.
- (17) File any necessary documents for record in the office of any county clerk or record office in this state or elsewhere where property of the insurer is located.
- (18) Assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition for liquidation has been filed shall not bind the liquidator.
- (19) Exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by law and that is not included within KRS 304.33-290 to 304.33-310, inclusive.
- (20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.
- (21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.
- (22) Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with this subtitle.
- (23) The enumeration in this section of the powers and authority of the liquidator is not a limitation upon him *or her*, nor does it exclude his *or her* right to do such other acts not herein specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.

➔Section 1447. KRS 304.33-250 is amended to read as follows:

- (1) (a) Notice required; General requirements. The liquidator shall give notice of the liquidation order as soon as possible by first-class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is licensed to do business, by first-class mail and by telephone to the **commissioner**~~[executive director]~~ of the **Department**~~[Office]~~ of Workers' Claims of this state if the insurer is or has been an insurer of workers' compensation, by first-class mail to all insurance agents having a duty under KRS 304.33-260, and by first-class mail at the last known address to all persons known or reasonably expected to have claims against the insurer, including all policyholders. He *or she* also shall publish a notice, under KRS Chapter 424, in a newspaper of general circulation in the county in which the liquidation is pending and in Franklin County, the last publication to be not less than three (3) months before the earliest deadline specified in the notice under subsection (2) of this section;

- (b) Special requirements. Notice to agents shall inform them of their duties under KRS 304.33-260 and inform them what information they must communicate to insureds. Notice to policyholders shall include notice of impairment and termination of coverage under KRS 304.33-210. When it is applicable, notice to policyholders shall include:
1. Notice of withdrawal of the insurer from the defense of any case in which the insured is interested; and
 2. Notice of the right to file a claim under subsection (2) of KRS 304.33-390;
- (c) Notice under subsection (1)(a) of this section to agents of the insurer and to potential claimants who are policyholders or insureds shall include, where applicable, notice that guaranty association or foreign guaranty association coverage may be available for all or part of certain claims, and that policyholders or certificate holders may be entitled to continuation of coverage through the guaranty association. The notice shall also include as an insert a separate notice from any guaranty association or foreign guaranty association obligated to provide coverage, if the notice is made available to the liquidator on a timely basis;
- (d) Reports and further notice. Within fifteen (15) days of the date of entry of the order, the liquidator shall report to the court what notice has been given. The court may order such additional notice as it deems appropriate.
- (2) Notice respecting claims filing. Except as otherwise established by the liquidator with approval of the court, notice to potential claimants under subsection (1) of this section shall require claimants to file with the liquidator their claims together with proper proofs thereof under KRS 304.33-370, on or before a date the liquidator specifies in the notice, which shall be not less than six (6) months nor more than a reasonable time specified in the court's order, except that the liquidator need not require persons claiming unearned premium and persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. The liquidator may specify different dates for the filing of different kinds of claims.
- (3) Notice conclusive. If notice is given in accordance with this section, all persons to whom this notice is directed shall be bound by the terms and provisions of the liquidation order and all further orders and notices similarly served on them, and the distribution of the assets of the insurer under this subtitle shall be conclusive with respect to all claimants, whether or not they received notice.
- ➔Section 1448. KRS 304.33-270 is amended to read as follows:
- (1) Termination of actions against insurer by order appointing liquidator. Upon issuance of any order appointing the **commissioner**~~executive director~~ liquidator of a domestic insurer or of an alien insurer domiciled in this state, no actions may be instituted against the insurer or the liquidator without approval of the court and all actions and all proceedings against the insurer whether in this state or elsewhere shall be abated and the liquidator shall not intervene in them, except as provided in this subsection. Whenever in the liquidator's judgment an action in this state has proceeded to a point where fairness or convenience would be served by its continuation to judgment, he **or she** may apply to the court for leave to defend or to be substituted for the insurer, and if the court gives him **or her** leave, the action shall not be abated. Whenever in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, with approval of the court **the liquidator**~~he~~ may intervene in the action. The liquidator may defend any action in which he **or she** intervenes under this section at the expense of the estate of the insurer.
- (2) Statute of limitations on claims by insurer. The liquidator may, within two (2) years subsequent to the entry of an order for liquidation or within such further time as applicable law permits, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim or for filing any claim, proof of claim, proof of loss, demand, notice or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading or doing any act, and where in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the insurer, within a period of sixty (60) days subsequent to the entry of an order for liquidation, or within such further period as is permitted by the agreement, or in the proceeding or by

applicable law, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

- (3) Statutes of limitations on claims against insurer. The time between the filing of a petition for liquidation against an insurer and the denial of the petition shall not be considered to be a part of the time within which any action may be commenced against the insurer. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty (60) days after the petition is denied.

➔Section 1449. KRS 304.33-300 is amended to read as follows:

- (1) Effect of petition: real property. After a petition for rehabilitation or liquidation, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The recording of a copy of the petition for or order of rehabilitation or liquidation with the county clerk in the county where any real property in question is located shall be constructive notice of the commencement of a proceeding in rehabilitation or liquidation. The exercise by a court of the United States or any state of jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.
- (2) Effect of petition: personal property. After a petition for rehabilitation or liquidation and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:
- (a) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred.
- (b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon his *or her* order, with the same effect as if the petition were not pending.
- (c) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith unless he *or she* has reasonable cause to believe that the petition is not well founded.
- (d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or in behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.
- (3) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under this section shall be personally liable therefor and shall be bound to account to the liquidator.
- (4) Negotiability. Nothing in this subtitle shall impair the negotiability of currency or negotiable instruments.

➔Section 1450. KRS 304.33-460 is amended to read as follows:

- (1) Unclaimed funds. All unclaimed funds subject to distribution remaining in the liquidator's hands when *the liquidator*~~he~~ is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member or other person who is unknown or cannot be found or who is under disability with no person legally competent to receive his *or her* distributive share, shall be deposited with the State Treasurer, and shall be paid over without interest except in accordance with KRS 304.33-430 to the person entitled thereto or his *or her* legal representative upon proof satisfactory to the State Treasurer of his *or her* right thereto. Any amount on deposit not claimed within six (6) years from the discharge of the liquidator is deemed abandoned and shall become property of the state. The State Treasurer shall at the end of each fiscal year transfer these amounts to the common school fund.
- (2) Withheld funds. All funds withheld under KRS 304.33-390 and not distributed shall upon discharge of the liquidator be deposited with the State Treasurer and paid by him *or her* in accordance with KRS 304.33-390. Any sums remaining which under KRS 304.33-390 would revert to the undistributed assets of the insurer shall be transferred to the State Treasurer and become the property of the state under subsection (1) of this section unless the *commissioner*~~executive director~~ petitions the court to reopen the liquidation under KRS 304.33-480.

➔Section 1451. KRS 304.33-480 is amended to read as follows:

After the liquidation proceeding has been terminated and the liquidator discharged, the **commissioner**~~[executive director]~~ or other interested party may at any time petition the court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

➔Section 1452. KRS 304.33-490 is amended to read as follows:

Whenever it appears to the **commissioner**~~[executive director]~~ that the records of any insurer in process of liquidation or completely liquidated are no longer useful, **the commissioner**~~[he]~~ may recommend to the court what records should be retained for future reference and what should be disposed of. The court shall enter an order thereon. The **commissioner**~~[executive director]~~ shall keep all records the court orders preserved, in accordance with KRS 304.2-150.

➔Section 1453. KRS 304.33-500 is amended to read as follows:

The court in which the proceeding is pending may as it deems desirable, cause audits to be made of the books of the **commissioner**~~[executive director]~~ relating to any receivership established under this subtitle, and a report of each audit shall be filed with the **commissioner**~~[executive director]~~ and with the court. The books, records and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

➔Section 1454. KRS 304.33-510 is amended to read as follows:

- (1) Grounds for petition. If a domiciliary liquidator has not been appointed, the **commissioner**~~[executive director]~~ may apply to the Franklin Circuit Court by petition for an order directing him **or her** to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one (1) or more of the following grounds:
 - (a) Any of the grounds in KRS 304.33-140;
 - (b) Any of the grounds in KRS 304.33-190;
 - (c) That any of its property has been sequestered by official action in its domiciliary state, or in any other state;
 - (d) That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;
 - (e) That
 1. Its certificate of authority to do business in this state has been revoked or that none was ever issued, and
 2. There are residents of this state with outstanding claims or outstanding policies.
- (2) Terms of order. The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with any county clerk in this state imparts the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that county clerk.
- (3) Transformation to liquidation or ancillary receivership. The conservator may at any time petition for and the court may grant an order under KRS 304.33-520 to liquidate the assets of a foreign or alien insurer under conservation or, if appropriate, for an order under KRS 304.33-540 to be appointed ancillary receiver.
- (4) Order to return to insurer. The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon its own motion.

➔Section 1455. KRS 304.33-520 is amended to read as follows:

- (1) Ground for petition. If no domiciliary receiver has been appointed, the **commissioner**~~[executive director]~~ may apply to the Franklin Circuit Court by petition for an order directing **the commissioner**~~[him]~~ to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:
 - (a) Any of the grounds in KRS 304.33-140;

- (b) Any of the grounds in KRS 304.33-190;
 - (c) Any of the grounds in KRS 304.33-510.
- (2) Terms of order. If it appears to the court that the best interests of creditors, policyholders and the public so require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with any county clerk in this state imparts the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that county clerk.
 - (3) Conversion to ancillary proceeding. If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under KRS 304.33-540. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under KRS 304.33-540.
 - (4) Federal receivership. On the same grounds as are specified in subsection (1) of this section, the **commissioner**~~executive director~~ may petition any appropriate federal District Court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction; or any lesser part thereof that the **commissioner**~~executive director~~ deems desirable for the protection of the policyholders and creditors in this state. The **commissioner**~~executive director~~ may accept appointment as federal receiver if another person files a petition.

➔Section 1456. KRS 304.33-530 is amended to read as follows:

- (1) Property rights and title: reciprocal state. The domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state; otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts and other records of the insurer located in this state. **The domiciliary liquidator**~~He~~ also shall have the right to recover the other assets of the insurer located in this state, subject to subsection (3) of KRS 304.33-540.
- (2) Property rights and title: state not a reciprocal state. If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the **commissioner**~~executive director~~ of this state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domiciling state. The **commissioner**~~executive director~~ of this state may petition for a conservation or liquidation order under KRS 304.33-510 or 304.33-520, or for an ancillary receivership under KRS 304.33-540, or after approval by the Franklin County Circuit Court, may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.
- (3) Filing claims. Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

➔Section 1457. KRS 304.33-540 is amended to read as follows:

- (1) Appointment of ancillary receiver in this state. If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the **commissioner**~~executive director~~ shall file a petition with the Franklin Circuit Court requesting appointment as ancillary receiver in this state:
 - (a) If **the commissioner**~~he~~ finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;
 - (b) If ten (10) or more persons resident in this state having claims against the insurer file a petition with the **commissioner**~~executive director~~ requesting appointment of an ancillary receiver; or
 - (c) If the protection of creditors or policyholders in this state so requires.

- (2) Terms of order. The court may issue an order appointing an ancillary receiver in whatever terms it deems appropriate. The filing or recording of the order with any county clerk in this state imparts the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that county clerk.
- (3) Property rights and title: ancillary receivers in this state. When a domiciliary liquidator has been appointed in a reciprocal state the ancillary receiver appointed in this state under subsection (1) of this section shall have the sole right to recover all the assets of the insurer in this state not already recovered by the domiciliary liquidator, except that the domiciliary liquidator shall be entitled to and have the sole right to recover balances due from agents and the books, accounts and other records of the insurer. The ancillary receiver shall have the right to recover balances due from agents and books, accounts and other records of the insurer, if such action is necessary to protect the assets because of inaction by the domiciliary liquidator. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. **The ancillary receiver**~~[He]~~ shall promptly transfer all remaining assets to the domiciliary liquidator. Subject to this section, the ancillary receiver and his **or her** deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.
- (4) Property rights and title: foreign ancillary receivers. When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts and other records located in their respective states, corresponding rights and powers to those prescribed in subsection (3) of this section for ancillary receivers appointed in this state.

➔Section 1458. KRS 304.33-550 is amended to read as follows:

The **commissioner**~~[executive director]~~ in his **or her** sole discretion may institute proceedings under KRS 304.33-110 or 304.33-120 at the request of the commissioner or other appropriate official of the domiciliary state of any foreign or alien insurer having property located in this state.

➔Section 1459. KRS 304.35-010 is amended to read as follows:

- (1) As used in this subtitle:
 - (a) "Casualty insurance" has the meaning set forth in KRS 304.5-070; and
 - (b) "Property insurance" has the meaning set forth in KRS 304.5-050.
- (2) All insurers licensed to write property or casualty insurance in this Commonwealth on a direct basis shall, subject to approval and regulation by the **commissioner**~~[executive director]~~ of insurance, establish and maintain a "FAIR" (fair access to insurance requirements) plan and establish and maintain a reinsurance association and formulate and from time to time amend the plan and articles of association and rules and regulations in connection therewith, and assess and share on a fair and equitable basis all expenses, income, and losses incident to such "FAIR" plan and reinsurance association in a manner consistent with the provisions of this subtitle.

➔Section 1460. KRS 304.35-030 is amended to read as follows:

- (1) The "FAIR" plan and articles of association shall make provision for a reinsurance association having authority on behalf of its members as their agent to cause to be issued property and casualty insurance policies, to reinsure in whole or in part any such policies, and to cede any such reinsurance. The plan and articles of association shall provide, among other things, for the lines of business to be written, policy forms to be used, perils to be covered, geographical area of coverage, compensation and commissions, assessments of members (which assessments annually shall not exceed one percent (1%) of any such member's net direct premium written on a voluntary basis in this state during the preceding year), participation in the writings, expenses, income, and losses in the proportion each member's property and casualty premiums written bear to the aggregate property and casualty premiums voluntarily written by all members, the administration of the plan and association, and any other matter necessary or convenient for the purpose of assuring fair access to insurance requirements.
- (2) If the **commissioner**~~[executive director]~~, in the fulfillment of the duties imposed on him **or her** by KRS 304.13-041, determines that a reasonable degree of competition does not exist in the market for any lines of insurance, within the definitions of KRS 304.5-050 (property insurance) and KRS 304.5-070 (casualty insurance), or either of them, and issues an order to that effect, the **commissioner**~~[executive director]~~ shall order the governing committee to promptly amend the plan to include such line or lines of business unless, in

the *commissioner's*~~{executive director's}~~ opinion, an effective residual market mechanism as defined in KRS 304.13-011(8) is already then functioning to provide basic insurance requirements to worthy applicants for reasonable amounts of coverage under such line or lines of insurance with insurers licensed to do business in this state. For accounting and rate-making purposes, the *commissioner*~~{executive director}~~ may require the plan to provide for the establishment and maintenance of separate accounts for any line included in the plan pursuant to this section.

➔Section 1461. KRS 304.35-040 is amended to read as follows:

- (1) The Reinsurance Association shall be governed by a committee consisting of seven (7) persons to be appointed by the *commissioner*~~{executive director}~~ of insurance. The *commissioner*~~{executive director}~~ shall appoint two (2) persons representing insurers chartered under the laws of the Commonwealth of Kentucky, one (1) person representing an insurer that is neither chartered under the laws of the Commonwealth of Kentucky nor affiliated with one (1) of the national insurance trade associations, one (1) person representing an insurer from each of the following three (3) associations: American Insurance Association, National Association of Mutual Insurance Companies, the Property Casualty Insurers Association of America, and one (1) licensed insurance agent.
- (2) The "FAIR" plan shall maintain a formulated plan and articles consistent with this subtitle. The governing committee of the association may, on its own initiative or shall at the request of the *commissioner*~~{executive director}~~, amend the plan and articles, subject to approval by the *commissioner*~~{executive director}~~.
- (3) The governing committee of the association shall, on or before April 1 of each year, file with the *commissioner*~~{executive director}~~, on such forms as the *commissioner*~~{executive director}~~ requires, an accounting of the plan's operations during the preceding calendar year together with its financial condition, and its underwriting experience as to each separate account maintained therein, as of the end of such year. The *commissioner*~~{executive director}~~ may require interim accountings on a quarterly basis or examine the affairs of the association when, in his *or her* opinion, such action is necessary to determine the continued solvency of the Reinsurance Association.
- (4) If at any time the *commissioner*~~{executive director}~~ determines that the Reinsurance Association is or may become unable to meet its financial obligations during the current year, the *commissioner*~~{executive director}~~ shall order the governing committee to levy appropriate assessments within the limitations of KRS 304.35-030(1) against all members.

➔Section 1462. KRS 304.35-050 is amended to read as follows:

Any person aggrieved by any action or decision of the governing committee may appeal to the *commissioner*~~{executive director}~~ of insurance within thirty (30) days from the date of the action or the decision. The *commissioner*~~{executive director}~~ shall, after a hearing conducted in accordance with KRS Chapter 13B, issue a final order approving the action or decision or disapproving the action or decision with respect to the matter which is the subject of appeal.

➔Section 1463. KRS 304.35-105 is amended to read as follows:

The *commissioner*~~{executive director}~~ shall request, receive and transmit the names and addresses of all commercial real property policy applicants to the "FAIR" plan to the state fire marshal.

➔Section 1464. KRS 304.36-050 is amended to read as follows:

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

- (1) "Affiliate" means a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year immediately preceding the date that the insurer becomes an insolvent insurer.
- (2) "Association" means the Kentucky Insurance Guaranty Association created under KRS 304.36-060.
- (3) "Claimant" means any insured making a first-party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.
- (4) "*Commissioner*~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of *the Department of Insurance of Kentucky*.

- (5) "Control" means the possession, direct or indirect, of power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of any other person. This presumption may be rebutted by a showing that control does not exist in fact.
- (6) (a) "Covered claim" means an unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this subtitle applies issued by an insurer, if the insurer becomes an insolvent insurer after June 16, 1972, and:
1. The claimant or insured is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which its principal place of business is located at the time of the insured event; or
 2. The claim is a first-party claim for damage to property with a permanent location in this state.
- (b) "Covered claim" shall not include the following:
1. Any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise;
 2. Any amount sought as a return of premium under any retrospective rating plan or dividends plan;
 3. Legal expenses for policyholders who were not Kentucky residents on the date of the insured event;
 4. Legal expenses for policyholders who were Kentucky residents at the time of the insured event if the legal expenses exceed the association's statutory cap;
 5. Any first-party claim by an insured whose net worth exceeds twenty-five million dollars (\$25,000,000) on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer, provided that an insurer's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis;
 6. Any first-party claim by an insured that is an affiliate of an insolvent insurer; or
 7. Any amount awarded as punitive or exemplary damages.
- (7) "Insolvent insurer" means:
- (a) An insurer licensed to transact insurance in this state either at the time the policy was issued or when the insured event occurred;
 - (b) Against whom a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the company's state of domicile after June 16, 1972; and
 - (c) With respect to which no order, decree, or finding relating to the solvency of the insurer, whether preliminary or temporary in nature or otherwise has been issued by a court of competent jurisdiction or by any insurance ~~executive director or~~ commissioner, insurance office or department or similar official or body before June 16, 1972, or which was in fact insolvent before June 16, 1972, and the de facto insolvency was known by the chief insurance regulatory official of the state of its domicile.
- (8) "Member insurer" means:
- (a) Any person who writes any kind of insurance to which this subtitle applies under KRS 304.36-030, including the exchange of reciprocal or inter-insurance contracts; and
 - (b) Any person who is licensed to transact insurance in this state. For purposes of determining a withdrawing member's assessment liability, an insurer shall cease to be a member insurer effective on the day following the termination or expiration of his *or her* license to transact the kinds of insurance to which this subtitle applies. However, the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, that relate to any insurer that became an insolvent insurer prior to the termination or expiration of the insurer's license.

- (9) "Net direct written premiums" means direct gross premiums written, or in the case of an insurer organized under KRS Chapter 299, assessments, membership fees, and policy fees levied and collected in this state, less returns thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.
- (10) "Ocean marine insurance" includes any form of insurance, regardless of name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, that are usually insured against by traditional marine insurance such as hull and machinery, marine builders risk, and marine protection and indemnity. These perils and risks insured against include without limitation loss, damage, or expense or legal liability of the insured for loss, damage, or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss or damage to the property of the insured or another person. "Ocean marine insurance" includes that coverage written in accordance with the following:
- (a) The Jones Act (46 U.S.C. sec. 688);
 - (b) The Longshore and Harbor Workers' Compensation Act D (33 U.S.C. secs. 901 et seq.); or
 - (c) Any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.
- (11) "Insured event," in an occurrence policy and claims-made policy, means the act that gave rise to the claim.

➔Section 1465. KRS 304.36-070 is amended to read as follows:

- (1) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the *commissioner*~~[executive director]~~. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the *commissioner*~~[executive director]~~. If no members are selected within sixty (60) days after June 16, 1972, the *commissioner*~~[executive director]~~ may appoint the initial members of the board of directors.
- (2) In approving selections to the board, the *commissioner*~~[executive director]~~ shall consider among other things whether all member insurers are fairly represented.
- (3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

➔Section 1466. KRS 304.36-080 is amended to read as follows:

- (1) The association shall:
 - (a) Be obligated to the extent of the covered claims existing prior to the order of liquidation and arising within thirty (30) days after the order of liquidation, or before the policy expiration date if less than thirty (30) days after the order of liquidation, or before the insured replaces the policy or on request effects cancellation, if *the insured*~~[he]~~ does so within thirty (30) days of the order of liquidation. The obligation shall be satisfied by paying to the claimant an amount as follows:
 1. The full amount of a covered claim for benefits arising from a workers' compensation insurance policy purchased to satisfy the requirements of KRS 342.340;
 2. An amount not exceeding ten thousand dollars (\$10,000) per policy for a covered claim for the return of unearned premium; or
 3. An amount not exceeding three hundred thousand dollars (\$300,000) per claimant for all other covered claims.
 - (b) Not be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provisions of this subtitle, a covered claim shall not include a claim filed with the association after the earlier of twelve (12) months after the date of the order of liquidation, or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred but not

reported losses. Any obligation of the association to defend an insured shall cease upon the association's payment or tender of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit. Notwithstanding any other provisions of this subtitle, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to any and all persons shall cease when ten million dollars (\$10,000,000) shall have been paid in the aggregate by the association and any one (1) or more associations similar to the association of any other state or states or any property/casualty security fund that obtains contributions from insurers on a preinsolvency basis to or on behalf of any insured and its affiliates on covered claims or allowed claims arising under the policy or policies of any one (1) insolvent insurer. For purposes of this section, the term "affiliate" shall mean a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person. If the claimant has a covered claim or allowed claim against the association or any associations similar to the association or any property and casualty insurance security fund of another states, under the policy or policies of any one (1) insolvent insurer, the association may establish a plan to allocate amounts payable by the association in a manner as the association in its discretion deems equitable;

- (c) Be deemed the insurer to the extent of its obligation on the covered claims and to that extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations;
 - (d) Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under KRS 304.36-130 and other expenses authorized by this subtitle. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two percent (2%) of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the association, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital and surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments. Each member insurer serving as a servicing facility may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer;
 - (e) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims;
 - (f) Notify such persons as the **commissioner**~~executive director~~ directs under KRS 304.36-100(2)(a);
 - (g) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the **commissioner**~~executive director~~, but such designation may be declined by a member insurer; and
 - (h) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this subtitle.
- (2) The association may:
- (a) Appear in, defend, and appeal any action on a claim brought against the association;

- (b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;
- (c) Borrow funds necessary to effect the purposes of this subtitle in accord with the plan of operation;
- (d) Sue or be sued;
- (e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this subtitle;
- (f) Perform such other acts as are necessary or proper to effectuate the purpose of this subtitle; and
- (g) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

→Section 1467. KRS 304.36-090 is amended to read as follows:

- (1) (a) The association shall submit to the **commissioner**~~{executive director}~~ a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the **commissioner**~~{executive director}~~.
- (b) If the association fails to submit a suitable plan of operation within ninety (90) days following June 16, 1972, or if at any time thereafter the association fails to submit suitable amendments to the plan, the **commissioner**~~{executive director}~~ shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this subtitle. Such rules shall continue in force until modified by the **commissioner**~~{executive director}~~ or superseded by a plan submitted by the association and approved by the **commissioner**~~{executive director}~~.
- (2) All member insurers shall comply with the plan of operation.
- (3) The plan of operation shall:
 - (a) Establish the procedures whereby all the powers and duties of the association under KRS 304.36-080 will be performed.
 - (b) Establish procedures for handling assets of the association.
 - (c) Establish the amount and method of reimbursing members of the board of directors under KRS 304.36-070.
 - (d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.
 - (e) Establish regular places and times for meetings of the board of directors.
 - (f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.
 - (g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the **commissioner**~~{executive director}~~ within thirty (30) days after the action or decision.
 - (h) Establish the procedures whereby selections for the board of directors will be submitted to the **commissioner**~~{executive director}~~.
 - (i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.
- (4) The plan of operation may provide that any or all powers and duties of the association, except those under KRS 304.36-080(1)(d) and (2)(c), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection

shall take effect only with the approval of both the board of directors and the *commissioner*~~[executive director]~~, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this subtitle.

- (5) The plan of operation may establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

➔Section 1468. KRS 304.36-100 is amended to read as follows:

- (1) The *commissioner*~~[executive director]~~ shall:
- (a) Notify the association of the existence of an insolvent insurer not later than three (3) days after he *or she* receives notice of the determination of the insolvency.
 - (b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.
- (2) The *commissioner*~~[executive director]~~ may:
- (a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this subtitle. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.
 - (b) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the *commissioner*~~[executive director]~~ may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars (\$100) per month.
 - (c) Revoke the designation of any servicing facility if *the commissioner*~~[he]~~ finds claims are being handled unsatisfactorily.

➔Section 1469. KRS 304.36-130 is amended to read as follows:

To aid in the detection and prevention of insurer insolvencies:

- (1) It shall be the duty of the board of directors, upon majority vote, to notify the *commissioner*~~[executive director]~~ of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.
- (2) The board of directors may, upon majority vote, request that the *commissioner*~~[executive director]~~ order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty (30) days of the receipt of such request, the *commissioner*~~[executive director]~~ shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the *commissioner*~~[executive director]~~ designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the *commissioner*~~[executive director]~~ from complying with subsection (3). The *commissioner*~~[executive director]~~ shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the *commissioner*~~[executive director]~~ but it shall not be open to public inspection prior to the release of the examination report to the public.
- (3) It shall be the duty of the *commissioner*~~[executive director]~~ to report to the board of directors when *the commissioner*~~[he]~~ has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.
- (4) The board of directors may, upon majority vote, make reports and recommendations to the *commissioner*~~[executive director]~~ upon any matter germane to the solvency, liquidation, rehabilitation or

conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

- (5) The board of directors may, upon majority vote, make recommendations to the *commissioner*~~{executive director}~~ for the detection and prevention of insurer insolvencies.
- (6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the *commissioner*~~{executive director}~~.

➔Section 1470. KRS 304.36-140 is amended to read as follows:

The association shall be subject to examination and regulation by the *commissioner*~~{executive director}~~. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the *commissioner*~~{executive director}~~.

➔Section 1471. KRS 304.36-170 is amended to read as follows:

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the *commissioner*~~{executive director}~~, or *the commissioner's*~~{his}~~ representatives for any action taken by them in the performance of their powers and duties under this subtitle.

➔Section 1472. KRS 304.37-010 is amended to read as follows:

As used in this subtitle, the following terms shall have the respective meanings set forth, unless the context shall otherwise require:

- (1) The term "*commissioner*~~{executive director}~~" shall mean the *commissioner*~~{executive director}~~ of insurance or the *Department*~~{Office}~~ of Insurance, as appropriate.
- (2) "Insurer" includes every person engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts of insurance.
- (3) An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.
- (4) An "affiliate", or person "affiliated" with a specific person, is a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- (5) A "person" is an individual, a corporation, a partnership, an association, a joint stock company, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but shall not include any bank in its fiduciary capacity or securities broker performing no more than the usual and customary broker's function.
- (6) A "subsidiary" of a specified person is an affiliate controlled by the person directly or indirectly through one (1) or more intermediaries.
- (7) The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.
- (8) The terms "control," "controlling," "controlled by," and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by KRS 304.37-020(12) that control does not exist in fact. The *commissioner*~~{executive director}~~ may determine, after forwarding all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

➔Section 1473. KRS 304.37-020 is amended to read as follows:

- (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the **commissioner**~~executive director~~, except a foreign or alien insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. For an alien insurer, the domiciliary state shall be deemed to be its state of entry. Any insurer which is subject to registration under this section shall register within sixty (60) days after June 16, 1972, or fifteen (15) days after it becomes subject to registration, whichever is later, and annually thereafter by April 1 of each year for the previous calendar year, unless the **commissioner**~~executive director~~ for good cause shown extends the time for registration, and then within the extended time. The **commissioner**~~executive director~~ may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurer with the insurance regulatory authority of its domiciliary jurisdiction.
- (2) Every insurer subject to registration shall file a registration statement on a form provided by the **commissioner**~~executive director~~, which shall contain current information about:
- (a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;
 - (b) The identity of every member of the insurance holding company system;
 - (c) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:
 1. Loans to, other investments in, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
 2. Purchases, sales, or exchanges of assets;
 3. Transactions not in the ordinary course of business;
 4. Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered in the ordinary course of the insurer's business;
 5. All management and service contracts and all cost-sharing arrangements;
 6. All reinsurance agreements;
 7. Dividend and other distributions to shareholders; and
 8. Consolidated tax allocation agreements;
 - (d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding company system; and
 - (e) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the **commissioner**~~executive director~~.
- (3) It shall not be necessary to disclose information on the registration statement filed pursuant to subsection (2) of this section if the information is not material for the purposes of this section. Unless the **commissioner**~~executive director~~ by administrative regulation or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments, involving one-half of one percent (0.5%) or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.
- (4) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the **commissioner**~~executive director~~ within thirty (30) days~~(30)~~ after the end of the month in which it learns of each change or addition.
- (5) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
- (6) Subject to KRS 304.37-030(5), each registered insurer shall report to the **commissioner**~~executive director~~ all dividends and other distributions to shareholders within fifteen (15) business days following the dividend or distribution declaration.

- (7) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, if the information is reasonably necessary to enable the insurer to comply with the provisions of this subtitle.
- (8) The **commissioner**~~{executive director}~~ shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.
- (9) The **commissioner**~~{executive director}~~ may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.
- (10) The **commissioner**~~{executive director}~~ may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section.
- (11) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the **commissioner**~~{executive director}~~ by administrative regulation or order shall exempt it from the provisions of this section.
- (12) Any person may file with the **commissioner**~~{executive director}~~ a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the persons and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the **commissioner**~~{executive director}~~ disallows the disclaimer. The **commissioner**~~{executive director}~~ shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.
- (13) The failure to file a registration statement or any amendment thereto required by this section within the time specified for the filing shall be a violation of this subtitle.

➔Section 1474. KRS 304.37-030 is amended to read as follows:

- (1) Material transactions by registered insurers with their affiliates shall be subject to the following standards:
 - (a) The terms shall be fair and reasonable;
 - (b) Charges or fees for services performed shall be reasonable;
 - (c) Expenses incurred and payment received shall be allocated to the insurer in conformity with consistently applied accounting practices;
 - (d) The books, accounts, and records of each party shall be maintained to clearly and accurately disclose the precise nature and details of the transactions; and
 - (e) The insurer's surplus as regards policyholders, following any dividends or distributions to shareholder affiliates, shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- (2) (a) The following transactions involving a domestic insurer and any person in its holding company system shall not be entered into unless the insurer has notified the **commissioner**~~{executive director}~~ in writing of its intention to enter into the transaction at least thirty (30) days prior to the transaction, or a shorter period as the **commissioner**~~{executive director}~~ may permit, and the **commissioner**~~{executive director}~~ has not disapproved it within that time:
 1. Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments, if the transactions are equal to or exceed, with respect to non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders, or with respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding.
 2. Loans or extensions of credit to any person who is not an affiliate, if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions,

in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit if the transactions are equal to or exceed, with respect to non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders, or, with respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding.

3. Reinsurance agreements or modifications in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer;
 4. All management agreements, service contracts, and all cost sharing arrangements; and
 5. Any material transactions, specified by regulation, which the **commissioner**~~{executive director}~~ determines may adversely affect the interests of the insurer's policyholders.
- (b) This subsection shall not authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.
- (c) A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the **commissioner**~~{executive director}~~ determines that the separate transactions were entered into over any twelve (12) month period for avoidance purposes, **the commissioner**~~{he}~~ may exercise his **or her** authority under KRS 304.99-151.
- (d) The **commissioner**~~{executive director}~~, in reviewing transactions pursuant to this subsection, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.
- (e) The **commissioner**~~{executive director}~~ shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in the corporation by the insurance holding company exceeds ten percent (10%) of the corporation's voting securities.
- (3) (a) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.
- (b) Nothing in this section precludes a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one (1) or more other persons under arrangements which meet the standards of subsection (1) of this section.
- (4) The following factors, among others, shall be considered in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs:
- (a) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
 - (b) The extent to which the insurer's business is diversified among the several lines of insurance;
 - (c) The number and size of risks insured in each line of business;
 - (d) The extent of the geographical dispersion of the insurer's insured risks;
 - (e) The nature and extent of the insurer's reinsurance program;
 - (f) The quality, diversification, and liquidity of the insurer's investment portfolio;
 - (g) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;
 - (h) The surplus as regards policyholders maintained by other comparable insurers;
 - (i) The adequacy of the insurer's reserves; and

- (j) The quality and liquidity of investments in subsidiaries. The *commissioner*~~[executive director]~~ may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders if in his *or her* judgment the investment warrants.
- (5) No insurer subject to registration under KRS 304.37-020 shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until thirty (30) days after the *commissioner*~~[executive director]~~ has received notice of the declaration thereof and has not within the period disapproved the payment, or the *commissioner*~~[executive director]~~ shall have approved the payment within the thirty (30) day period. For purposes of this section, an extraordinary dividend or distribution is any dividend or distribution which, together with other dividends or distribution made within the preceding twelve (12) months, exceeds the lesser of (a) ten percent (10%) of the insurer's surplus as regards policyholders as of December 31 next preceding, or (b) the net gain from operations of the insurer company, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, for the twelve (12) month period ending December 31 next preceding, but shall not include pro rata distribution of any class of the insurer's own securities. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the *commissioner's*~~[executive director's]~~ approval thereof, and the declaration shall confer no rights upon stockholders until the *commissioner*~~[executive director]~~ has approved the payment of the dividend or distribution or until the *commissioner*~~[executive director]~~ has not disapproved the payment within the thirty (30) day period referred to in this section.

➔Section 1475. KRS 304.37-040 is amended to read as follows:

- (1) Subject to the limitation contained in this section and in addition to the powers which the *commissioner*~~[executive director]~~ has under KRS Chapter 304 relating to the examination of insurers, the *commissioner*~~[executive director]~~ shall also have the power to order any insurer registered under KRS 304.37-020 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the *commissioner*~~[executive director]~~ shall have the power to examine such affiliates to obtain such information.
- (2) The *commissioner*~~[executive director]~~ shall exercise his *or her* power under subsection (1) only if the examination of the insurer under KRS Chapter 304 is inadequate or the interests of the policyholders of such insurer may be adversely affected.
- (3) The *commissioner*~~[executive director]~~ may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the *commissioner's*~~[executive director's]~~ staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons so retained shall be under the direction and control of the *commissioner*~~[executive director]~~ and shall act in a purely advisory capacity.
- (4) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) shall be liable for and shall pay the expense of such examination in accordance with the provisions of KRS Chapter 304.

➔Section 1476. KRS 304.37-050 is amended to read as follows:

All information, documents, and copies thereof obtained by or disclosed to the *commissioner*~~[executive director]~~ by any other person in the course of an examination or investigation made pursuant to KRS 304.37-040 and all information reported pursuant to KRS 304.37-020, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the *commissioner*~~[executive director]~~ or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the *commissioner*~~[executive director]~~, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event *the commissioner*~~he~~ may publish all or any part thereof in such manner as *the commissioner*~~he~~ may deem appropriate.

➔Section 1477. KRS 304.37-060 is amended to read as follows:

The *commissioner*~~[executive director]~~ may, upon notice and opportunity for all interested persons to be heard, issue such orders as shall be necessary to carry out the provisions of this subtitle.

➔Section 1478. KRS 304.37-070 is amended to read as follows:

Whenever it appears to the **commissioner**~~{executive director}~~ that any person has committed a violation of this subtitle which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the **commissioner**~~{executive director}~~ may proceed as provided in KRS Chapter 304 to take possession of the property of such domestic insurer and to conduct the business thereof.

➔Section 1479. KRS 304.37-080 is amended to read as follows:

Whenever it appears to the **commissioner**~~{executive director}~~ that any person has committed a violation of this subtitle which makes the continued operation of an insurer contrary to the interest of policyholders or the public, the **commissioner**~~{executive director}~~ may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as **the commissioner**~~{he}~~ finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

➔Section 1480. KRS 304.37-090 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall, if requested by any interested party served with notice as required herein, make a complete record of any testimony, evidence, and proceedings at any hearing conducted pursuant to this subtitle.

➔Section 1481. KRS 304.37-100 is amended to read as follows:

- (1) Any person aggrieved by any act, determination, rule, regulation, order, or any other action of the **commissioner**~~{executive director}~~ pursuant to this subtitle, may file appropriate proceedings in the Franklin Circuit Court or other court of competent jurisdiction for proper relief.
- (2) The filing of an appeal pursuant to this section or other court proceeding shall not stay the application of such order or other action of the **commissioner**~~{executive director}~~ unless the court, after giving notice to the parties and an opportunity to be heard, determines that such a stay would not be detrimental to the interest of policyholders, shareholders, creditors, or the public.
- (3) Any person aggrieved by any failure of the **commissioner**~~{executive director}~~ to act or make a determination required by this subtitle may petition the Franklin Circuit Court for a mandatory injunction or other injunctive relief directing the **commissioner**~~{executive director}~~ to act or make such determination forthwith.

➔Section 1482. KRS 304.37-110 is amended to read as follows:

- (1) Any domestic insurer, either by itself or in cooperation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries engaged in the following kinds of business:
 - (a) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
 - (b) Acting as an insurance agent for its parent or any of its parent's insurer subsidiaries;
 - (c) Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;
 - (d) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
 - (e) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
 - (f) Rendering investment advice to governments, government agencies, corporations, or other organizations or groups;
 - (g) Rendering other services related to the operations of an insurance business, such as actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;
 - (h) Ownership and management of assets which the parent corporation may own or manage if the aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph shall not exceed the limitations applicable to these investments by the insurer. This paragraph shall not prohibit investments permitted under KRS 304.7-120;
 - (i) Acting as an administrative agent for a governmental instrumentality which is performing an insurance function;

- (j) Financing of insurance premiums, agents, and other forms of consumer financing;
 - (k) Any other business activity determined by the *commissioner*~~{executive director}~~ to be reasonably ancillary to an insurance business; and
 - (l) Owning a corporation or corporations engaged or organized to engage exclusively in one (1) or more businesses specified in this section.
- (2) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this chapter, a domestic insurer may also:
- (a) Invest, in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer's assets or fifty percent (50%) of the insurer's surplus as regards policyholders, if after these investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs. In calculating the amount of these investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:
 - 1. Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and
 - 2. All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;
 - (b) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, if each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph (a) of this subsection or in Subtitle 7 of KRS Chapter 304. For the purpose of this paragraph, "the total investment of the insurer" shall include:
 - 1. Any direct investment by the insurer in an asset; and
 - 2. The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary;
 - (c) With the approval of the *commissioner*~~{executive director}~~, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one (1) or more subsidiaries, if after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- (3) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (2) of this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to the investments of insurers.
- (4) Whether any investment pursuant to subsection (2) of this section meets the requirements shall be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.
- (5) If an insurer ceases to control a subsidiary, it shall dispose of any investment made pursuant to this section within three (3) years of the time of the cessation of control, or within an extension of time as the *commissioner*~~{executive director}~~ may prescribe, unless at any time after the investment has been made, the investment has met the requirements for investment under any other provision of this chapter, and the insurer has notified the *commissioner*~~{executive director}~~.

➔Section 1483. KRS 304.37-120 is amended to read as follows:

- (1) No person other than the issuer shall make a tender offer for, a request or invitation for tenders of, enter into any agreement to exchange securities, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic insurer if, after the consummation, the person would, directly or indirectly, or by conversion, or by exercise of any right to acquire, be in control of the insurer. No person shall enter into an agreement to merge with or to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time of the offer, request, or invitation is made, or any agreement is entered into, or prior to the acquisition of these securities if no offer or agreement is involved, the person has filed with the **commissioner**~~[executive director]~~ and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the **commissioner**~~[executive director]~~ in the manner prescribed in this section.
- (a) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person as determined by the **commissioner**~~[executive director]~~ is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the **commissioner**~~[executive director]~~ containing the information required in KRS 304.37-130(3)(a) thirty (30) days prior to the proposed effective date of the acquisition. The person who fails to file a preacquisition notification shall be subject to the penalty set out in KRS 304.99-151. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.
- (2) The statement to be filed with the **commissioner**~~[executive director]~~ under this section shall be made under oath or affirmation and shall contain the following information:
- (a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected; and
1. If the person is an individual, his *or her* principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years; or
 2. If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for a lesser period that the person and any predecessors have been in existence, an informative description of the business intended to be done by the person and the person's subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to these functions. The list shall include for each individual the information required by subparagraph 1. of this paragraph.
- (b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for merger or other acquisition of control, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration; but if a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.
- (c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party, or for a lesser period that the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.
- (d) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets, or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.
- (e) The number of shares of any security referred to in subsection (1) of this section which the acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and a statement as to the method used to determine the fairness of the proposal.
- (f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned, or concerning any security referred to in subsection (1) of this section which there is a right to acquire beneficial ownership of by each acquiring party.

- (g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved, such as transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom these contracts, arrangements, or understandings have been entered into.
 - (h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid.
 - (i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party.
 - (j) Copies of all tender offers for requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section, and of additional soliciting material distributed which relates.
 - (k) The term of any agreement, contract, or understanding made with, or proposed to be made with any broker-dealer, as to solicitation of securities referred to in subsection (1) of this section for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to subsection (1) of this section.
 - (l) Any additional information as the *commissioner*~~{executive director}~~ may by regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.
 - (m) If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the *commissioner*~~{executive director}~~ may require that the information called for by paragraphs (a) to (l) of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or other group, and each person who controls the partner or member. If any partner, member, or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the *commissioner*~~{executive director}~~ may require that the information called for by paragraphs (a) to (l) of this subsection shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.
 - (n) If any material change occurs in the facts in the statement filed with the *commissioner*~~{executive director}~~ and sent to the insurer pursuant to this section, an amendment stating the change, with copies of all documents and other materials relevant to the change, shall be filed with the *commissioner*~~{executive director}~~ and sent to the insurer within two (2) business days after the person learns of the change.
- (3) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may utilize those documents in furnishing the information required by the statement referred to in subsection (1) of this section.
- (4) (a) The *commissioner*~~{executive director}~~ shall approve any merger or other acquisition of control referred to in subsection (1) of this section unless, after a public hearing *the commissioner*~~{he}~~ finds that:
- 1. After the change of control, the domestic insurer referred to in subsection (1) of this section would not be able to satisfy the requirements for issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;
 - 2. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in Kentucky or tend to create a monopoly. In applying the competitive standard in this paragraph:

- a. The informational requirements of KRS 304.37-130(3)(a) and the standards of KRS 304.37-130(4)(b) shall apply;
 - b. The merger or other acquisition shall not be disapproved if the *commissioner*~~executive director~~ finds that any of the situations meeting the criteria provided by KRS 304.37-130(4)(c) exist; and
 - c. The *commissioner*~~executive director~~ may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
3. The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;
 4. The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;
 5. The competence, experience, and integrity of persons who would control the operation of the insurer would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
 6. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
- (b) The public hearing required by this section shall be conducted as directed in Subtitle 2 of this chapter.
 - (c) The *commissioner*~~executive director~~ may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the *commissioner's*~~executive director's~~ staff that may be necessary to assist the *commissioner*~~executive director~~ in reviewing the proposed acquisition of control.
- (5) The provisions of this section shall not apply to:
 - (a) Any transaction which is subject to the provisions of KRS 304.24-390, dealing with the merger or consolidation of a domestic insurer; or
 - (b) Any offer, request, invitation, agreement, or acquisition which the *commissioner*~~executive director~~, by order, shall exempt from the section as not having been made or entered into for the purpose of and not having the effect of changing or influencing the control of, a domestic insurer, or not comprehended within the purposes of this section; or
 - (c) Any acquisition of stock of a former mutual by an affiliate company that occurs in connection with the conversion of a mutual insurer to a stock insurer under KRS 304.24-600 to 304.24-625, provided that no person acquires control of the parent company. For purposes of this paragraph, "former mutual" has the meaning provided in KRS 304.24-601.
 - (6) The following shall be violations of this section:
 - (a) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (1) or (2) of this section; or
 - (b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the *commissioner*~~executive director~~ has given his *or her* approval.
 - (7) The courts of this state shall have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the *commissioner*~~executive director~~ under this section, and overall actions involving such person arising out of violations of this section. Each person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the Secretary of State to be his *or her* true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of the violations of this section. Copies of all lawful process shall be served on the Secretary of State and transmitted to the person at his *or her* last known address by the Secretary of State in the same manner as service of process on foreign insurers.

➔Section 1484. KRS 304.37-130 is amended to read as follows:

- (1) The following definitions shall apply for the purposes of this section only:

- (a) "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, such as the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.
 - (b) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.
- (2) (a) This section applies to any acquisition in which there is a change of control of an insurer authorized to do business in Kentucky, except as set forth in paragraph (b) of this subsection.
- (b) This section shall not apply to the following:
- 1. An acquisition subject to approval or disapproval of the **commissioner**~~{executive director}~~ pursuant to KRS 304.37-120;
 - 2. A purchase of securities solely for the investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in Kentucky. If a purchase of securities results in a presumption of control under KRS 304.37-010(8), it is not solely for investment purposes unless the insurance regulatory official of the insurer's state of domicile accepts a disclaimer of control, or affirmatively finds that control does not exist, and the disclaimer action or affirmative finding is communicated by the domiciliary insurance regulatory official to the **commissioners**~~{executive directors}~~;
 - 3. If the acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the **commissioner**~~{executive director}~~ in accordance with subsection (3)(a) of this section thirty (30) days prior to the proposed effective date of the acquisition. However, the acquisition notification shall not be required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of this paragraph;
 - 4. The acquisition of already affiliated persons;
 - 5. An acquisition if, as an immediate result of the acquisition:
 - a. The combined market share of the involved insurers would not exceed five percent (5%) of the total market;
 - b. There would be no increase in any market share; or
 - c. The combined market share of the involved insurers would not exceed twelve percent (12%) of the total market; and the market share would not increase by more than two percent (2%) of the total market.

For the purpose of this subparagraph (b)5., a market means direct written insurance premium in Kentucky for a line of business as contained in the annual statement required to be filed by insurers authorized to do business in Kentucky;
 - 6. An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; and
 - 7. An acquisition of an insurer whose domiciliary insurance regulatory official affirmatively finds that the insurer is in failing condition, there is lack of feasible alternative to improving the condition, the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition, and the findings are communicated by the domiciliary insurance regulatory official to the **commissioner**~~{executive director}~~.
- (3) An acquisition covered by subsection (2) of this section may be subject to an order pursuant to subsection (5) of this section or KRS 304.37-010 unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The **commissioner**~~{executive director}~~ shall give confidential treatment to information submitted under this subsection in the same manner as provided in KRS 304.37-050.

- (a) The preacquisition notification shall be in the form and contain the information prescribed by the National Association of Insurance Commissioners relating to those markets which, under subsection (2)(b)5. of this section, cause the acquisition not to be exempted from the provisions of this section. The ~~commissioner~~~~executive director~~ may require additional material and information ~~the commissioner~~~~he~~ deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (4) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in Kentucky accompanied by a summary of the education and experience of the economist indicating his *or her* ability to render an informed opinion.
- (b) The waiting period required shall begin on the date of receipt by the ~~commissioner~~~~executive director~~ of a preacquisition notification and shall end on the earlier of the thirtieth day after the date of receipt, or termination of the waiting period by the ~~commissioner~~~~executive director~~. Prior to the end of the waiting period, the ~~commissioner~~~~executive director~~ may, on a one-time basis, require the submission of additional needed information relevant to the proposed acquisition; if the submission is required, the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the ~~commissioner~~~~executive director~~ or termination of the waiting period by the ~~commissioner~~~~executive director~~.
- (4) (a) The ~~commissioner~~~~executive director~~ may enter an order under subsection (5)(a) of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be to lessen substantially competition in any line of insurance in Kentucky or tend to create a monopoly, or if the insurer fails to file adequate information in compliance with subsection (3) of this section.
- (b) In determining whether a proposed acquisition would violate the competitive standard of paragraph (a) of this subsection, the ~~commissioner~~~~executive director~~ shall consider the following:

1. Any acquisition covered under subsection (2) of this section involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

a. If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more;

or

b. If the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more.

A highly concentrated market means one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two (2) columns in the table is prima facie evidence of violation of the competitive standard in paragraph (a) of this subsection. For the purpose of this subparagraph, the insurer with the largest share of the market shall be deemed to be insurer A.

2. There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition.

Any acquisition or merger covered under subsection (2) of this section involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (a) of this subsection if:

- a. There is a significant trend toward increased concentration in the market;
 - b. One of the insurers involved is one of the insurers in a grouping of the large insurers showing the requisite increase in the market share; and
 - c. Another involved insurer's market is two percent (2%) or more.
3. For the purposes of subsection (4)(b) of this section:
- a. The term "insurer" includes any company or group of companies under common management, ownership or control;
 - b. The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the **commissioner**~~{executive director}~~ shall give due consideration to factors such as the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, the line being that used in the annual statement required to be filed by insurers doing business in Kentucky, and the relevant geographical market is assumed to be Kentucky; and
 - c. The burden of showing prima facie evidence of violation of the competitive standard rests upon the **commissioner**~~{executive director}~~.
4. Even though an acquisition is not prima facie violative of the competitive standard under paragraph (b) of this subsection, the **commissioner**~~{executive director}~~ may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under paragraph (b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making this determination shall be such factors as market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry into and exit from the market.
- (c) An order shall not be entered under subsection (5)(a) of this section if:
1. The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from the economies exceed the public benefits which would arise from not lessening competition; or
 2. The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.
- (5) (a) If an acquisition violates the standards of this section, the **commissioner**~~{executive director}~~ may enter an order:
1. Requiring an involved insurer to cease and desist from doing business in Kentucky with respect to the line or lines of insurance involved in the violation; or
 2. Denying the application of an acquired or acquiring insurer for a certificate of authority to do business in Kentucky.
- (b) The order referred to in paragraph (a) of this subsection shall be entered pursuant to a hearing held under Subtitle 2 of this chapter.

➔Section 1485. KRS 304.37-150 is amended to read as follows:

- (1) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, administrative regulation, or order issued by the **commissioner**~~{executive director}~~ may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of

shares may be taken as though the securities were not issued and outstanding; but no action taken at the meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the ~~commissioner~~~~executive director~~ has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule, administrative regulation, or order issued by the ~~commissioner~~~~executive director~~, the insurer or the ~~commissioner~~~~executive director~~ may apply to the Circuit Court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of KRS 304.37-130 or any other provision of this chapter, or any rule, administrative regulation, or order issued by the ~~commissioner~~~~executive director~~ to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders, and for any other equitable relief as required by the nature of the case and the interest of the insurer's policyholders, creditors, shareholders, or the public.

- (2) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, administrative regulation, or order issued by the ~~commissioner~~~~executive director~~, the Circuit Court for Franklin County or the Circuit Court for the county in which the insurer has its principal place of business may, upon notice the court deems appropriate, upon the application of the insurer or the ~~commissioner~~~~executive director~~ seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue the appropriate order to effectuate the provisions of this subtitle.
- (3) Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

➔Section 1486. KRS 304.37-500 is amended to read as follows:

The following definitions shall apply to KRS 304.37-500 to 304.37-580:

- (1) "Interested person" means:
 - (a) Any affiliated person of a company;
 - (b) Any member of the immediate family of any natural person who is an affiliated person of a company;
 - (c) Any person or partner or employee of any person who at any time since the beginning of the last two (2) completed fiscal years of a company has acted as legal counsel for the company; or
 - (d) Any natural person whom the ~~commissioner~~~~executive director~~ by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two (2) completed fiscal years of a company, a material business or professional relationship with a company or with the principal executive officer of the company;
- (2) "Intermediate holding company" means a holding company which is a subsidiary of a mutual insurance holding company and which either directly or through a subsidiary intermediate holding company has one (1) or more subsidiary reorganized insurance companies of which a majority of the voting shares of the capital stock would otherwise have been required by KRS 304.37-505, to be at all times owned by the mutual insurance holding company. The ~~commissioner~~~~executive director~~ shall have jurisdiction over an intermediate holding company as if it were a mutual insurance holding company;
- (3) "Majority of the voting shares of the capital stock of the reorganized insurance company" means shares of the capital stock of the reorganized insurance company which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the reorganized insurance company for the election of directors and on all other matters submitted to a vote of the shareholders of the reorganized insurance company. The ownership of a majority of the voting shares of the capital stock of the reorganized insurance company which are required by KRS 304.37-505 to be held by the mutual insurance holding company may be held by indirect ownership through one (1) or more intermediate holding companies in a corporate structure approved by the ~~commissioner~~~~executive director~~, provided, however, that indirect ownership through one (1) or more intermediate holding companies shall not result in the mutual insurance holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the reorganized insurance company;
- (4) "Mutual insurance holding company" means a holding company organized on the mutual plan and incorporated under the laws of Kentucky, resulting from the reorganization of a domestic mutual insurance company in accordance with KRS 304.37-505 and 304.37-510, with one (1) or more stock insurance holding company subsidiaries or stock insurance company subsidiaries;

- (5) "Plan of reorganization" means a plan to reorganize a domestic mutual insurance company by forming a mutual insurance holding company; and
- (6) "Stock offering" means any proposed sale, exchange, transfer or other change of ownership of stock or of securities convertible into or exchangeable or exercisable for stock; including, but not limited to, an initial public offering, private equity placement, or grants of stock options and other equity based compensation. For purposes of KRS 304.37-570, 304.37-575, and 304.37-580, "stock offering" shall not mean:
- (a) An offering of preferred stock which is not convertible or exchangeable into common stock and which has no ordinary voting rights; or
 - (b) A transfer of stock between a mutual insurance holding company, an insurance company subsidiary of a mutual holding company, and an insurance company subsidiary of an intermediate holding company subsidiary to a mutual holding company.

➔Section 1487. KRS 304.37-505 is amended to read as follows:

- (1) A domestic mutual insurance company, upon approval of the *commissioner*~~{executive director}~~, may reorganize by forming an insurance holding company based upon a mutual plan and continuing the corporate existence of the reorganizing insurance company as a stock insurance company. The *commissioner*~~{executive director}~~, after a public hearing conducted in accordance with KRS Chapter 13B, if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, may approve the proposed plan of reorganization and may require as a condition of approval modification of the proposed plan of reorganization as the *commissioner*~~{executive director}~~ finds necessary for the protection of the policyholders' interests. A reorganization under this section is subject to KRS 304.37-120(1), (2), (3), (6), and (7). The *commissioner*~~{executive director}~~ shall retain jurisdiction over a mutual insurance holding company organized under this section to assure that policyholder interests are protected.
- (2) All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company.
- (3) A domestic mutual insurance company, upon the approval of the *commissioner*~~{executive director}~~, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed under this section and continuing the corporate existence of the reorganizing insurance company as a stock insurance company subsidiary of the mutual insurance holding company. The *commissioner*~~{executive director}~~, after a public hearing conducted in accordance with KRS Chapter 13B, if satisfied that the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, may approve the proposed merger and may require as a condition of approval modification of the proposed merger as the *commissioner*~~{executive director}~~ finds necessary for the protection of the policyholders' interests. A merger under this section is subject to KRS 304.37-120(1), (2), (3), (6), and (7). The *commissioner*~~{executive director}~~ shall retain jurisdiction over a mutual insurance holding company organized under this section to assure that policyholder interests are protected.
- (4) A merger of policyholders' membership interests in a mutual insurance company into a mutual insurance holding company shall be deemed to be a merger of the insurance companies under Subtitle 37 of KRS Chapter 304.

➔Section 1488. KRS 304.37-510 is amended to read as follows:

- (1) A foreign mutual insurance company may reorganize upon the approval of the *commissioner*~~{executive director}~~ and in compliance with the requirement of any law or regulation which is applicable to the foreign mutual insurance company by merging its policyholders' membership interests into a mutual insurance holding company formed under KRS 304.37-505 and continuing the corporate existence of the reorganizing foreign mutual insurance company as a foreign stock insurance company subsidiary of the mutual insurance holding company. The *commissioner*~~{executive director}~~, after a public hearing as provided in KRS 304.37-120(4)(b),

may approve the proposed merger. A merger under this section is subject to KRS 304.37-120(1), (2), (3), (6), and (7).

- (2) The reorganizing foreign mutual insurance company may remain a foreign company after the merger and may be admitted to do business in this state. A foreign mutual insurance company which is a party to the merger may at the same time redomesticate in this state by complying with the applicable requirements of this state and its state of domicile. The provisions of KRS 304.37-120 shall apply to a merger authorized under this section.

➔Section 1489. KRS 304.37-515 is amended to read as follows:

A mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company organized under KRS Chapter 271B shall be incorporated under KRS Chapter 271B. The articles of incorporation and any amendments to the articles of the mutual insurance holding company shall be subject to approval of the ~~commissioner~~~~executive director~~ and the Attorney General in the same manner as those of an insurance company.

➔Section 1490. KRS 304.37-520 is amended to read as follows:

A mutual insurance holding company is deemed to be an insurer subject to Subtitle 33 of this chapter and shall automatically be a party to any proceeding under Subtitle 33 of this chapter involving an insurance company which, as a result of a reorganization under KRS 304.37-505, is a subsidiary of the mutual insurance company. In any proceeding under Subtitle 33 of this chapter involving the reorganized insurance company, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the recognized insurance company's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the ~~commissioner~~~~executive director~~ or as ordered by the court under Subtitle 33 of this chapter.

➔Section 1491. KRS 304.37-540 is amended to read as follows:

- (1) In addition to any other items required to be filed with the ~~department~~~~office~~ under this chapter, each mutual insurance holding company shall supply to the ~~Department~~~~Office~~ of Insurance, by March 1 of each year, an annual statement consisting of the following:
- (a) An income statement;
 - (b) A balance sheet;
 - (c) A cash flow statement;
 - (d) Complete information on the status of any closed block of business formed as a part of a plan or reorganization;
 - (e) An investment plan covering all assets; and
 - (f) A statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the mutual insurance holding company.
- (2) The aggregate pledges and encumbrances of a mutual holding company's assets shall not affect more than forty-nine percent (49%) of the company's stock in any subsidiary insurance holding company or subsidiary insurance company that resulted from a reorganization or merger.
- (3) At least fifty percent (50%) of the generally accepted accounting practices net worth of a mutual insurance holding company shall be invested in insurance company subsidiaries.

➔Section 1492. KRS 304.37-545 is amended to read as follows:

No policyholder who is a member of a mutual insurance holding company shall receive because of a membership interest any payment of a policy credit, dividend, or other distribution unless the payment has been approved by the ~~commissioner~~~~executive director~~. The ~~commissioner~~~~executive director~~, after a public hearing, if satisfied the proposed payment is fair and equitable to policyholders who are members, may approve the proposed payment and may require as a condition of approval modification of the proposed payment as the ~~commissioner~~~~executive director~~ finds necessary for the protection of policyholders.

➔Section 1493. KRS 304.37-550 is amended to read as follows:

The reorganizing or merging insurer shall file with the ~~commissioner~~~~executive director~~ an application requesting approval of the proposed reorganization or merger. The application shall include the following:

- (1) A Form A filing as described in KRS 304.37-120 and the administrative regulations promulgated thereunder;

- (2) A plan of reorganization as described in KRS 304.37-555;
- (3) A plan to obtain the approval by a majority of two-thirds (2/3) of the participating policyholders in accordance with the applicant's articles of incorporation and bylaws. Policyholders must be provided with sufficient information to evaluate the merits of the proposed transaction, including a description of the purpose of the transaction, risks associated with the transaction, and alternatives considered. Policyholders shall be given not less than twenty (20) days' notice of any vote on approval of the reorganization;
- (4) A copy of the mutual insurance holding company's proposed articles of incorporation and bylaws specifying all membership rights;
- (5) The names, addresses, and occupational information of all corporate officers and members of the initial mutual insurance holding company board of directors;
- (6) Information sufficient to demonstrate that the financial condition of the applicant will not be diminished upon reorganization;
- (7) A copy of the proposed articles of incorporation and bylaws for any insurance company subsidiary or intermediate holding company subsidiary;
- (8) An index demonstrating where in the application information supplied in compliance with each of the foregoing provisions is found; and
- (9) Any other information requested by the *commissioner*~~{executive director}~~ at any time during the proceedings.

➔Section 1494. KRS 304.37-555 is amended to read as follows:

The reorganizing or merging insurer shall file a plan of reorganization, approved by the affirmative vote of a majority of its board of directors, for review and approval by the *commissioner*~~{executive director}~~. The plan shall provide the following:

- (1) Establishing a mutual insurance holding company with at least one (1) stock insurance company subsidiary or one (1) wholly owned intermediate holding company with a stock insurance subsidiary, the shares of which shall be held exclusively by the wholly owned intermediate holding company;
- (2) Protecting the immediate and long term interests of existing policyholders;
- (3) Ensuring immediate membership in the mutual insurance holding company of all existing policyholders of the reorganizing domestic mutual insurance company;
- (4) Providing for membership interest of future policyholders;
- (5) Describing the number of members of the board of directors of the mutual insurance holding company required to be policyholders;
- (6) Demonstrating that, in the event of proceedings under Subtitle 33 of KRS Chapter 304 involving a stock insurance company subsidiary of the mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurance company;
- (7) Describing how any accumulation or prospective accumulation of earnings by the mutual insurance holding company, which is or would be in excess of that determined by the board of directors of the mutual insurance holding company to be necessary, shall inure to the exclusive benefit of the policyholders of its insurance company subsidiaries who are members;
- (8) Describing the nature and content of the annual report and financial statement to be sent to each member;
- (9) Describing the applicant's plan for a stock offering in accordance with the provisions of KRS 304.37-570; and
- (10) Describing other relevant matters the applicant deems appropriate.

➔Section 1495. KRS 304.37-560 is amended to read as follows:

The application and plan of reorganization submitted to the *commissioner*~~{executive director}~~ shall demonstrate that:

- (1) Policyholder interests are properly preserved and protected;
- (2) The plan is fair and equitable to policyholders; and

- (3) The financial condition of the applicant will not be diminished.

➔Section 1496. KRS 304.37-565 is amended to read as follows:

- (1) A public hearing required by KRS 304.37-505 and 304.37-510 shall be conducted as directed in Subtitle 2 of this chapter and KRS Chapter 13B.
- (2) In addition to any notice required by this chapter and KRS Chapter 13B, the *department*~~{office}~~ shall supplement any notice by newspaper publication and broadcast announcements, in accordance with KRS Chapter 424.
- (3) The *commissioner*~~{executive director}~~ may retain at the applicant's expense any attorneys, actuaries, accountants, investment bankers, or other experts not otherwise a part of the *commissioner's*~~{executive director's}~~ staff that may be necessary to assist the *commissioner*~~{executive director}~~ in reviewing the proposed application and plan of reorganization or merger.
- (4) Upon receipt of the application and plan of reorganization or merger, the *commissioner*~~{executive director}~~ shall submit any application to the Attorney General for examination. The Attorney General shall have access to the *commissioner's*~~{executive director's}~~ staff and all consultants retained by the *commissioner*~~{executive director}~~ for review of the application. The Attorney General may examine the application and plan or reorganization or merger for compliance with the standards in KRS 304.37-555. The Attorney General may submit written findings and a recommendation of approval, disapproval, or conditional approval of the application and plan or reorganization or merger to the *commissioner*~~{executive director}~~. Written findings and recommendations shall be delivered to the *commissioner*~~{executive director}~~ no later than five (5) days prior to the public hearing required by KRS 304.37-505 and 304.37-510 and shall be entered into the record at the hearing.
- (5) The *commissioner*~~{executive director}~~ shall at all times retain jurisdiction over the mutual insurance holding company and its intermediate holding company subsidiaries with stock insurance company subsidiaries.
- (6) Following the hearing required in KRS 304.37-505 and 304.37-510, the *commissioner*~~{executive director}~~ shall, by order, approve, conditionally approve, or deny an application. The *commissioner*~~{executive director}~~ may require, as a condition of approval of the proposed reorganization, modification of the proposed plan or reorganization as the *commissioner*~~{executive director}~~ finds necessary. The applicant shall accept required modifications by filing appropriate amendments to the proposed plan of reorganization with the *commissioner*~~{executive director}~~ within thirty (30) days of the date of the order of the *commissioner*~~{executive director}~~ requiring modifications. If the applicant does not accept the required modifications by failing to file the required amendments to the proposed plan of reorganization within thirty (30) days, the proposed reorganization shall be deemed denied.
- (7) An approval or conditional approval of a plan of reorganization shall expire if the reorganization is not completed within one hundred eighty (180) days unless the time period is extended by the *commissioner*~~{executive director}~~ upon a showing of good cause.
- (8) The *commissioner*~~{executive director}~~ may revoke approval or conditional approval of an applicant's plan of reorganization if the *commissioner*~~{executive director}~~ finds the applicant has failed to comply with the plan of reorganization. The *commissioner*~~{executive director}~~ may compel completion of a plan of reorganization unless the plan is abandoned in its entirety. The *commissioner*~~{executive director}~~ shall retain jurisdiction over the applicant until a plan of reorganization has been completed.
- (9) Upon completion of all elements of a plan of reorganization and any conditions placed on the reorganization by the *commissioner*~~{executive director}~~, the applicant shall provide a notice of and documentation of completion to the *commissioner*~~{executive director}~~.
- (10) Within twelve (12) months after the *commissioner*~~{executive director}~~ receives the notice specified in subsection (9) of this section, the *commissioner*~~{executive director}~~ shall examine the affairs, transactions, accounts, records, and assets of the mutual holding company, reorganized insurer, and its affiliated persons for compliance with the plan of reorganization and for protection of policyholder interests.

➔Section 1497. KRS 304.37-570 is amended to read as follows:

- (1) No stock offering by a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual

insurance holding company shall occur without the prior approval of the *commissioner*~~{executive director}~~. The *commissioner's*~~{executive director's}~~ approval may be obtained only through an application and hearing process.

- (2) Every application for approval of a stock offering shall contain the following information:
 - (a) A description of the stock intended to be offered by the applicant, including a description of all shareholder rights;
 - (b) The total number of shares authorized to be issued, the estimated number of shares the applicant requests permission to offer, and the intended date or range of dates for the offering;
 - (c) A justification for a uniform planned offering price or a justification of the method by which the offering price will be determined;
 - (d) The name or names of any underwriter, syndicate member, or placement agent involved and, if known, the name or names of each entity, person, or group of persons to whom the stock offering is to be made who will control five percent (5%) or more of the total outstanding class of shares, and the manner in which the offer is to be tendered. If any entity or person is a corporation or business organization, the name of each member of its board of directors or equivalent management team shall be provided along with the name of each member of the board of directors of the offeror. Copies of any filings with the Securities and Exchange Commission disclosing intended acquisitions of the stock shall be included in the application;
 - (e) A description of stock subscription rights to be afforded members of the mutual insurance holding company in conjunction with the stock offering;
 - (f) A detailed description of all expenses to be incurred in conjunction with the stock offering;
 - (g) An explanation of how funds raised by the stock offering are to be used; and
 - (h) Any other information requested by the *commissioner*~~{executive director}~~.
- (3) No application regarding a planned stock offering shall be approved unless the plan contains provisions:
 - (a) Requiring a majority of the members of the board of directors of the mutual insurance holding company to be persons who are not interested persons of the mutual insurance holding company or of any subsidiary or affiliated person of the company. The *commissioner*~~{executive director}~~ may waive this requirement upon a showing of good cause based on clear and convincing evidence;
 - (b) For the mutual insurance holding company to adopt articles of incorporation prohibiting any waiver of dividends from stock subsidiaries except under conditions specified in its articles of incorporation and after approval of the waiver by the board of directors of the mutual insurance holding company and the *commissioner*~~{executive director}~~;
 - (c) Requiring that the board of directors of any insurance company subsidiary of a mutual insurance holding company, any intermediate holding company subsidiary of a mutual holding company, or the insurance company subsidiary of an intermediate holding company shall include at least three (3) directors who are not interested persons of the mutual insurance holding company;
 - (d) Establishing, within the board of directors of the corporation offering stock, a pricing committee consisting exclusively of directors who are not interested persons who shall have sole responsibility for evaluating and approving the price of any stock offering;
 - (e) Establishing, within the board of directors of the mutual insurance holding company, any insurance company subsidiary of a mutual insurance holding company, any intermediate holding company subsidiary, and any insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company, an executive compensation committee consisting exclusively of directors who are not interested persons, who shall have sole responsibility for evaluating and approving compensation for directors, officers, and employees;
 - (f) Establishing that for any committee of the mutual insurance holding company, any insurance company subsidiary of a mutual insurance holding company, any intermediate holding company subsidiary, and any insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance

holding company, at least two-thirds (2/3) of any committee having responsibility for making decisions affecting capital structure or mergers and acquisitions shall not be interested persons;

- (g) Prohibiting officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates from the purchase or beneficial ownership of any shares of the stock offering, or issuance of stock options to or for the benefit of the officers, directors, and insiders for a period of at least six (6) months following the first date the offering was publicly and regularly traded. This paragraph shall not be construed to limit the rights of officers, directors, and insiders from exercising subscription rights generally accorded members of the mutual insurance holding company, except that, in accordance with any subscription rights, the officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates may not purchase or own, in the aggregate, more than one percent (1%) of the stock offering for a period of at least six (6) months following the first date the offering was publicly and regularly traded;
 - (h) For a period of two (2) years after the six (6) month period referred to in paragraph (g) of this section, the officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates may not purchase or beneficially own, in the aggregate, more than five percent (5%) of the stock of the insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company; and
 - (i) Requiring that all members of the mutual insurance holding company are granted stock subscription rights in any initial stock offering. This requirement may be waived by the **commissioner**~~{executive director}~~ upon a showing of good cause at public hearing. For purposes of this paragraph, good cause may only be found where the members of the mutual insurance holding company are given rights to participate in the appreciation of the stock offered that are comparable to stock subscription rights.
- (4) An insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company may issue more than one (1) class of stock if:
- (a) At all times a majority of the voting stock is held by the mutual insurance holding company or its subsidiary; and
 - (b) No class of common stock possesses greater dividend or other rights than the class held by the mutual insurance holding company or its subsidiary.
- (5) The **commissioner**~~{executive director}~~ shall hire, at the applicant's expense, attorneys, actuaries, accountants, investment bankers, and other experts as may reasonably be necessary to assist the **commissioner**~~{executive director}~~ in reviewing the application.
- (6) The **commissioner**~~{executive director}~~ shall, in the **commissioner's**~~{executive director's}~~ discretion, hold a public hearing in accordance with KRS Chapter 13B regarding any application for approval of a stock offering. Upon receipt of an application for approval of a stock offering which includes an initial offering of stock, the **commissioner**~~{executive director}~~ shall hold a public hearing at which all interested parties may appear and present evidence and argument regarding the applicant's planned offering. The **commissioner**~~{executive director}~~ shall provide the applicant adequate notice of the hearing so that the applicant can provide notice of the hearing to members of the mutual insurance holding company, in a manner approved by the **commissioner**~~{executive director}~~, not less than twenty (20) days prior to the hearing. Following the hearing, the **commissioner**~~{executive director}~~ may approve, conditionally approve, or deny the application. The **commissioner**~~{executive director}~~ may approve the plan if:
- (a) The offering complies with these rules and other provisions of law;
 - (b) The method for establishing the price of a stock offering is consistent with generally accepted market or industry practices for establishing stock offering prices in similar transactions; and
 - (c) The plan and offering will not unfairly impact the interests of members of the mutual insurance holding company.
- (7) Nothing in this section shall be deemed to prohibit the filing of a registration statement with the Securities and Exchange Commissioner prior to or concurrently with the giving of notice to members.

- (a) Notwithstanding subsections (1) to (6) of this section, a stock offering which is not an initial stock offering and which offers stock regularly traded on the New York Stock Exchange, the American Stock Exchange, or another exchange approved by the **commissioner**~~{executive director}~~, or designated on the national association of securities dealers automated quotations-national market system may be sold if a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company, or an insurance company subsidiary of an intermediate holding company intends to make a stock offering which would be governed by the provisions of KRS 304.37-500 to 304.37-580. The entity shall deliver to the **commissioner**~~{executive director}~~ not less than thirty (30) days prior to the offering a notice of the planned stock offering and information regarding the following:
1. The total number of shares intended to be offered;
 2. The intended date of sale;
 3. Evidence that the stock is regularly traded on one (1) of the public exchanges noted in subsection (a) of this section; and
 4. A record of the trading pace and trading volume of the stock during the prior fifty-two (52) weeks.
- (b) The **commissioner**~~{executive director}~~ shall be deemed to have approved the sale unless, within thirty (30) days following receipt of the notice, the **commissioner**~~{executive director}~~ issues an objection to the sale. If the **commissioner**~~{executive director}~~ issues an objection to the sale, the procedures set forth in subsection (2) of this section shall be followed to determine whether the **commissioner**~~{executive director}~~ approves the proposed sale;
- (c) Approval of a stock offering obtained under either subsection (6) or (7) of this section shall expire ninety (90) days following the date of the approval or deemed approval, except as otherwise provided by the order of the **commissioner**~~{executive director}~~; and
- (d) No prospectus, information, sales material, or sales presentation by the applicant, or by any representative, agent, or affiliate of the applicant shall contain a representation that the **commissioner's**~~{executive director's}~~ approval of a stock offering constitutes an endorsement of the price, price range, or any other information relating to the stock.

➔Section 1498. KRS 304.38-030 is amended to read as follows:

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

- (1) "**Commissioner**~~{Executive director}~~" means the **commissioner**~~{executive director}~~ of *the Department of Insurance*.
- (2) "Enrollee" means a person who has been enrolled in a health maintenance organization.
- (3) "Evidence of coverage" means any certificate, agreement, contract, or other document issued to an enrollee stating the health care services to which the enrollee is entitled. All coverages described in an evidence of coverage issued by a health maintenance organization are deemed to be "health benefit plans" to the extent defined in KRS 304.17A-005 unless exempted by the **commissioner**~~{executive director}~~.
- (4) "Health care services" means any services included in the furnishing to any individual of medical, optometric, or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services and goods for the purpose of preventing, alleviating, curing, or healing human illness, physical disability, or injury.
- (5) "Health maintenance organization" means any person who undertakes to provide, directly or through arrangements with others, health care services to individuals enrolled with such an organization on a per capita or a predetermined, fixed prepayment basis. A health maintenance organization is authorized to provide all health care services.
- (6) "Person" includes but is not limited to any individual, partnership, association, trust, or corporation.
- (7) "Provider" means a person or group of persons licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, or another health profession in a state or licensed to act as a hospital or another health care facility.

➔Section 1499. KRS 304.38-035 is amended to read as follows:

No person shall in this state be, act as, or hold himself *or herself* out as a health maintenance organization unless he *or she* holds a certificate of authority as a health maintenance organization from the **commissioner**~~[executive director]~~.

➔Section 1500. KRS 304.38-040 is amended to read as follows:

- (1) A corporation, limited liability company, or partnership may apply to the **commissioner**~~[executive director]~~ for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this subtitle.
- (2) Health maintenance organizations which are corporations may be organized by applying the provisions of KRS Chapter 271B, if for profit, and KRS Chapter 273, if for nonstock, nonprofit, to the extent that the same are not inconsistent with the express provisions of this subtitle.
- (3) Each application for a certificate of authority shall be submitted to the **commissioner**~~[executive director]~~ upon a form prescribed by **the commissioner**~~[him]~~ and shall set forth or be accompanied by:
 - (a) Evidence that the applicant has been issued a certificate of need in accordance with the provisions of KRS Chapter 216B or evidence that no certificate of need is required by KRS Chapter 216B;
 - (b) Articles of incorporation, articles of organization, partnership agreement, or other applicable documents in quadruplicate, acknowledged and verified by the applicant;
 - (c) The initial bylaws, operating agreement, or other equivalent documents of the organization in triplicate, or any other similar documents;
 - (d) A statement which shall include describing the health maintenance organization:
 1. The health services to be offered;
 2. The financial risks to be assumed;
 3. The initial geographic area to be served;
 4. Pro forma financial projections for the first three (3) years of operations including the assumptions the projections are based upon;
 5. The sources of working capital and funding;
 6. A description of the persons to be covered by the health maintenance organization;
 7. Any proposed reinsurance arrangements;
 8. Any proposed management, administrative, or cost-sharing arrangements; and
 9. A description of the health maintenance organization's proposed method of marketing;
 - (e) The names, addresses, and positions of the initial board of directors, board of trustees, or other governing body responsible for the conduct of the affairs of the applicant;
 - (f) Any proposed evidence of coverage to be issued by the applicant to individuals, enrollees, groups, or other contract holders; and
- (g) Evidence of financial responsibility as provided in KRS 304.38-060.

➔Section 1501. KRS 304.38-050 is amended to read as follows:

- (1) No health maintenance organization shall deliver or issue for delivery in this state any contract describing health benefits available, or any endorsement, rider, or application which becomes a part thereof, or any amendments thereto or modifications thereof, or the schedule of fees or other periodic charges to be paid by enrollees, until a copy of the form has been filed with and approved by the **commissioner**~~[executive director]~~. Each form shall contain a complete and clear statement of:
 - (a) The health care services to which the enrollee is entitled;
 - (b) Any limitations on the services, kind of services, or benefits to be provided, including any deductible or copayment feature;
 - (c) Where and in what manner information is available as to how services may be obtained; and

- (d) Any other provisions pertaining to the delivery of health care services.

Any schedule of fees or other periodic charges to be paid by enrollees submitted to and filed with the **commissioner**~~[executive director]~~ along with adequate supporting information to show that the charges or fees are not excessive, inadequate, or unfairly discriminatory.

- (2) At the expiration of sixty (60) days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the **commissioner**~~[executive director]~~, or a hearing has been scheduled by order of the **commissioner**~~[executive director]~~. In the event that a hearing is held, the sixty (60) day waiting period shall begin anew after the close of the hearing. Approval of the form by the **commissioner**~~[executive director]~~ shall constitute a waiver of any unexpired portion of the waiting period. The **commissioner**~~[executive director]~~ may extend by not more than an additional thirty (30) day period within which he *or she* may affirmatively approve or disapprove the form by giving notice to the insurer of the extension before expiration of the initial sixty (60) day period. At the expiration of the period as so extended, and in the absence of the prior affirmative approval or disapproval, the form shall be deemed approved. The **commissioner**~~[executive director]~~ may at any time withdraw the approval.
- (3) This section shall not apply to rate filings made under Subtitle 17A of this chapter.

➔Section 1502. KRS 304.38-060 is amended to read as follows:

Upon receipt of an application for issuance of a certificate of authority, the **commissioner**~~[executive director]~~ shall issue or deny the same. Issuance of a certificate of authority shall be granted only if the **commissioner**~~[executive director]~~ finds that the applicant has complied with KRS 304.38-040 and has paid the application fee, and the **commissioner**~~[executive director]~~ is satisfied that the following conditions are met:

- (1) The persons responsible for the conduct of the affairs of the application are competent, trustworthy, and possess good reputations;
- (2) The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the **commissioner**~~[executive director]~~ may consider:
 - (a) The financial soundness of the health maintenance organization's arrangements for health care services and the schedule of charges used in connection therewith;
 - (b) The adequacy of working capital;
 - (c) Any agreement with an insurer, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization or its inability to meet its financial obligations;
 - (d) Examples of any agreements with providers for the provision of health care services by provider type; and
 - (e) Compliance with KRS 304.38-070 if the applicant is applying for a health maintenance organization certificate of authority as a guarantee that the obligations will be duly performed.

➔Section 1503. KRS 304.38-070 is amended to read as follows:

- (1) This subsection applies to a corporation or limited liability company applying for and holding a certificate of authority as a health maintenance organization:
 - (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a corporation or limited liability company shall possess and thereafter maintain unimpaired paid-in capital stock of one million dollars (\$1,000,000), and, when first so authorized, shall possess initial free surplus of not less than two million dollars (\$2,000,000);
 - (b) A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. Notwithstanding the other provisions hereof, the exception provided in this paragraph shall cease to apply to any such health maintenance organization

from and after the date it has accumulated capital and surplus equal to or in excess of the capital and surplus required by paragraph (a) of this subsection; and

- (c) Each corporation authorized as a health maintenance organization shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000) and shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the *commissioner*~~{executive director}~~. A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency as required for such authority immediately prior to July 15, 1986. The exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection.
- (2) This subsection applies to a partnership applying for or holding a certificate of authority as a health maintenance organization:
 - (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a partnership shall possess, when first so authorized, a total of at least three million dollars (\$3,000,000) in its capital accounts. Thereafter, a partnership authorized as a health maintenance organization shall possess and maintain a total of at least one million two hundred fifty thousand dollars (\$1,250,000) in its capital accounts and shall comply at all times with the risk-based capital requirement established in administrative regulations promulgated by the *commissioner*~~{executive director}~~;
 - (b) A partnership holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. The exception provided for in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which the total of the funds which it has accumulated in its capital accounts equal or exceed the total of the funds in its capital accounts required by this subsection.
 - (3) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with risk-based capital (RBC) requirements as follows:
 - (a) For purposes of this subsection, risk-based capital shall be determined in accordance with the risk-based capital requirements for health maintenance organizations established under this subtitle and any administrative regulation promulgated pursuant to KRS Chapter 13A, except as otherwise provided in this subsection. A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with the same risk-based capital requirements as other health maintenance organizations, except that no additional phase-in or risk-based capital reports shall be required for 2000 or 2001, and the risk-based capital levels shall be established in accordance with paragraph (b) of this subsection;
 - (b) For the risk-based capital reports required to be filed by health maintenance organizations which manage care and process health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program, the risk-based capital levels shall be defined as follows:
 1. "Company Action Level RBC" means the product of two (2.0) and its Authorized Control Level RBC;
 2. "Regulatory Action Level RBC" means the product of one and five-tenths (1.5) and its Authorized Control Level RBC;
 3. "Authorized Control Level RBC" means the product of four-tenths (.40) and the risk-based capital after covariance determined under the risk-based capital formula in accordance with the RBC instruction; and

4. "Mandatory Control Level RBC" means the product of seven-tenths (.70) and the Authorized Control Level RBC; and
- (c) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization managing care, processing health care claims, or providing health benefits to groups or individuals in addition to Medicaid-eligible and Kentucky Children's Health Insurance Program enrollees shall comply with the risk-based capital requirements of subsection (1) of this section and this subtitle, and shall not be eligible to calculate its risk-based capital according to this subsection.

➔Section 1504. KRS 304.38-073 is amended to read as follows:

Each health maintenance organization shall furnish to the **commissioner**~~{executive director}~~ a deposit of cash or securities approved by the **commissioner**~~{executive director}~~ in an amount not less than five hundred thousand dollars (\$500,000) so that the obligations to the enrollees shall be performed. A health maintenance organization may be required to furnish an additional deposit if the **commissioner**~~{executive director}~~ determines, after a hearing, that an additional deposit is necessary for the protection of the health maintenance organization's enrollees.

➔Section 1505. KRS 304.38-075 is amended to read as follows:

- (1) Any health maintenance organization that contracts with a provider or provider organization for the transfer of risk to the provider shall take reasonable steps to ensure the transferee is able to accept and manage the risk to be transferred. The health maintenance organization shall submit a plan for evaluating a provider's or provider organization's ability to accept and manage risk to the **department**~~{office}~~ for approval at least forty-five (45) days prior to the proposed date of the transfer of any risk.

- (2) If a health maintenance organization transfers risk to a provider:

- (a) Not in compliance with the standards listed in its approved plan; or
- (b) Prior to filing or receiving approval of its plan;

the **commissioner**~~{executive director}~~ may require the health maintenance organization to retain additional reserves to cover the risk transferred.

➔Section 1506. KRS 304.38-090 is amended to read as follows:

Organizations subject to the provisions of this subtitle shall make and file with the **commissioner**~~{executive director}~~ and the Kentucky Certificate of Need and Licensure Board annually before March 1 of each year, a statement under oath upon a form to be prescribed by the **commissioner**~~{executive director}~~ covering the preceding year, and shall include (a) a financial statement of the organization, including a balance sheet, receipts, and disbursements for the preceding year; (b) the number of persons enrolled during the year, the number of enrollees as of the end of the year, the number of enrollments terminated during the year, and any other information relating to the operation of the health maintenance organization as may be prescribed by the **commissioner**~~{executive director}~~ in order to enable the **commissioner**~~{executive director}~~ to evaluate the performance of the health maintenance organization.

➔Section 1507. KRS 304.38-095 is amended to read as follows:

In his *or her* discretion, the **commissioner**~~{executive director}~~ may require organizations subject to the provisions of this subtitle to comply with KRS 304.2-205.

➔Section 1508. KRS 304.38-100 is amended to read as follows:

The funds of a health maintenance organization shall be invested only in securities or other investments permitted by Subtitle 7 of Chapter 304 of the Kentucky Revised Statutes, or such other securities or investments as the **commissioner**~~{executive director}~~ may permit.

➔Section 1509. KRS 304.38-130 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may suspend or revoke any certificate of authority issued to a health maintenance organization under this subtitle if the **commissioner**~~{executive director}~~ finds that any of the conditions exist for which the **commissioner**~~{executive director}~~ could suspend or revoke a certificate of authority as provided in Subtitles 2 and 3 of this chapter or if the **commissioner**~~{executive director}~~ finds that any of the following conditions exist:

- (a) The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under KRS 304.38-040, unless amendments to such submissions have been filed with and approved by the **commissioner**~~[executive director]~~;
 - (b) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of KRS 304.38-050 or Subtitle 17A of this chapter;
 - (c) The health maintenance organization does not provide or arrange for health care services as approved by the **commissioner**~~[executive director]~~ in KRS 304.38-050(1)(a);
 - (d) The certificate of need and licensure board certifies to the **commissioner**~~[executive director]~~ that the health maintenance organization fails to meet the requirements of the board or that the health maintenance organization is unable to fulfill its obligations to furnish health care services;
 - (e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;
 - (f) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;
 - (g) The continued operation of the health maintenance organization would be hazardous to its enrollees; or
 - (h) The health maintenance organization has otherwise failed to substantially comply with this subtitle.
- (2) If the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of the suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.
- (3) If the certificate of authority of a health maintenance organization is revoked, the organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation whatsoever. The **commissioner**~~[executive director]~~ may, by written order, permit the further operation of the organization as the **commissioner**~~[executive director]~~ may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage. If the **commissioner**~~[executive director]~~ permits such further operation the health maintenance organization will continue to collect the periodic prepayments required of enrollees.

➔Section 1510. KRS 304.38-140 is amended to read as follows:

Any rehabilitation or liquidation of a health maintenance organization shall be conducted under the supervision of the **commissioner**~~[executive director]~~ pursuant to and in accordance with Subtitle 33 of Chapter 304 of the Kentucky Revised Statutes.

➔Section 1511. KRS 304.38-150 is amended to read as follows:

The **commissioner**~~[executive director]~~ may promulgate reasonable rules and regulations not inconsistent with the provisions of this subtitle that he *or she* deems necessary for the proper administration of this subtitle.

➔Section 1512. KRS 304.38-180 is amended to read as follows:

- (1) No health maintenance organization, or representative thereof, may cause or knowingly permit the use of advertising or solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive.
- (2) No health maintenance organization shall cancel an enrollee's coverage, except for the failure to pay the charge for such coverage, or for such other reasons as may be promulgated in regulations issued by the **commissioner**~~[executive director]~~.
- (3) Subtitle 12 of this chapter shall be construed to apply to health maintenance organizations and evidences of coverage, except to the extent that the **commissioner**~~[executive director]~~ determines that the nature of health maintenance organizations and evidence of coverage under such sections is clearly inappropriate.

➔Section 1513. KRS 304.38-185 is amended to read as follows:

In his *or her* discretion, the **commissioner**~~[executive director]~~ may include health maintenance organizations or designated types of health maintenance organizations doing business pursuant to this subtitle in coordination of benefits guidelines prescribed pursuant to KRS 304.18-085.

➔Section 1514. KRS 304.38-200 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

- (1) Subtitle 1 -- Scope -- General Definitions and Provisions;
- (2) Subtitle 2 -- **Commissioner of the Department of Insurance**~~[Executive Director]~~;
- (3) Subtitle 3 -- Authorization of Insurers and General Requirements;
- (4) Subtitle 4 -- Fees and Taxes;
- (5) Subtitle 5 -- Kinds of Insurance -- Limits of Risk -- Reinsurance;
- (6) Subtitle 6 -- Assets and Liabilities;
- (7) Subtitle 7 -- Investments;
- (8) Subtitle 8 -- Administration of Deposits;
- (9) Subtitle 9 -- Agents, Consultants, Solicitors, and Adjusters;
- (10) Subtitle 12 -- Trade Practices and Frauds;
- (11) Subtitle 14 -- The Insurance Contract;
- (12) Subtitle 17 -- Health Insurance Contracts;
- (13) Subtitle 17A -- Health Benefit Plans;
- (14) Subtitle 17B -- Kentucky Access;
- (15) Subtitle 17C -- Limited Health Service Benefit Plans;
- (16) Subtitle 18 -- Group and Blanket Health Insurance;
- (17) Subtitle 24 -- Domestic Stock and Mutual Insurers;
- (18) Subtitle 25 -- Continuity of Management;
- (19) Subtitle 26 -- Insider Trading of Equity Securities;
- (20) Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- (21) Subtitle 37 -- Insurance Holding Company Systems;
- (22) Subtitle 47 -- Insurance Fraud; and
- (23) Subtitle 99 -- Penalties.

➔Section 1515. KRS 304.38A-010 is amended to read as follows:

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

- (1) "Enrollee" means an individual who is enrolled in a limited health services benefit plan;
- (2) "Evidence of coverage" means any certificate, agreement, contract, or other document issued to an enrollee stating the limited health services to which the enrollee is entitled. All coverages described in an evidence of coverage issued by a limited health service organization are deemed to be "limited health services benefit plans" to the extent defined in KRS 304.17C-010 unless exempted by the **commissioner**~~[executive director]~~;
- (3) "Limited health service" means dental care services, vision care services, mental health services, substance abuse services, chiropractic services, pharmaceutical services, podiatric care services, and such other services as may be determined by the **commissioner**~~[executive director]~~ to be limited health services. Limited health service shall not include hospital, medical, surgical, or emergency services except as these services are provided incidental to the limited health services set forth in this subsection;

- (4) "Limited health service contract" means any contract entered into by a limited health service organization with a policyholder to provide limited health services;
- (5) "Limited health service organization" means a corporation, partnership, limited liability company, or other entity that undertakes to provide or arrange limited health service or services to enrollees. A limited health service organization does not include a provider or an entity when providing or arranging for the provision of limited health services under a contract with a limited health service organization, health maintenance organization, or a health insurer; and
- (6) "Provider" means the same as defined in KRS 304.17A-005(23).

➔Section 1516. KRS 304.38A-020 is amended to read as follows:

No person may operate a limited health service organization in this state without obtaining and maintaining a certificate of authority from the **commissioner**~~executive director~~ pursuant to this section and KRS 304.38A-030, 304.38A-040, 304.38A-050, 304.38A-060, 304.38A-070, 304.38A-090, and 304.38A-110, except an insurer authorized to transact health insurance in this state.

➔Section 1517. KRS 304.38A-030 is amended to read as follows:

An application for a certificate of authority to operate a limited health service organization shall be filed with the **commissioner**~~executive director~~ on a form prescribed by the **commissioner**~~executive director~~. The application shall be verified by an officer or authorized representative of the applicant and shall set forth, or be accompanied by, the following:

- (1) A copy of the applicant's basic organizational document, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents and all amendments to these documents;
- (2) A copy of all bylaws, rules, and regulations, or similar documents, if any, regulating the conduct of the applicant's internal affairs;
- (3) A list of the names, addresses, official positions, and biographical information of the individuals who are responsible for conducting the applicant's affairs, including but not limited to all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers, and any person or entity owning or having the right to acquire ten percent (10%) or more of the voting securities of the applicant, and the partners or members in the case of a partnership or association. Such listing shall fully disclose the extent and nature of any contracts or arrangements between any individual who is responsible for conducting the applicant's affairs and the limited health service organization, including any possible conflicts of interest;
- (4) A complete biographical statement, on forms prescribed by the **department**~~office~~, with respect to each individual identified under this section;
- (5) A statement generally describing the applicant, its facilities, personnel, and the limited health services to be offered;
- (6) A copy of the form of any contract made, or to be made between the applicant and any person listed in subsection (3) of this section;
- (7) A copy of the form of any contract made or to be made between the applicant and any person, corporation, partnership, or other entity for the performance on the applicant's behalf of any functions including but not limited to marketing, administration, enrollment, investment management and provider agreements, subcontract agreements, and risk-sharing arrangements for the provision of limited health services to enrollees;
- (8) A copy of the applicant's most recent financial statements audited by independent certified public accountants. If the financial affairs of the applicant's parent company are audited by independent certified public accountants but those of the applicant are not, then a copy of the most recent audited financial statement of the applicant's parent company, certified by an independent certified public accountant, attached to which shall be consolidated financial statements of the applicant, shall satisfy this requirement unless the **commissioner**~~executive director~~ determines that additional or more recent financial information is required for the proper administration of this subtitle;

- (9) A copy of the applicant's financial plan, including a three (3) year projection of anticipated operating results with all material assumptions, a statement of the sources of working capital, and any other sources of funding and provisions for contingencies;
- (10) A description of the proposed method of marketing;
- (11) A statement acknowledging that all lawful process in any legal action or proceeding against the applicant on a cause of action arising in this state is valid if served in accordance with KRS 304.3-230;
- (12) A description of how the applicant will comply with KRS 304.38A-040 and 304.38A-080;
- (13) The fee for issuance of a certificate of authority provided in Subtitle 4 of this chapter; and
- (14) Such other information as the **commissioner**~~{executive director}~~ may reasonably require to make the determinations required by this subtitle.

➔Section 1518. KRS 304.38A-040 is amended to read as follows:

- (1) Following receipt of an application filed pursuant to KRS 304.38A-030, the **commissioner**~~{executive director}~~ shall review the application and notify the applicant of any deficiencies. The **commissioner**~~{executive director}~~ shall issue a certificate of authority to an applicant if the following conditions are met:
 - (a) The applicant has verified to the **commissioner**~~{executive director}~~ that it has an initial minimum worth of at least two hundred fifty thousand dollars (\$250,000);
 - (b) The requirements of KRS 304.38A-030 have been fulfilled;
 - (c) The individuals responsible for conducting the applicant's affairs are competent, trustworthy, and possess good reputations, and have had appropriate experience, training, or education;
 - (d) The applicant is financially responsible and may reasonably be expected to meet its obligations to enrollees and to prospective enrollees. In making his *or her* determination, the **commissioner**~~{executive director}~~ may consider:
 - 1. The financial soundness;
 - 2. The adequacy of surplus, working capital, other sources of funding, and provisions for contingencies;
 - 3. Any agreement for paying the cost of the limited health services or for alternative coverage in the event of insolvency of the limited health service organization; and
 - 4. The manner in which the requirements of KRS 304.38A-030 have been fulfilled; and
 - (e) Any deficiencies identified by the **commissioner**~~{executive director}~~ have been corrected.
- (2) If the certificate of authority is denied, the **commissioner**~~{executive director}~~ shall notify the applicant and shall specify the reasons for denial in the notice. The limited health service organization shall have sixty (60) days from the date of receipt of the notice to request a hearing before the **commissioner**~~{executive director}~~ pursuant to KRS 304.2-310.
- (3) Each certificate of authority issued to a limited health service organization shall designate the type of services the limited health service organization is authorized to provide.

➔Section 1519. KRS 304.38A-060 is amended to read as follows:

- (1) A limited health service organization may add one (1) or more limited health services by:
 - (a) Filing the relevant information required by KRS 304.38A-030;
 - (b) Demonstrating compliance with KRS 304.38A-030 and 304.38A-080; and
 - (c) Obtaining approval from the **commissioner**~~{executive director}~~ prior to offering the additional limited health service.
- (2) If the filings are disapproved, the **commissioner**~~{executive director}~~ shall notify the limited health service organization and shall specify the reasons for disapproval in the notice. The limited health service organization

shall have sixty (60) days from the date of receipt of the notice to request a hearing before the **commissioner**~~[executive director]~~ pursuant to KRS 304.2-310.

➔Section 1520. KRS 304.38A-070 is amended to read as follows:

A limited health service organization shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

- (1) Subtitle 1--Scope--General Definitions and Provisions;
- (2) Subtitle 2--Insurance **Commissioner**~~[Executive Director]~~;
- (3) Subtitle 3--Authorization of Insurers and General Requirements;
- (4) Subtitle 4--Fees and Taxes;
- (5) Subtitle 5--Kinds of Insurance--Limits of Risk--Reinsurance;
- (6) Subtitle 6--Assets and Liabilities;
- (7) Subtitle 7--Investments;
- (8) Subtitle 8--Administration of Deposits;
- (9) Subtitle 9--Agents, Consultants, Solicitors, and Adjusters;
- (10) Subtitle 12--Trade Practices and Frauds;
- (11) Subtitle 14--The Insurance Contract;
- (12) Subtitle 17--Health Insurance Contracts;
- (13) Subtitle 17C--Limited Health Services Benefit Plans;
- (14) Subtitle 18--Group and Blanket Health Insurance;
- (15) Subtitle 24--Domestic Stock and Mutual Insurers;
- (16) Subtitle 25--Continuity of Management;
- (17) Subtitle 26--Insider Trading of Equity Securities;
- (18) Subtitle 33--Insurers Rehabilitation and Liquidation;
- (19) Subtitle 37--Insurance Holding Company Systems;
- (20) Subtitle 47--Insurance Fraud; and
- (21) Subtitle 99--Penalties.

➔Section 1521. KRS 304.38A-080 is amended to read as follows:

- (1) Each limited health service organization shall at all times have and maintain a net worth of not less than one hundred twenty-five thousand dollars (\$125,000).
- (2) (a) Each limited health service organization shall deposit with the **commissioner**~~[executive director]~~ or with any organization or trustee acceptable to the **commissioner**~~[executive director]~~ through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that is acceptable to the **commissioner**~~[executive director]~~ in an amount equal to fifty thousand dollars (\$50,000).
 - (b) The deposit shall be an admitted asset.
- (3) A limited health service organization shall at all times comply with the risk-based capital requirements for health organizations in administrative regulations promulgated by the **commissioner**~~[executive director]~~ for health maintenance organizations and other health organizations.

➔Section 1522. KRS 304.38A-090 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may suspend or revoke the certificate of authority issued to a limited health service organization pursuant to this subtitle upon determining that any of the following conditions exist:

- (a) The limited health service organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted pursuant to KRS 304.38A-030, unless amendments to the submissions have been filed with and approved by the *commissioner*~~{executive director}~~;
 - (b) The limited health service organization issues an evidence of coverage or schedule of charges for limited health services which does not comply with the requirements of Subtitle 17C of this chapter;
 - (c) The limited health service organization is unable to fulfill its obligations to furnish limited health services;
 - (d) The limited health service organization is not financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;
 - (e) The net worth of the limited health service organization is less than that required by KRS 304.38A-080 or the limited health service organization has failed to correct any deficiency in its net worth as required by the *commissioner*~~{executive director}~~;
 - (f) The continued operation of the limited health service organization would be hazardous to its enrollees; or
 - (g) The limited health service organization has otherwise failed to comply with this subtitle.
- (2) If the *commissioner*~~{executive director}~~ has cause to believe that grounds for the suspension or revocation of a certificate of authority exist, he or she shall notify the limited health service organization in writing specifically stating the grounds for suspension or revocation and fixing a time not more than sixty (60) days thereafter for a hearing on the matter in accordance with KRS Chapter 13B.
 - (3) When the certificate of authority of a limited health service organization is revoked, the organization shall proceed immediately following the effective date of the order of revocation to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation whatsoever. The *commissioner*~~{executive director}~~ may, by written order, permit such further operation of the organization as he *or she* may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing limited health services.
 - (4) A limited health service organization shall be subject to the provisions of KRS 304.2-210 to 304.2-300 and to the provisions of Subtitle 2 of this chapter for determining financial condition, market conduct, and business practices.

➔Section 1523. KRS 304.38A-100 is amended to read as follows:

- (1) Any limited health service organization that contracts with a provider or provider organization for the transfer of risk to the provider shall take reasonable steps to ensure the transferee is able to accept and manage the risk to be transferred. The limited health service organization shall submit a plan for evaluating a provider's or provider organization's ability to accept and manage risk to the *department*~~{office}~~ for approval at least forty-five (45) days prior to the proposed date of the transfer of any risk.
- (2) If a limited health service organization transfers risk to a provider:
 - (a) Not in compliance with the standards listed in its approved plan; or
 - (b) Prior to filing or receiving approval of its plan,

the *commissioner*~~{executive director}~~ may require the limited health service organization to retain additional reserves to cover the risk transferred.

➔Section 1524. KRS 304.38A-110 is amended to read as follows:

- (1) A person issued a single service organization certificate of authority in accordance with KRS 304.38-065 and holding the certificate of authority on July 15, 2002, shall be converted to a limited health service organization as defined in KRS 304.38A-010. At the next renewal of the certificate of authority, the person shall be issued a certificate of authority to act as a limited health service organization if it meets the requirements for continuance of the certificate of authority. No certificate of authority to act as a single service organization shall be issued or renewed after July 15, 2002.

- (2) A single service organization holding a certificate of authority immediately prior to July 15, 2002, that is converted to a limited health service organization according to subsection (1) of this section shall continue to be required to meet the minimum net worth requirement of one hundred twenty-five thousand dollars (\$125,000) and shall comply with the risk-based capital requirements for health organizations in administrative regulations promulgated by the *commissioner*~~executive director~~ for health maintenance organizations and other health organizations.

➔Section 1525. KRS 304.39-060 is amended to read as follows:

- (1) Any person who registers, operates, maintains or uses a motor vehicle on the public roadways of this Commonwealth shall, as a condition of such registration, operation, maintenance or use of such motor vehicle and use of the public roadways, be deemed to have accepted the provisions of this subtitle, and in particular those provisions which are contained in this section.
- (2) (a) Tort liability with respect to accidents occurring in this Commonwealth and arising from the ownership, maintenance, or use of a motor vehicle is "abolished" for damages because of bodily injury, sickness or disease to the extent the basic reparation benefits provided in this subtitle are payable therefor, or that would be payable but for any deductible authorized by this subtitle, under any insurance policy or other method of security complying with the requirements of this subtitle, except to the extent noneconomic detriment qualifies under paragraph (b) of this subsection.
- (b) In any action of tort brought against the owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required in this subtitle, or against any person or organization legally responsible for his *or her* acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish and inconvenience because of bodily injury, sickness or disease arising out of the ownership, maintenance, operation or use of such motor vehicle only in the event that the benefits which are payable for such injury as "medical expense" or which would be payable but for any exclusion or deductible authorized by this subtitle exceed one thousand dollars (\$1,000), or the injury or disease consists in whole or in part of permanent disfigurement, a fracture to a bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of bodily function or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed in compliance with the requirements of this subsection upon a showing that the medical treatment received has an equivalent value of at least one thousand dollars (\$1,000).
- (c) Tort liability is not so limited for injury to a person who is not an owner, operator, maintainer or user of a motor vehicle within subsection (1) of this section, nor for injury to the passenger of a motorcycle arising out of the maintenance or use of such motorcycle.
- (3) For purposes of this section and the provisions on reparation obligor's rights of reimbursement, subrogation, and indemnity, a person does not intentionally cause harm merely because his *or her* act or failure to act is intentional or done with ~~the~~^{his} realization that it creates a grave risk of harm.
- (4) Any person may refuse to consent to the limitations of his *or her* tort rights and liabilities as contained in this section. Such rejection must be in writing in a form to be prescribed by the *Department*~~Office~~ of Insurance and must have been executed and filed with the *department*~~office~~ at a time prior to any motor vehicle accident for which such rejection is to apply. Such rejection form together with a reasonable explanation thereof shall be furnished by the reparation obligor with each policy to each prospective insurance applicant. Such rejection form shall affirmatively state in bold print that acceptance of this form of insurance denies the applicant the right to sue a negligent motorist unless certain requirements contained in the policy of insurance are met. Rejection by a person who is under legal disability shall be made on behalf of such person by his *or her* legal guardian, conservator or ~~his~~ natural parent. The failure of such guardian or a natural parent of a person under legal disability to file a rejection, within six (6) months from the date that this subtitle would otherwise become applicable to such person, shall be deemed to be an affirmative acceptance of all provisions of this subtitle. Provided, however, any person who, at the time of an accident, does not have basic reparation insurance but has not formally rejected such limitations of his *or her* tort rights and liabilities and has at such time in effect security equivalent to that required by KRS 304.39-110 shall be deemed to have fully rejected such limitations within meaning of this section for that accident only.
- (5) (a) Any rejection must be filed with the *Department*~~Office~~ of Insurance and shall become effective on the date of its filing until revoked;

- (b) Any rejection filed prior to June 30, 1980, shall be deemed to be effective from the date of its filing until revoked; and
 - (c) Any revocation shall be in writing and shall become effective upon the date of its filing with the **Department**~~{Office}~~ of Insurance.
- (6) Every insurance company when issuing an automobile policy to a resident of this Commonwealth must inform the buyer in writing in a form to be prescribed by the insurance **commissioner**~~{executive director}~~ of his **or her** right to reject the limitations of ~~the~~~~{his}~~ tort rights and liabilities under this subtitle in the manner provided in subsections (4) and (7) of this section.
 - (7) Any rejection shall result in the full retention by the individual of his **or her** tort rights and ~~his~~ tort liabilities. Any person injured by a motor vehicle operator who has such rejection on file may claim ~~the~~~~{his}~~ full damages, including nonpecuniary damages, or, if such injured person has not rejected his **or her** own tort limitations, he **or she** may also claim basic reparation benefits from the appropriate security on the vehicle as established under KRS 304.39-050. If such provider of security is other than the one providing security for the operator who has rejected the limitations, such provider shall be subrogated to the rights of the injured person to the extent of reparation benefits paid against the owner and operator of the vehicle.
 - (8) No person who has rejected the tort limitations under this section, except as provided in subsection (9) of this section or KRS 304.39-140(5), may collect basic reparation benefits.
 - (9) Any owner or operator of a motorcycle, as defined in Kentucky Revised Statutes, may file a rejection as described in subsections (4) and (5) of this section, which will apply solely to the ownership and operation of a motorcycle but will not apply to injury resulting from the ownership, operation or use of any other type of motor vehicle.

➔Section 1526. KRS 304.39-080 is amended to read as follows:

- (1) "Security covering the vehicle" is the insurance or other security so provided. The vehicle for which the security is so provided is the "secured vehicle."
- (2) "Basic reparation insurance" includes a contract, self-insurance, or other legal means under which the obligation to pay basic reparation benefits arises.
- (3) This Commonwealth, its political subdivisions, municipal corporations, and public agencies may continuously provide, pursuant to subsection (6) of this section, security for the payment of basic reparation benefits in accordance with this subtitle for injury arising from maintenance or use of motor vehicles owned by those entities and operated with their permission.
- (4) The United States and its public agencies and any other state, its political subdivisions, municipal corporation, and public agencies may provide, pursuant to subsection (6) of this section, security for the payment of basic reparation benefits in accordance with this subtitle for injury arising from maintenance or use of motor vehicles owned by those entities and operated with their permission.
- (5) Except for entities described in subsections (3) and (4) of this section, every owner or operator of a motor vehicle registered in this Commonwealth or operated in this Commonwealth with an owner's permission shall continuously provide with respect to the motor vehicle while it is either present or registered in this Commonwealth, and any other person may provide with respect to any motor vehicle, by a contract of insurance or by qualifying as a self-insurer, security for the payment of basic reparation benefits in accordance with this subtitle and security for payment of tort liabilities, arising from maintenance or use of the motor vehicle. The owner of a motor vehicle who fails to maintain security on a motor vehicle in accordance with this subsection shall have his or her motor vehicle registration revoked in accordance with KRS 186A.040 and shall be subject to the penalties in KRS 304.99-060. An owner who permits another person to operate a motor vehicle without security on the motor vehicle as required by this subtitle shall be subject to the penalties in KRS 304.99-060.
- (6) Security may be provided by a contract of insurance or by qualifying as a self-insurer or obligated government in compliance with this subtitle.
- (7) Self-insurance, subject to approval of the **commissioner**~~{executive director}~~ of insurance, is effected by filing with the **commissioner**~~{executive director}~~ in satisfactory form:

- (a) A continuing undertaking by the owner or other appropriate person to pay tort liabilities or basic reparation benefits, or both, and to perform all other obligations imposed by this subtitle;
 - (b) Evidence that appropriate provision exists for prompt and efficient administration of all claims, benefits, and obligations provided by this subtitle; and
 - (c) Evidence that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a policy of insurance, complying with this subtitle, for payment of tort liabilities, basic reparation benefits, and all other obligations imposed by this subtitle.
- (8) An entity described in subsection (3) or (4) of this section may provide security by lawfully obligating itself to pay basic reparation benefits in accordance with this subtitle.
- (9) A person providing security pursuant to subsection (7) of this section is a "self-insurer." An entity described in subsection (3) or (4) of this section that has provided security pursuant to subsection (6) of this section is an "obligated government."

➔Section 1527. KRS 304.39-100 is amended to read as follows:

- (1) An insurance contract which purports to provide coverage for basic reparation benefits or is sold with representation that it provides security covering a motor vehicle has the legal effect of including all coverages required by this subtitle.
- (2) An insurer authorized to transact or transacting business in this Commonwealth shall file with the **commissioner**~~executive director~~ of insurance as a condition of its continued transaction of business within this Commonwealth a form approved by the **commissioner**~~executive director~~ of insurance declaring that in any contract of liability insurance for injury, wherever issued, covering the ownership, maintenance or use of a motor vehicle other than motorcycles while the vehicle is in this Commonwealth shall be deemed to provide the basic reparation benefits coverage and minimum security for tort liabilities required by this subtitle, except a contract which provides coverage only for liability in excess of required minimum tort liability coverage. Any nonadmitted insurer may file such form.

➔Section 1528. KRS 304.39-117 is amended to read as follows:

- (1) Each insurer issuing an insurance contract which provides security covering a motor vehicle shall provide to the insured, in compliance with administrative regulations promulgated by the **department**~~office~~, written proof in the form of an insurance card that the insured has in effect an insurance contract providing security in conformity with this subtitle.
- (2) The owner shall keep the card in his *or her* motor vehicle as prima facie evidence, except as provided in subsection (3) of this section, that the required security is currently in full force and effect, and shall show the card to a peace officer upon request.
- (3) On and after January 1, 2006, as to personal motor vehicles as defined in KRS 304.39-087, the card and the database created by KRS 304.39-087 shall be evidence to a peace officer who requests the card if the peace officer has access to the database through AVIS. If AVIS does not list the vehicle identification number of the personal motor vehicle as an insured vehicle, the peace officer may accept an insurance card as evidence that the required security is currently in full force and effect on the personal motor vehicle if the card was effective no more than forty-five (45) days before the date on which the peace officer requests the card.

➔Section 1529. KRS 304.39-150 is amended to read as follows:

Terms and conditions of contracts and certificates or other evidence of insurance coverage sold or issued in this Commonwealth providing motor vehicle tort liability, basic reparation, and added reparation insurance coverages, and of forms used by insurers offering these coverages, are subject to approval and regulation by the **commissioner**~~executive director~~ of insurance. The **commissioner**~~executive director~~ shall approve only terms and conditions consistent with the purposes of this subtitle and fair and equitable to all persons whose interests may be affected.

➔Section 1530. KRS 304.39-170 is amended to read as follows:

- (1) Reparation obligors providing basic reparation insurance in this Commonwealth may organize and maintain, subject to approval and regulation by the **commissioner**~~executive director~~ of insurance, an assigned claims bureau and an assigned claims plan and adopt rules for their operation and for assessment of costs on a fair and equitable basis consistent with this subtitle. If they do not organize and continuously maintain an assigned

claims bureau and an assigned claims plan in a manner considered by the *commissioner*~~[executive director]~~ of insurance to be consistent with this subtitle, *the commissioner*~~he~~ shall organize and maintain an assigned claims bureau and an assigned claims plan. Each reparation obligor providing basic reparation insurance in this Commonwealth shall participate in the assigned claims bureau and the assigned claims plan. Costs incurred shall be allocated fairly and equitably among the reparation obligors.

- (2) The assigned claims bureau shall promptly assign each claim and notify the claimant of the identity and address of the assignee of the claim. Claims shall be assigned so as to minimize inconvenience to claimants. The assignee thereafter has rights and obligations as if he *or she* had issued a policy of basic reparation insurance complying with this subtitle applicable to the injury or, in case of financial inability of a reparation obligor to perform its obligations, as if the assignee had written the applicable basic reparation insurance, undertaken the self-insurance, or lawfully obligated itself to pay reparation benefits.

➔Section 1531. KRS 304.39-290 is amended to read as follows:

- (1) There is created a nonprofit unincorporated legal entity to be known as the Kentucky Insurance Arbitration Association to provide a mechanism for the reimbursement, among reparation obligors of losses paid as basic or added reparation benefits, based solely on the law of torts without regard to subsections (1), (2), and (3) of KRS 304.39-060.
- (2) All basic reparation obligors shall be and remain members of the association as a condition of their authority to transact business in this Commonwealth.
- (3) The association shall perform its functions under a plan of operation established and approved under subsection (5) and shall exercise its powers through a board of directors established under subsection (4) hereof.
- (4) The board of directors of the association shall consist of not less than five (5) nor more than ten (10) persons serving terms as established in the plan of operation. They shall be selected by member obligors subject to the approval of the *commissioner*~~[executive director]~~. If no members have been selected and approved prior to July 1, 1974, the *commissioner*~~[executive director]~~ shall appoint the initial members of the board. In approving selections to the board, the *commissioner*~~[executive director]~~ shall consider, among other things, whether all member obligors are fairly represented.

Each member of the board shall designate qualified experienced claimspersons from the member's company, who upon approval by the *commissioner*~~[executive director]~~, may serve as his *or her* alternates for the purpose of claims arbitration.

- (5) The association shall submit to the *commissioner*~~[executive director]~~ a plan of operation and any amendments thereto necessary, or suitable to assure the fair, reasonable, and equitable administration of the association. The plan shall become effective upon approval in writing by the *commissioner*~~[executive director]~~:
- (a) All reparation obligors shall comply with the provisions of the plan of operation;
- (b) The plan of operation shall:
1. Establish procedures whereby all the powers and duties of the association will be performed;
 2. Establish minimum requirements for the initial submission of a case for reimbursement or arbitration;
 3. Establish minimum requirements beneath which reimbursements shall not be made in order that there be fair allocation of significant losses and the elimination of unnecessary costs in the reimbursement mechanism;
 4. Encourage voluntary reimbursement procedures between reparation obligors so that resort to arbitration shall be as infrequent as possible;
 5. Recognize that fair allocation of loss between commercial and noncommercial motor vehicles may require different minimum requirements than when the loss is between two (2) or more noncommercial vehicles;
 6. Establish regular places and times for meetings;

7. Establish procedures for records to be maintained on all cases presented for arbitration and dispositions thereof;
 8. Establish procedures for compensation to reparation obligors for travel related expense and the fair value of the time devoted by their employees as a director or alternate in performance of duties for the association;
 9. Establish procedures for adequately and equitably financing the cost of the association among members; and
 10. Contain additional provisions necessary or proper for execution of the powers and duties of the association.
- (6) The association shall be subject to examination and regulation by the **commissioner**~~{executive director}~~:
- (a) The board of directors shall submit to the **commissioner**~~{executive director}~~, not later than March 30 of each year, a report on its activities for the preceding calendar year;
 - (b) The board of directors shall promptly notify the **commissioner**~~{executive director}~~ whenever it appears that any member insurer has failed or refused to comply with an arbitration decision or has shown a protracted tendency to decline a significant number of meritorious claims presented to it prior to initiation of arbitration proceedings.
- (7) The association shall be exempt from payment of all fees, licenses, and taxes levied by this Commonwealth or any of its subdivisions except taxes on real or personal property.
- (8) There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the **commissioner**~~{executive director}~~ or his *or her* representative for any action taken by them in the performance of their powers and duties under this section.

➔Section 1532. KRS 304.39-300 is amended to read as follows:

The **commissioner**~~{executive director of insurance}~~ may adopt rules to provide effective administration of this subtitle which are consistent with the purposes of this subtitle and fair and equitable to all persons whose interests may be affected.

➔Section 1533. KRS 304.39-330 is amended to read as follows:

- (1) The rates for bodily injury liability in the amounts specified in KRS 304.39-110 combined with the rates for uninsured motorists coverage in equal amounts and for basic reparation benefits coverage shall be reduced by each insurer by not less than ten percent (10%) as of the effective date of this subtitle from the rates in effect for each such insurer immediately prior to such date for bodily injury liability in the amounts specified in KRS 304.39-110 combined with the rates for uninsured motorists coverage and the rates charged for one thousand dollars (\$1,000) per person medical expense coverage. Such reduced rates shall remain in effect for at least one (1) year, and thereafter shall not be increased without the approval of the **commissioner**~~{executive director of insurance}~~ after hearing. There shall be no exception to the requirements of this section unless the **commissioner**~~{executive director}~~ shall find that the use of such reduced rates required as to any insurer will result in rates which are inadequate under Chapter 304 of the Kentucky Revised Statutes.
- (2) The provisions of subsection (1) shall not apply to any policy covering a motor vehicle for which a person who would otherwise be a basic reparation insured has rejected the limitations upon his *or her* tort rights and liabilities in accordance with the provisions of KRS 304.39-060(4).

➔Section 1534. KRS 304.40-020 is amended to read as follows:

As used in KRS 304.40-030 to 304.40-140:

- (1) "Association" means the joint underwriting association established pursuant to the provisions of KRS 304.40-030 to 304.40-140.
- (2) "Medical malpractice insurance" means insurance as defined in KRS 304.5-070(1)(j).
- (3) "**Commissioner**~~{Executive director}~~" means the **commissioner**~~{executive director}~~ of *the Department of Insurance*.

- (4) "Net direct premiums" means gross direct premiums written on the lines of insurance set forth in KRS 304.40-030(1), as computed by the **commissioner**~~{executive director of insurance}~~, less return premiums for the unused or unabsorbed portions of premium deposits.

➔Section 1535. KRS 304.40-030 is amended to read as follows:

- (1) A temporary joint underwriting association is hereby created, consisting of all insurers authorized to write and engage in writing in this state on a direct basis the following lines of insurance, as reported in the companies' annual statements:
- (a) Workers' compensation;
 - (b) Liability other than auto;
 - (c) Private passenger auto liability;
 - (d) Commercial auto liability;
 - (e) The liability portion of commercial multiperil policies; and
 - (f) Health insurance including prepaid hospital services contracts and group or blanket health insurance.

Every such insurer shall remain a member of the joint underwriting association as a condition of its authority to continue to transact such kinds of insurance in this state.

- (2) The implementation of the operation of the joint underwriting association shall become effective upon the order of the **commissioner**~~{executive director}~~. The **commissioner**~~{executive director}~~ shall not order the association to commence underwriting operations until he *or she*, after due hearing and investigation, has determined that medical malpractice insurance cannot be made available in the voluntary market for any of the categories defined in subsection (3)(a), (b), and (c) of this section. The joint underwriting association shall remain in effect for a period of no longer than two and one-half (2-1/2) years from the date that it commences underwriting operations.
- (3) For the purposes of the joint underwriting association, three (3) health care provider categories shall be established:
- (a) Physicians and surgeons;
 - (b) Hospitals; and
 - (c) All other licensed health care providers.

The **commissioner**~~{executive director}~~ shall hold separate hearings and conduct investigations on each of the three (3) categories of health care providers and determine for each category whether or not medical malpractice insurance is readily available in the voluntary market. If the **commissioner**~~{executive director}~~ finds that insurance is not readily available for any of the categories of health care providers, the joint underwriting association shall commence underwriting operations for that category.

KRS 304.40-030 to 304.40-140 shall not preclude any licensed health care provider from procuring medical malpractice insurance from the voluntary market.

If the **commissioner**~~{executive director}~~ determines at any time that medical malpractice insurance is readily available in the voluntary market for either (a) physicians and surgeons, (b) hospitals, or (c) all other licensed health care providers, the association shall thereby cease its underwriting operations for such category of medical malpractice insurance which **the commissioner**~~{he}~~ has determined is readily available in the voluntary market.

- (4) The association shall, pursuant to the provisions of KRS 304.40-030 to 304.40-140 and the plan of operation with respect to medical malpractice insurance, have the power on behalf of its members:
- (a) To issue, or to cause to be issued, policies of insurance to applicants, including incidental coverages and subject to limitations as specified in the plan of operation, but not to exceed one hundred thousand dollars (\$100,000) for each claimant under one (1) policy and one million dollars (\$1,000,000) for all claimants under one (1) policy in any one (1) year;

- (b) To underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions;
- (c) To assume reinsurance from its members;
- (d) To cede reinsurance; and
- (e) To negotiate and obtain in the voluntary market medical malpractice insurance for any health care provider to whom the association has issued or caused to be issued a policy of medical malpractice insurance with the foregoing limits.

➔Section 1536. KRS 304.40-040 is amended to read as follows:

- (1) Within forty-five (45) days following the order of the **commissioner**~~{executive director}~~ implementing the operation of the association, the directors of the association shall submit to the **commissioner**~~{executive director}~~ for ~~his~~ review a proposed plan of operation, consistent with the provisions of this subtitle.
- (2) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical malpractice insurance; and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association.
- (3) The plan of operation shall be subject to approval by the **commissioner**~~{executive director}~~ after consultation with the members of the association, representatives of the public, and other affected individuals and organizations. If the **commissioner**~~{executive director}~~ disapproves all or any part of the proposed plan of operation, the directors shall within fifteen (15) days submit for review an appropriate revised plan of operation or part thereof. If the directors fail to do so, the **commissioner**~~{executive director}~~ shall promulgate a plan of operation or part thereof, as the case may be. The plan of operation approved or promulgated by the **commissioner**~~{executive director}~~ shall become effective upon order of the **commissioner**~~{executive director}~~.
- (4) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the **commissioner**~~{executive director}~~, or shall be made at the direction of the **commissioner**~~{executive director}~~.

➔Section 1537. KRS 304.40-050 is amended to read as follows:

- (1) All policies issued by the association shall be written for the term of one (1) year. The directors of the association may elect to issue policies on an occurrence basis or a claims made basis. No policy form shall be used by the association unless it has been filed with the **commissioner**~~{executive director}~~ and either (a) **the commissioner**~~{he}~~ has approved it, or (b) thirty (30) days has lapsed and **the commissioner**~~{he}~~ has not disapproved it in accordance with KRS Chapter 304, Subtitle 14.
- (2) Cancellation of the association's policies shall be governed by the laws and regulations governing the cancellation of other policies of casualty insurance, except that the association may also cancel any of its policies in the event of nonpayment of any stabilization reserve fund charged, by mailing or delivering to the insured at the address shown on the policy, written notice stating when not less than ten (10) days thereafter cancellation shall be effective.
- (3) The rates, rating plans, rating rules, rating classifications and territories applicable to the insurance written by the association and statistics relating thereto shall be subject to Chapter 304, Subtitle 13 of the Kentucky Revised Statutes, giving due consideration to the past and prospective loss and expense experience for medical malpractice insurance written and to be written in this state, trends in the frequency and severity of losses, the investment income of the association, and such other information as the **commissioner**~~{executive director}~~ may require. All rates shall be on an actuarially sound basis, giving due consideration to the group retrospective rating plan and the stabilization reserve fund, and shall be calculated to be self-supporting. The **commissioner**~~{executive director}~~ shall make available to the association the loss and expense experience of insurers previously writing medical malpractice insurance in this state.
- (4) All policies issued by the association shall be subject to a nonprofit group retrospective rating plan to be approved by the **commissioner**~~{executive director}~~, under which the final premium for all policyholders of the association as a group will be equal to the administrative expenses, loss and loss adjustment expenses and

taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee on policyholder supplied funds. The standard premium before retrospective adjustment for each policy issued by the association shall be established on the basis of the association's rates, rating plans, rating rules, rating classifications, and territories then in effect. The maximum final premium for all policyholders of the association as a group shall be limited as provided in KRS 304.40-060(4). Since the business of the association is subject to the nonprofit group retrospective rating plan required by this subsection, there shall be a presumption that the rates filed and premiums for the business of the association are not excessive.

- (5) The **commissioner**~~{executive director}~~ shall examine the business of the association as often as he *or she* deems appropriate to assure that the group retrospective rating plan is being operated in a manner consistent with this section. If he *or she* finds that it is not being so operated, he *or she* shall issue an order to the association, specifying in what respects its operation is deficient and stating what corrective action shall be taken.
- (6) The association shall certify to the **commissioner**~~{executive director}~~ the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the association. Within sixty (60) days after such certification, the **commissioner**~~{executive director}~~ shall authorize the members of the association to commence recoupment of their respective shares of the deficit by applying a surcharge to be determined by the association at a rate not to exceed two percent (2%) of the annual premiums on future policies affording those kinds of insurance which form the basis for their participation in the association under procedures established by the association. The association shall amend the amount of its certification of deficit to the **commissioner**~~{executive director}~~ as the values of its incurred losses become finalized, and the members of the association shall amend their recoupment procedure accordingly.
- (7) In the event that sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (6) of this section, all members shall, on a temporary basis, contribute to the financial requirements of the association in the manner provided for in KRS 304.40-080. Any such contribution shall be reimbursed to the members by recoupment as provided in subsection (6) of this section.

➔Section 1538. KRS 304.40-060 is amended to read as follows:

- (1) There is hereby created a stabilization reserve fund which shall be administered by three (3) directors, one (1) of whom shall be the **commissioner**~~{executive director}~~ or *the commissioner's*~~{his}~~ deputy. The remaining two (2) directors shall be appointed by the **commissioner**~~{executive director}~~. One (1) shall be a representative of the association; the other a representative of its policyholders. The directors shall serve without salary, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties when approved by the **commissioner**~~{executive director}~~.
- (2) Each policyholder shall pay to the association a stabilization reserve fund charge equal to one-third (1/3) of each premium payment due for insurance through the association. Such charge shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.
- (3) The association shall promptly pay to the trustee of the fund all stabilization reserve fund charges which it collects from its policyholders and any retrospective premium refunds payable under the group retrospective rating plan authorized by KRS 304.40-050.
- (4) All moneys received by the fund shall be held in trust by a corporate trustee selected by the directors. The trustee may invest the trust fund, subject to the approval of the directors. All investment income shall be credited to the fund. All expenses of administration of the fund shall be charged against the fund. The trust fund shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders of the association under the group retrospective rating plan authorized by KRS 304.40-050. Payment of retrospective premium charges shall be made by the directors upon certification to them by the association of the amount due. If the trust fund is finally exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall thereupon terminate and shall be conclusively presumed to have been discharged. Any moneys remaining in the fund after all such retrospective premium charges have been paid shall be returned to policyholders under procedures authorized by the directors.

➔Section 1539. KRS 304.40-075 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Charitable health care provider" means any person, agency, clinic, or facility licensed or certified by the Commonwealth, or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care or dentistry without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider" means those persons, agencies, clinics, or facilities providing primary care medicine and performing no invasive or surgical procedures, and those persons, agencies, clinics, or facilities providing services within the dentist's scope of practice under KRS Chapter 313;
 - (b) "Medical malpractice insurer" means every person or entity engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts to provide medical professional liability insurance, except an entity in the business of providing such medical professional liability insurance only to itself or its affiliated subsidiary, or parent corporation, or subsidiaries of its parent corporations; and
 - (c) "Medical professional liability insurance" means insurance to cover liability incurred as a result of the hands-on providing of medical professional services directly to patients by an insured in the treatment, diagnosis, or prevention of patient illness, disease, or injury.
- (2) Insurers offering medical professional liability insurance in the Commonwealth shall make available, as a condition of doing business in the Commonwealth pursuant to this chapter, medical professional liability insurance for charitable health care providers and persons volunteering to perform medical services for charitable health care providers, with the same coverage limits made available to its other insureds.
- (3)
 - (a) Premiums for policies issued under subsection (2) of this section shall be paid by the Commonwealth from the general fund upon written application for payment of the premium by the health care provider wishing to offer charitable services.
 - (b) The ~~Department~~~~Office~~ of Insurance shall, through promulgation of administrative regulations pursuant to KRS Chapter 13A, establish reasonable guidelines for the registration of charitable health care providers. The guidelines shall require the provider to supply, at a minimum, the following information:
 1. Name and address of the charitable health care provider;
 2. Number of employees of the charitable health care provider who will be rendering medical care without compensation or charge and without expectation of compensation or charge, and who will be covered under the policy issued under subsection (2) of this section;
 3. The expected number of patients to be provided charitable health care services in the year for which the insurer will offer malpractice coverage;
 4. The charitable health care provider's acknowledgment that the insurer's risk management and loss prevention policies shall be followed;
 5. A copy of the registration filed with the Cabinet for Health and Family Services under KRS 216.941; and
 6. A copy of the medical malpractice policy, declaration page, and any other documentation the ~~commissioner~~~~executive director~~ may deem necessary to determine the proper amount of premiums and taxes to be reimbursed.
 - (c) Persons insured under this section shall be required to comply with the same risk management and loss prevention policies which the insurer imposes upon its other insureds.
 - (d) Any premium refund for medical professional liability insurance issued under subsection (2) of this section received for any reason by the charitable health care provider shall be promptly remitted to the ~~department~~~~office~~ for transmittal to the general fund.
- (4) This section shall only apply to charitable health care providers and persons volunteering to perform medical services for charitable health care providers who are not otherwise covered by any policy of medical

professional liability insurance for the charitable health care services provided, and that meet the terms for eligibility established pursuant to this section.

- (5) Coverage offered to charitable health care providers and persons volunteering at charitable health care providers shall be at least as broad as the coverage offered by the insurer to other noncharitable health care providers or facilities and to medical professionals working at noncharitable health care facilities.
- (6) The *Department*~~{Office}~~ of Insurance shall retrospectively review on an annual basis the premiums paid pursuant to this section as opposed to the expenses incurred by the insurers covering risks under this section to determine if the profits made for those risks were consistent with reasonable loss ratio guidelines. If the determination is made that the profits were not consistent with reasonable loss ratio guidelines, the *Department*~~{Office}~~ of Insurance shall determine the amount of the premiums to be refunded to the Commonwealth.
- (7) The Cabinet for Health and Family Services shall make available to the *Department*~~{Office}~~ of Insurance information on its registration of charitable health care providers for the purpose of obtaining medical malpractice insurance.
- (8) The *Department*~~{Office}~~ of Insurance shall not provide medical malpractice insurance as specified in subsection (3)(a) of this section to a charitable health care provider who has not registered with the Cabinet for Health and Family Services under KRS 216.941.

→Section 1540. KRS 304.40-080 is amended to read as follows:

All insurers which are members of the association shall participate in its writings, expenses, servicing, allowance, management fees, and losses in the proportion that the net direct premiums of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year, bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer with the *commissioner*~~{executive director}~~.

→Section 1541. KRS 304.40-090 is amended to read as follows:

The association shall be governed by a board of thirteen (13) directors. Five (5) directors shall be elected by the insurance companies which are members of the association, at a meeting of the member companies at a time and place designated by the *commissioner*~~{executive director}~~, by cumulative voting of the member companies, whose vote shall be weighted in accordance with each member's net direct premiums written during the preceding calendar year. One (1) of these five (5) directors shall be from a member company domiciled in Kentucky. The *commissioner*~~{executive director}~~ shall appoint seven (7) directors, one (1) named by the Kentucky Medical Association; one (1) named by the Kentucky Bar Association; one (1) named by the Kentucky Hospital Association; one (1) who is a licensed resident property and casualty agent in Kentucky; and three (3) knowledgeable members of the public at large, who have no interest in any of the foregoing categories. The *commissioner*~~{executive director}~~ or *the commissioner's*~~{his}~~ designee shall serve as a director.

→Section 1542. KRS 304.40-100 is amended to read as follows:

- (1) Any applicant to the association, any person insured pursuant to KRS 304.40-030 to 304.40-140, or their representatives, or any affected insurer, may appeal to the *commissioner*~~{executive director}~~ within thirty (30) days after any rule, action, or decision by or on behalf of the association, with respect to those items the plan of operation defines as appealable matters. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (2) All final orders of the *commissioner*~~{executive director}~~ made pursuant to this subtitle are subject to appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

→Section 1543. KRS 304.40-110 is amended to read as follows:

The association shall file in the office of the *commissioner*~~{executive director}~~ annually, on or before the first day of each March, a statement containing information with respect to its transaction, condition, operations, and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed and shall be in such form as is approved by the *commissioner*~~{executive director}~~. The *commissioner*~~{executive director}~~ may at any time require the association to furnish additional information with respect to its transactions, condition, or any matter

connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

➔Section 1544. KRS 304.40-120 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall make an examination into the affairs of the association at least annually. Such examination shall be conducted and the report thereon filed in the manner prescribed in KRS Chapter 304, subtitle 2. The expenses of such examinations shall be paid by the association in the manner prescribed by that subtitle.

➔Section 1545. KRS 304.40-130 is amended to read as follows:

There shall be no liability on the part of, and no cause of action of any nature shall arise against the association, the **commissioner**~~{executive director}~~ or **the commissioner's**~~{his}~~ authorized representatives or any other person or organization, for any statements or actions made in good faith by them during any proceedings or concerning any matters within the scope of KRS 304.40-030 to 304.40-140.

➔Section 1546. KRS 304.40-260 is amended to read as follows:

As used in KRS 304.40-250 to 304.40-320, the following words and terms shall be defined as follows:

- (1) "Health care provider" means any physician, osteopath, dentist, podiatrist, nurse or nurse's assistant, certified registered nurse anesthetist, physical or occupational therapist, or psychologist, licensed to practice health care in this state; any hospital, medical clinic, medical foundation, health maintenance organization, extended care facility, intermediate care facility, nursing home, emergency treatment center, outpatient medical or surgical center, frontier nursing service, or any other facility or service licensed under any act of this state to provide health care within this state; or any officer, director, employer agent thereof; and any corporation, partnership or sole proprietorship which directly provides medical services to its employees;
- (2) "**Commissioner**~~{Executive director}~~" means the **commissioner**~~{executive director}~~ of **the Department of Insurance**;
- (3) "Patient" means a natural person who receives health care from a licensed health care provider under a contract, express or implied;
- (4) "Claimant" means the patient or spouse, parent, guardian, trustee, or other authorized agent of the patient;
- (5) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another;
- (6) "Malpractice" means any tort or breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider to the patient;
- (7) "Health care" means any act, or treatment performed or furnished, or which should have been performed or furnished, by any health care provider to a patient during that patient's care, treatment, or confinement for a physical or mental condition;
- (8) "Malpractice insurer" means any insurance authority or any insurance company properly engaged in the practice of writing malpractice liability insurance under authority of the **commissioner**~~{executive director}~~ of insurance.

➔Section 1547. KRS 304.40-310 is amended to read as follows:

- (1) All malpractice claims settled or adjudicated to final judgment against a health care provider shall be reported to the **commissioner**~~{executive director}~~ of insurance by the malpractice insurer of the health care provider or the health care provider if self-insured, within sixty (60) days following final settlement or disposition of the claim. The report to the **commissioner**~~{executive director}~~ shall recite the following:
 - (a) Name and address of health care provider involved;
 - (b) Name and address of claimant;
 - (c) Nature of the claim;
 - (d) Damages asserted and alleged injury; and
 - (e) The amount of any settlement or judgment.

- (2) The **commissioner**~~{executive director}~~ of insurance shall forward the name of every health care provider against whom a settlement is made or judgment is rendered to the appropriate licensure board or regulatory agency for review of the fitness of the health care provider to practice his **or her** profession.
- (3) (a) At any time before a jury is empanelled or before a trial is commenced by a court without a jury, no settlement or other compromise of any claim for malpractice shall be effective between a claimant and the fund unless the proposed settlement or other compromise shall have been approved by the **commissioner**~~{executive director}~~.
- (b) The **commissioner**~~{executive director}~~ shall prescribe by rule the procedure for submission of settlements or other compromises involving the fund.
- (c) If the **commissioner**~~{executive director}~~ shall disapprove a proposed settlement or other compromise involving the fund, the claimant may thereafter pursue his **or her** interests in a court of appropriate jurisdiction and the action of the **commissioner**~~{executive director}~~ shall not be admissible upon any trial of the action.
- (d) Notwithstanding the provisions of KRS 413.140, when an offer to compromise or settle has been filed with the **commissioner**~~{executive director}~~ the statute of limitations made and provided for the commencement of an action for malpractice shall not bar any such action until ninety (90) days after notice to the parties of the **commissioner's**~~{executive director's}~~ disapproval of any proposed settlement or other compromise.

➔Section 1548. KRS 304.41-020 is amended to read as follows:

As used in this subtitle:

- (1) "Association" means the Joint Underwriting Association established pursuant to the provisions of this subtitle.
- (2) "Legal professional liability insurance" means insurance as defined in KRS 304.5-070(1)(j).
- (3) "**Commissioner**~~{Executive director}~~" means the **commissioner**~~{executive director}~~ of *the Department of Insurance*.
- (4) "Net direct premiums" means gross direct premiums written on the lines of insurance set forth in KRS 304.41-030(1) as computed by the **commissioner**~~{executive director}~~ of insurance, less return premiums for the unused or unabsorbed portions of premium deposits.

➔Section 1549. KRS 304.41-030 is amended to read as follows:

- (1) A temporary Joint Underwriting Association is created, consisting of all insurers authorized to write and engage in writing in the Commonwealth on a direct basis the following lines of insurance, as reported in the companies' annual statements:
- (a) Workers' compensation;
- (b) Liability other than auto;
- (c) Private passenger auto liability;
- (d) Commercial auto liability; and
- (e) The liability portion of commercial multi-peril policies.

Every such insurer shall remain a member of the Joint Underwriting Association as a condition of its authority to continue to transact such kinds of insurance in the Commonwealth.

- (2) The implementation of the operation of the Joint Underwriting Association shall become effective upon the order of the **commissioner**~~{executive director}~~. The **commissioner**~~{executive director}~~ shall not order the association to commence underwriting operations until *the commissioner*~~{he}~~, after due hearing and investigation, has determined that legal professional liability insurance cannot be made available in the voluntary market. The Joint Underwriting Association shall remain in effect for a period of no longer than two and one-half (2 1/2) years from the date that it commences underwriting operations.

This subtitle shall not preclude any attorney at law from procuring legal professional liability insurance from the voluntary market.

If the **commissioner**~~{executive director}~~ determines at any time that legal professional liability insurance is readily available in the voluntary market, the association shall thereby cease its underwriting operations.

- (3) The association shall, pursuant to the provisions of this subtitle and the plan of operation with respect to legal professional liability insurance, have the power on behalf of its members:
- (a) To issue, or to cause to be issued, policies of insurance to applicants, including incidental coverages and subject to limitations as specified in the plan of operation, but not to exceed five hundred thousand dollars (\$500,000) for each claimant under one (1) policy and one million dollars (\$1,000,000) for all claimants under one (1) policy in any one (1) year;
 - (b) To underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions;
 - (c) To assume reinsurance from its members;
 - (d) To cede reinsurance; and
 - (e) To negotiate and obtain in the voluntary market legal professional liability insurance with limits in excess of the foregoing limits for any attorney-at-law to whom the association has issued or caused to be issued a policy of legal professional liability insurance.

➔Section 1550. KRS 304.41-040 is amended to read as follows:

- (1) Within forty-five (45) days following the order of the **commissioner**~~{executive director}~~ implementing the operation of the association, the directors of the association shall submit to the **commissioner**~~{executive director}~~ for his *or her* review a proposed plan of operation, consistent with the provisions of this subtitle.
- (2) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of legal professional liability insurance; and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association.
- (3) The plan of operation shall be subject to approval by the **commissioner**~~{executive director}~~ after consultation with the members of the association, representatives of the public, and other affected individuals and organizations. If the **commissioner**~~{executive director}~~ disapproves all or any part of the proposed plan of operation, the directors shall within fifteen (15) days submit for review an appropriate revised plan of operation or part thereof. If the directors fail to do so, the **commissioner**~~{executive director}~~ shall promulgate a plan of operation or part thereof, as the case may be. The plan of operation approved or promulgated by the **commissioner**~~{executive director}~~ shall become effective upon order of the **commissioner**~~{executive director}~~.
- (4) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the **commissioner**~~{executive director}~~, or shall be made at the direction of the **commissioner**~~{executive director}~~.

➔Section 1551. KRS 304.41-050 is amended to read as follows:

- (1) All policies issued by the association shall be written for the term of one (1) year. The directors of the association may elect to issue policies on an occurrence basis or a claims made basis. No policy form shall be used by the association unless it has been filed with the **commissioner**~~{executive director}~~ and either (a) *the commissioner*~~{he}~~ has approved it, or (b) thirty (30) days has lapsed and *the commissioner*~~{he}~~ has not disapproved it in accordance with KRS Chapter 304, Subtitle 14.
- (2) Cancellation of the association's policies shall be governed by the laws and regulations governing the cancellation of other policies of casualty insurance, except that the association may also cancel any of its policies in the event of nonpayment of any stabilization reserve fund charge, by mailing or delivering to the insured at the address shown on the policy, written notice stating when not less than ten (10) days thereafter cancellation shall be effective.
- (3) The rates, rating plan, rating rules, rating classifications and territories applicable to the insurance written by the association and statistics relating thereto shall be subject to KRS Chapter 304, Subtitle 13, giving due consideration to the past and prospective loss and expense experience for legal professional liability insurance

written and to be written in this state, trends in the frequency and severity of losses, the investment income of the association, and such other information as the **commissioner**~~{executive director}~~ may require. All rates shall be on an actuarially sound basis, giving due consideration to the group retrospective rating plan and the stabilization reserve fund, and shall be calculated to be self-supporting. The **commissioner**~~{executive director}~~ shall make available to the association the loss and expense experience of insurers previously writing legal professional liability insurance in this state.

- (4) All policies issued by the association shall be subject to a nonprofit group retrospective rating plan to be approved by the **commissioner**~~{executive director}~~, under which the final premium for all policyholders of the association as a group will be equal to the administrative expenses, loss and loss adjustment expenses and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee on policyholder supplied funds. The standard premium before retrospective adjustment for each policy issued by the association shall be established on the basis of the association's rates, rating plans, rating rules, rating classifications, and territories then in effect. The maximum final premium for all policyholders of the association as a group shall be limited as provided in KRS 304.41-060(4). Since the business of the association is subject to the nonprofit group retrospective rating plan required by this subsection, there shall be a presumption that the rates filed and premiums for the business of the association are not excessive.
- (5) The **commissioner**~~{executive director}~~ shall examine the business of the association as often as he *or she* deems appropriate to assure that the group retrospective rating plan is being operated in a manner consistent with this section. If **the commissioner**~~{he}~~ finds that it is not being so operated, he *or she* shall issue an order to the association, specifying in what respects its operation is deficient and stating what corrective action shall be taken.
- (6) The association shall certify to the **commissioner**~~{executive director}~~ the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the association. Within sixty (60) days after such certification, the **commissioner**~~{executive director}~~ shall authorize the members of the association to commence recoupment of their respective shares of the deficit by applying a surcharge to be determined by the association at a rate not to exceed two percent (2%) of the annual premiums on future policies affording those kinds of insurance which form the basis for their participation in the association under procedures established by the association. The association shall amend the amount of its certification of deficit to the **commissioner**~~{executive director}~~ as the values of its incurred losses become finalized, and the members of the association shall amend their recoupment procedure accordingly.
- (7) In the event that sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (6) of this section, all members shall, on a temporary basis, contribute to the financial requirements of the association in the manner provided for in KRS 304.41-080. Any such contribution shall be reimbursed to the members by recoupment as provided in subsection (6) of this section.

➔Section 1552. KRS 304.41-060 is amended to read as follows:

- (1) There is hereby created a stabilization reserve fund which shall be administered by three (3) directors, one (1) of whom shall be the **commissioner**~~{executive director}~~ or **the commissioner's**~~{his}~~ deputy. The remaining two (2) directors shall be appointed by the **commissioner**~~{executive director}~~. One (1) shall be a representative of the association; the other a representative of its policyholders. The directors shall serve without salary, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties when approved by the **commissioner**~~{executive director}~~.
- (2) Each policyholder shall pay to the association a stabilization reserve fund charge equal to one-third (1/3) of each premium payment due for insurance through the association. Such charge shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.
- (3) The association shall promptly pay to the trustee of the fund all stabilization reserve fund charges which it collects from its policyholders and any retrospective premium refunds payable under the group retrospective rating plan authorized by KRS 304.41-050(4).
- (4) All moneys received by the fund shall be held in trust by a corporate trustee selected by the directors. The trustee may invest the trust fund, subject to the approval of the directors. All investment income shall be

credited to the fund. All expenses of administration of the fund shall be charged against the fund. The trust fund shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders of the association under the group retrospective rating plan authorized by KRS 304.41-050(4). Payment of retrospective premium charges shall be made by the directors upon certification to them by the association of the amount due. If the trust fund is finally exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall thereupon terminate and shall be conclusively presumed to have been discharged. Any moneys remaining in the fund after all such retrospective premium charges have been paid shall be returned to policyholders under procedures authorized by the directors.

→Section 1553. KRS 304.41-080 is amended to read as follows:

All insurers which are members of the association shall participate in its writings, expenses, servicing, allowance, management fees, and losses in the proportion that the net direct premiums of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year, bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer with the *commissioner*~~[executive director]~~.

→Section 1554. KRS 304.41-090 is amended to read as follows:

The association shall be governed by a board of thirteen (13) directors. Five (5) directors shall be elected by the insurance companies which are members of the association, at a meeting of the member companies at a time and place designated by the *commissioner*~~[executive director]~~, by cumulative voting of the member companies, whose vote shall be weighted in accordance with each member's net direct premiums written during the preceding calendar year. One (1) of these five (5) directors shall be from a member company domiciled in Kentucky. The *commissioner*~~[executive director]~~ shall appoint seven (7) directors, one (1) named by the Kentucky Medical Association; one (1) named by the Kentucky Bar Association; one (1) named by the Kentucky Hospital Association; one (1) who is a licensed resident property and casualty agent in Kentucky; and three (3) knowledgeable members of the public at large, who have no interest in any of the foregoing categories. The *commissioner*~~[executive director]~~ or *the commissioner's*~~[his]~~ designee shall serve as a director.

→Section 1555. KRS 304.41-100 is amended to read as follows:

- (1) Any applicant to the association, any person insured pursuant to this subtitle, or their representatives, or any affected insurer, may appeal to the *commissioner*~~[executive director]~~ within thirty (30) days after any rule, action, or decision by or on behalf of the association, with respect to those items the plan of operation defines as appealable matters. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (2) All final orders of the *commissioner*~~[executive director]~~ made pursuant to this subtitle are subject to appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

→Section 1556. KRS 304.41-110 is amended to read as follows:

The association shall file in the office of the *commissioner*~~[executive director]~~ annually, on or before the first day of each March, a statement containing information with respect to its transactions, condition, operations, and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed and shall be in such form as is approved by the *commissioner*~~[executive director]~~. The *commissioner*~~[executive director]~~ may at any time require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

→Section 1557. KRS 304.41-120 is amended to read as follows:

The *commissioner*~~[executive director]~~ shall make an examination into the affairs of the association at least annually. Such examination shall be conducted and the report thereon filed in the manner prescribed in KRS Chapter 304, Subtitle 2. The expenses of such examinations shall be paid by the association in the manner prescribed by that said subtitle.

→Section 1558. KRS 304.41-130 is amended to read as follows:

There shall be no liability on the part of, and no cause of action of any nature shall arise against the association, the ~~commissioner~~~~[executive director]~~ or *the commissioner's*~~[his]~~ authorized representatives or any other person or organization, for any statements or actions made in good faith by them during any proceedings or concerning any matters within the scope of this subtitle.

➔ Section 1559. KRS 304.42-050 is amended to read as follows:

As used in this subtitle:

- (1) "Account" means either of the three (3) accounts created under KRS 304.42-060.
- (2) "Association" means the Kentucky Life and Health Insurance Guaranty Association created under KRS 304.42-060.
- (3) "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specific amount. An assessment is authorized when the resolution is passed.
- (4) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.
- (5) "Called assessment" or the term "called" when used in the context of assessments means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.
- (6) "~~Commissioner~~~~[Executive director]~~" means the *commissioner*~~[executive director]~~ of *the Department of Insurance* of this state.
- (7) "Contractual obligation" means any obligation under a policy or contract or a certificate under a group policy or contract, or portion thereof, for which coverage is provided under KRS 304.42-030.
- (8) "Covered policy" means any policy or contract or portion of a policy or contract for which coverage is provided under KRS 304.42-030.
- (9) "Extracontractual claims" include but are not limited to claims relating to bad faith in the payment of claims, punitive or exemplary damages, and attorneys' fees and costs.
- (10) "Impaired insurer" means a member insurer which, after June 17, 1978, is not an insolvent insurer and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.
- (11) "Insolvent insurer" means a member insurer which after June 17, 1978, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.
- (12) "Member insurer" means any insurer authorized to transact in this state any kind of insurance for which coverage is provided under KRS 304.42-030, and includes any insurer whose certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:
 - (a) A nonprofit hospital, medical-surgical, dental, and health service corporation, as defined by Subtitle 32 of this chapter;
 - (b) A health maintenance organization;
 - (c) A fraternal benefit society;
 - (d) A mandatory state pooling plan;
 - (e) An assessment or cooperative insurer or any entity that operates on an assessment basis;
 - (f) An insurance exchange;
 - (g) Any entity similar to the above;
 - (h) Health insurance where such insurance is written by a member of the Kentucky Insurance Guaranty Association; or
 - (i) A limited health service organization.

- (13) "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's Investors Service, Inc., or any successor thereto.
- (14) "Owner" of a policy or contract and "policy owner" and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms "owner," "contract owner," and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.
- (15) "Premiums" means amounts or considerations, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits, and less dividends and experience credits. "Premiums" does not include amounts or considerations received for any policies or contracts or for the portions of policies or contracts for which coverage is not provided under KRS 304.42-030(2), except that assessable premium shall not be reduced on account of KRS 304.42-030(2)(b)3. Relative to interest limitations and KRS 304.42-030(3)(b) relating to limitations with respect to one (1) individual and one (1) contract owner. "Premiums" shall not include with respect to multiple nongroup policies of life insurance owned by one (1) owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of one million dollars (\$1,000,000) with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.
- (16) "Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.
- (17) "Plan sponsor" means:
- (a) The employer in the case of a benefit plan established or maintained by a single employer;
 - (b) The employee organization in the case of a benefit plan established or maintained by an employee organization; or
 - (c) In a case of a benefit plan established or maintained by two (2) or more employers or jointly by one (1) or more employers and one (1) or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.
- (18) (a) "Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise the function, determined by the association in its reasonable judgment by considering the following factors:
1. The state in which the primary executive and administrative headquarters of the entity is located;
 2. The state in which the principal office of the chief executive officer of the entity is located;
 3. The state in which the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;
 4. The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;
 5. The state from which the management of the overall operations of the entity is directed; and
 6. In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors.

However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

- (b) The principal place of business of a plan sponsor of a benefit plan described in subsection (17)(c) of this section shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be

the principal place of business of the employer or employee organization that has the largest investment in the benefit plan or question.

- (19) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.
- (20) "Resident" means any person to whom a contractual obligation is owed and who resides in this state on the date when a member insurer is determined to be an impaired or insolvent insurer, whichever occurs first. A person may be a resident of only one (1) state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either residents of foreign countries or residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this subtitle shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.
- (21) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.
- (22) "State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.
- (23) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.
- (24) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

➔Section 1560. KRS 304.42-060 is amended to read as follows:

- (1) There is created a nonprofit legal entity to be known as the Kentucky Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under KRS 304.42-100 and shall exercise its powers through a board of directors established under KRS 304.42-070. For purposes of administration and assessment, the association shall maintain three (3) accounts:
 - (a) The health insurance account;
 - (b) The life insurance account; and
 - (c) The annuity account.
- (2) The association shall come under the immediate supervision of the *commissioner*~~[executive director]~~ and shall be subject to the applicable provisions of the insurance laws of this state.

➔Section 1561. KRS 304.42-070 is amended to read as follows:

- (1) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the *commissioner*~~[executive director]~~. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the *commissioner*~~[executive director]~~. To select the initial board of directors, and initially organize the association, the *commissioner*~~[executive director]~~ shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one (1) vote in person or by proxy. If the board of directors is not selected within sixty (60) days after notice of the organizational meeting, the *commissioner*~~[executive director]~~ may appoint the initial members.
- (2) In approving selections or in appointing members to the board, the *commissioner*~~[executive director]~~ shall consider, among other things, whether all member insurers are fairly represented.
- (3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

➔Section 1562. KRS 304.42-080 is amended to read as follows:

- (1) If a member insurer is an impaired insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the *commissioner*~~[executive director]~~:
 - (a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; or
 - (b) Provide such monies, pledges, loans, notes, guarantees, or other means as are proper to effectuate paragraph (a) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (a) of this subsection.
- (2) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:
 - (a)
 1. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or
 2. Assure payment of the contractual obligations of the insolvent insurer; and
 3. Provide such monies, pledges, loans, notes, guarantees, or other means as are reasonably necessary to discharge such duties; or
 - (b) Provide benefits and coverages in accordance the following provisions:
 1. With respect to life and health insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that would have been payable under policies or contracts of the insolvent insurer, for claims incurred:
 - a. With respect to group policies and contracts, not later than the earlier of the next renewal date under such policies or contracts or forty-five (45) days, but in no event less than thirty (30) days, after the date on which the association becomes obligated with respect to such policies or contracts;
 - b. With respect to nongroup policies, contracts, and annuities not later than the earlier of the next renewal date (if any) under such policies or contracts or one (1) year, but in no event less than thirty (30) days, from the date on which the association becomes obligated with respect to such policies or contracts;
 2. Make diligent efforts to provide all known insureds or annuitants for nongroup policies and contracts, or group policy owners with respect to group policies and contracts thirty (30) days' notice of the termination under subparagraph 1. of this paragraph of the benefits provided;
 3. With respect to individual health and life insurance policies, and annuities covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly and annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subparagraph 4. of this paragraph, if the insureds or annuitants had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class;
 4.
 - a. In providing substitute coverage required under subparagraph 3. of this paragraph the association may offer either to reissue the terminated coverage or to issue an alternative policy.
 - b. Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.
 - c. The association may reinsure any alternative or reissued policy.
 5.
 - a. Alternative policies adopted by the association shall be subject to approval by the domiciliary insurance commissioner or receivership court. The association may adopt

- alternative policies of various types for future issuance without regard to any particular impairment or insolvency.
- b. Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.
 - c. Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.
6. If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval by the domiciliary insurance commissioner or by the receivership court;
 7. The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association;
- (3) When proceeding under subsection (2)(b) of this section with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with KRS 304.42-030(2)(b)3.
 - (4) Nonpayment of premiums within thirty-one (31) days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract for substitute coverage shall terminate the association's obligations under such policy or coverage under this subtitle with respect to such policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this subtitle.
 - (5) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of such order.
 - (6) The protection provided by this subtitle shall not apply where any guaranteed protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.
 - (7) In carrying out its duties under subsection (2) of this section, the association may:
 - (a) Subject to approval by a court in this state, impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this subtitle are less than the amounts needed to assure full and prompt performance of the association's duties under this subtitle, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest; and
 - (b) Subject to approval by a court in this state, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

- (8) A deposit in this state, held under law or required by the **commissioner**~~{executive director}~~ for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, shall be promptly paid to the association. The association:
- (a) Shall be entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency; and
 - (b) Shall remit to the domiciliary receiver the amount so paid to the association and retained in accordance with paragraph (a) of this subsection. Any amount so paid to the association less the amount retained by it in accordance with paragraph (a) of this subsection shall be treated as a distribution of estate assets under KRS 304.33-440 or similar provision of the state of domicile of the impaired or insolvent insurer.
- (9) If the association fails to act within a reasonable period of time with respect to an insolvent insurer as provided in subsection (2) of this section, the **commissioner**~~{executive director}~~ shall have the powers and duties of the association under this subtitle with respect to the insolvent insurer.
- (10) The association may render assistance and advice to the **commissioner**~~{executive director}~~, upon his *or her* request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.
- (11) The association shall have standing to appear or intervene before any court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this subtitle or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.
- (12) (a) Any person receiving benefits under this subtitle shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the association to the extent the benefits received because of this subtitle, whether benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and cause of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this subtitle upon such person.
- (b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this subtitle.
 - (c) In addition to paragraphs (a) and (b) of this subsection, the association shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to such policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received under this subtitle against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor.
 - (d) If the preceding provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or portion thereof covered by the association.
 - (e) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in the preceding paragraphs of this

subsection, the person shall pay to the association the portion of the recovery attributable to the policies or portion thereof covered by the association.

- (13) In addition to the rights and powers elsewhere in this subtitle, the association may:
- (a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this subtitle;
 - (b) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under KRS 304.42-090 and to settle claims or potential claims against it;
 - (c) Borrow money to effect the purposes of this subtitle; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;
 - (d) Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the association, and to perform such other functions as may become necessary or proper under this subtitle;
 - (e) Take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims;
 - (f) Exercise, for the purposes of this subtitle and to the extent approved by the *commissioner*~~executive director~~, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this subtitle;
 - (g) Organize itself as a corporation or in other legal form permitted by the laws of the state;
 - (h) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this subtitle with respect to the person, and the person shall promptly comply with the request; and
 - (i) Take other necessary or appropriate action to discharge its duties and obligations under this subtitle or to exercise its powers under this subtitle.
- (14) The association may join an organization of one (1) or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.
- (15) (a) At any time within one (1) year after the date on which the association becomes responsible for the obligations of a member insurer, the association may elect to succeed to the rights and obligations of the member insurer that accrue on or after that date and that relate to contracts covered in whole or in part by the association, under any one (1) or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association. The association may not exercise any such election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement. The election shall be effected by a notice to the receiver, rehabilitator, or liquidator and to the affected reinsurer. If the association makes an election, subparagraphs 1. to 4. of this paragraph shall apply with respect to the agreements selected by the association:
1. The association shall be responsible for all unpaid premiums due under the agreements for periods both before and after the date, and shall be responsible for the performance of all other obligations to be performed after the coverage date, in each case which relate to contracts covered, in whole or in part, by the association. The association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association.
 2. The association shall be entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or in part. Upon receipt of any such amounts the association shall be obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of:
 - a. The amount received by the association, over

- b. The benefits paid by the association on account of the policy or contract less the retention of the impaired or insolvent member insurer applicable to the loss or event.
 - 3. Within thirty (30) days following the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each such reinsurance agreement as of the date of the association's election, which calculation shall give full credit to all items paid by either the member insurer or its receiver, rehabilitator, or liquidator, or the indemnity reinsurer during the period between the coverage date and the date of the association's election. Either the association or indemnity reinsurer shall pay the net balance due the other within five (5) days of the completion of the calculation. If the receiver, rehabilitator, or liquidator has received any amounts due the association under subparagraph 2. of this paragraph, the receiver, rehabilitator, or liquidator shall remit those amounts to the association as promptly as practicable.
 - 4. If the association, within sixty (60) days of the election, pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association in whole or in part, the insurer shall not be entitled to terminate the reinsurance agreements insofar as the agreements relate to contracts covered by the association in whole or in part and shall not be entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the association.
- (b) If the association transfers its obligations to another insurer, and if the association and the other insurer agree, the other insurer shall succeed to the rights and obligations of the association under paragraph (a) of this subsection effective as of the date agreed upon by the association and the other insurer and regardless of whether the association has made the election referred to in paragraph (a) of this subsection if:
- 1. The indemnity reinsurance agreements automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;
 - 2. The obligations described in subparagraph 2. of paragraph (a) of this subsection no longer apply on and after the date the indemnity reinsurance agreement is transferred to the third party insurer; and
 - 3. The association has not previously expressly determined in writing that it will not exercise the election referred to in paragraph (a) of this subsection.
- (c) The provisions of this subsection shall supersede the provisions of any law of this state or of any affected reinsurance agreements that provide for or require any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable by the reinsurer under the reinsurance agreements with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions.
- (d) Except as otherwise expressly provided in this subsection, nothing in this subsection shall alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. Nothing in this subsection shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. Nothing in this subsection shall give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.
- (16) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this subtitle in an economical and efficient manner.
- (17) If the association has arranged or offered to provide the benefits of this subtitle to a covered person under a plan or arrangement that fulfills the association's obligations under this subtitle, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.
- (18) Venue in a suit against the association under this subtitle shall be in Franklin County. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this subtitle.

➔Section 1563. KRS 304.42-090 is amended to read as follows:

- (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty (30) days after prior written notice to the member insurers and shall accrue interest at eight percent (8%) per annum on and after the due date.
- (2) There shall be two (2) classes of assessments:
 - (a) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer;
 - (b) Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the association under KRS 304.42-080 with regard to an impaired or insolvent insurer.
- (3)
 - (a) The amount of any Class A assessment shall be determined by the board and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. The total of all non-pro rata assessments shall not exceed one hundred fifty dollars (\$150) per member insurer in any one (1) calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.
 - (b) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three (3) most recent calendar years for which information is available preceding the year in which the insurer became insolvent, or in the case of assessment with respect to an impaired insurer, the three (3) most recent calendar years for which information is available preceding the year in which the insurer became impaired, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.
 - (c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this subtitle. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty (180) days after the assessment is authorized.
- (4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member shall pay all assessments that were deferred under a repayment plan approved by the association.
- (5)
 - (a) Subject to the provisions of paragraph (b) of this subsection, the total of all assessments authorized by the association with respect to a member insurer for each account shall not in any one (1) calendar year exceed two percent (2%) of the insurer's average annual premiums received in this state on the policies and contracts covered by the account during the three (3) calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any other account, does not provide in any one (1) year in any other account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this subtitle.
 - (b) If two (2) or more assessments are authorized in one (1) calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in paragraph (a) of this subsection shall be equal and limited to the higher of the three (3) year average annual premiums for the applicable account as calculated under this section.

- (c) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one (1) or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.
- (6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses claims.
- (7) It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance within the scope of this subtitle, to consider the amount reasonably necessary to meet its assessment obligations under this subtitle.
- (8) The association shall issue to each insurer paying an assessment under this subtitle, other than a Class A assessment, a certificate of contribution, in a form prescribed by the **commissioner**~~{executive director}~~, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the **commissioner**~~{executive director}~~ may approve.
- (9) (a) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.
- (b) Within sixty (60) days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.
- (c) Within thirty (30) days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty (60) days of receipt of notice of the final decision, the protesting member insurer may appeal the final action to the **commissioner**~~{executive director}~~, in accordance with KRS 304.42-110(3).
- (d) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the **commissioner**~~{executive director}~~ for a final decision, with or without a recommendation from the association.
- (e) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Interest on a refund due a protesting member shall be paid at the rate actually earned by the association.
- (10) The association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request.
- ➔Section 1564. KRS 304.42-100 is amended to read as follows:
- (1) (a) The association shall submit to the **commissioner**~~{executive director}~~ a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the **commissioner**~~{executive director}~~;
- (b) If the association fails to submit a suitable plan of operation within one hundred eighty (180) days following June 17, 1978, or if at any time thereafter the association fails to submit suitable amendments to the plan, the **commissioner**~~{executive director}~~ shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this subtitle. Such rules shall continue in force until modified by the **commissioner**~~{executive director}~~ or superseded by a plan submitted by the association and approved by the **commissioner**~~{executive director}~~.
- (2) All member insurers shall comply with the plan of operation.

- (3) The plan of operation shall, in addition to requirements enumerated elsewhere in this subtitle:
- (a) Establish procedures for handling the assets of the association;
 - (b) Establish the amount and method of reimbursing members of the board of directors under KRS 304.42-070;
 - (c) Establish regular places and times for meetings of the board of directors;
 - (d) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
 - (e) Establish the procedures whereby selections for the board of directors will be made and submitted to the **commissioner**~~{executive director}~~;
 - (f) Establish any additional procedures for assessments under KRS 304.42-090;
 - (g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.
- (4) The plan of operation may provide that any or all powers and duties of the association, except those under paragraph (c) of subsection (10) of KRS 304.42-080 and 304.42-090, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the **commissioner**~~{executive director}~~, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this subtitle.

➔Section 1565. KRS 304.42-110 is amended to read as follows:

In addition to the duties and powers enumerated elsewhere in this subtitle:

- (1) The **commissioner**~~{executive director}~~ shall:
- (a) Upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;
 - (b) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand shall not excuse the association from the performance of its powers and duties under this subtitle; and
 - (c) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the **commissioner**~~{executive director}~~ may be appointed conservator.
- (2) The **commissioner**~~{executive director}~~ may suspend or revoke, after notice and hearing conducted in accordance with KRS Chapter 13B, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the **commissioner**~~{executive director}~~ may levy a forfeiture on any member insurer which fails to pay an assessment when due. A forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars (\$100) per month.
- (3) Any final action of the board of directors or the association may be appealed to the **commissioner**~~{executive director}~~ by any member insurer if the appeal is taken within sixty (60) days of its receipt of notice of the action being appealed. Any final order of the **commissioner**~~{executive director}~~ shall be subject to judicial review as set forth in Subtitle 2 of this chapter and KRS Chapter 13B.
- (4) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this subtitle.

➔Section 1566. KRS 304.42-120 is amended to read as follows:

To aid in the detection and prevention of insurer insolvencies or impairments:

- (1) It shall be the duty of the **commissioner**~~[executive director]~~:
 - (a) To notify the commissioners of all of the other states, territories of the United States and the District of Columbia when he *or she* takes any of the following actions against a member insurer:
 1. Revocation of license;
 2. Suspension of license;
 3. Makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners or creditors.

Such notice shall be mailed to all commissioners within thirty (30) days following the action taken or the date on which such action occurs;
 - (b) To report to the board of directors when he *or she* has taken any of the actions set forth in paragraph (a) of this subsection or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner;
 - (c) To report to the board of directors when he *or she* has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that such insurer may be an impaired or insolvent insurer;
 - (d) To furnish to the board of directors the NAIC insurance regulatory information system information developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the **commissioner**~~[executive director]~~ or other lawful authority.
- (2) The **commissioner**~~[executive director]~~ may seek the advice and recommendations of the board of directors concerning any matter affecting his *or her* duties and responsibilities regarding the financial condition of member companies and companies seeking admission to transact insurance business in this state.
- (3) The board of directors may, upon majority vote, make reports and recommendations to the **commissioner**~~[executive director]~~ upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations shall not be considered public documents.
- (4) The board of directors may, upon majority vote, notify the **commissioner**~~[executive director]~~ of any information indicating any member insurer may be an impaired or insolvent insurer.
- (5) The board of directors may, upon majority vote, make recommendations to the **commissioner**~~[executive director]~~ for the detection and prevention of insurer insolvencies.

➔Section 1567. KRS 304.42-130 is amended to read as follows:

- (1) A member insurer, other than a nonprofit hospital, medical, surgical, dental, or health service corporation, may offset its tax liability to this state imposed against it under KRS 136.320(3) and (4), 136.330, 136.340, or 136.350, whichever may be applicable, against the assessment described in subsection (8) of KRS 304.42-090 to the extent of twenty percent (20%) of the amount of the assessment for each of the five (5) calendar years following the year in which the assessment was paid. If a member insurer should cease doing business, all uncredited assessments may be credited against its tax liability for the year in which it ceases doing business.
- (2) Any sums acquired by refund, pursuant to KRS 304.42-090(6), from the association which have theretofore been written off by contributing insurers and offset against taxes as provided in this section, and are not then needed for purposes of this subtitle, shall be paid by the association to the **commissioner**~~[executive director]~~ and by **the commissioner**~~[him]~~ deposited with the State Treasurer for credit to the general fund of this state.

➔Section 1568. KRS 304.42-150 is amended to read as follows:

The association shall be subject to examination and regulation by the *commissioner*~~{executive director}~~. The board of directors shall submit to the *commissioner*~~{executive director}~~, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the *commissioner*~~{executive director}~~ and a report of its activities during the preceding calendar year. Upon the request of a member insurer, the association shall provide the member insurer with a copy of the report.

➔Section 1569. KRS 304.42-170 is amended to read as follows:

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the *commissioner*~~{executive director}~~ or *the commissioner's*~~{his}~~ representatives, for any action taken by them in the performance of their powers and duties under this subtitle. Immunity shall extend to the participation in any organization of one (1) or more other state associations of similar purposes and to any such organization and its agents or employees.

➔Section 1570. KRS 304.44-010 is amended to read as follows:

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

- (1) "*Department*~~{Office}~~" means the *Department*~~{Office}~~ of Insurance;
- (2) "Mine subsidence" means the collapse of underground coal mines resulting in direct damage to a structure. It does not include loss caused by earthquake, landslide, water seepage, volcanic eruption, or collapse of storm, and sewer drains;
- (3) "Mine subsidence insurance fund" or "fund" means the fund established by this subtitle and administered as determined by the *department*~~{office}~~;
- (4) "Policy" means a contract of insurance providing mine subsidence insurance;
- (5) "Premium" means the gross rate charged policyholders for insurance provided by this subtitle;
- (6) "Structure" means any dwelling, building, or fixture permanently affixed to realty, but does not include land, trees, plants, or crops; and
- (7) "Administrator" means the organization designated by the *commissioner*~~{executive director}~~ of the department to administer the fund.

➔Section 1571. KRS 304.44-020 is amended to read as follows:

- (1) There is hereby established a fund to be known as the "Mine Subsidence Insurance Fund." The fund shall be operated pursuant to this subtitle. The *commissioner*~~{executive director}~~ of the *department*~~{office}~~ shall determine how the fund shall be administered. In the discretion of the *commissioner*~~{executive director}~~, the fund may be administered by the Reinsurance Association, established by KRS 304.35-010, or by the *department*~~{office}~~;
- (2) The administrator shall make available through the fund insurance coverage against losses arising out of or due to mine subsidence within this state as to any structure within this state;
- (3) The moneys in the fund shall be derived from premiums for subsidence insurance collected pursuant to this subtitle;
- (4) Premiums for subsidence insurance shall be established by the administrator which shall periodically review the premium level and the experience data applicable to operation of the fund and make changes as required; and
- (5) Premiums shall be established at a rate or within a schedule of rates sufficient to satisfy all foreseeable claims upon the fund during the period of coverage, giving due consideration to relevant loss or claim experience or trends, to cover normal costs of operation of the fund by the administrator and provide a reasonable reserve fund for unexpected contingencies. Deviation from the premium set by the administrator shall not be allowed.

➔Section 1572. KRS 304.44-130 is amended to read as follows:

These provisions establishing the mine subsidence insurance fund shall not be implemented until federal money is received by the *department*~~{office}~~ for administration costs and a reserve. However, the *department*~~{office}~~ may take any preliminary action to prepare for implementation when federal money is received.

➔Section 1573. KRS 304.45-020 is amended to read as follows:

As used in this subtitle:

- (1) "**Commissioner**~~[Executive director]~~" means the **commissioner**~~[executive director]~~ of the Kentucky **Department**~~[Office]~~ of Insurance or the insurance supervisor of another state;
- (2) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:
 - (a) Any person who performs that work; or
 - (b) Any person who hires an independent contractor to perform that work, but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability;
- (3) "Domicile," for the purposes of determining the state in which a purchasing group is domiciled, means:
 - (a) For a corporation, the state in which the purchasing group is incorporated; and
 - (b) For an unincorporated entity, the state of its principal place of business;
- (4) "Hazardous financial condition" means a condition in which, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:
 - (a) To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or
 - (b) To pay other obligations in the normal course of business;
- (5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risks which is determined to be insurance under the laws of this state;
- (6) "Liability":
 - (a) Means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of:
 1. Any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations; or
 2. Any activity of any state or local government, or any agency or political subdivision thereof; but
 - (b) Does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. secs. 51 et seq.);
- (7) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage arising from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection (6) of this section;
- (8) "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group, including, at a minimum:
 - (a) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;
 - (b) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification system for each kind of insurance the group intends to offer;
 - (c) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
 - (d) Pro forma financial statements and projections;
 - (e) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

- (f) Identification of management, underwriting, and claim procedures, marketing methods, managerial oversight methods, and investment policies; and
 - (g) Such other matters as may be prescribed by the *commissioner*~~[executive director]~~ for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered;
- (9) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such person when the incident giving rise to the claim occurred;
- (10) "Purchasing group" means any group which:
- (a) Has as one (1) of its purposes the purchase of liability insurance on a group basis;
 - (b) Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph (c) of this subsection;
 - (c) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and
 - (d) Is domiciled in any state;
- (11) "Risk retention group" means any corporation or other limited liability association:
- (a) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;
 - (b) Which is organized for the primary purpose of conducting the activity described under paragraph (a) of this subsection;
 - (c) Which:
 - 1. Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or
 - 2. Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the *commissioner*~~[executive director]~~ of at least one (1) state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined under the Product Liability Risk Retention Act of 1981 prior to the date of the enactment of the Liability Risk Retention Act of 1986);
 - (d) Which does not exclude any person from membership in the group solely to provide for members of such group a competitive advantage over such person;
 - (e) Which:
 - 1. Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or
 - 2. Has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;
 - (f) Whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and
 - (g) Whose activities do not include the provision of insurance other than:

1. Liability insurance for assuming and spreading all or any portion of the liability of its group members; and
2. Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in businesses or activities so that such group or member meets the requirement described in paragraph (f) of this subsection from membership in the risk retention group and which provides such reinsurance; and

(h) The name of which includes the phrase "risk retention group;"

(12) "State" means any state of the United States or the District of Columbia.

➔Section 1574. KRS 304.45-030 is amended to read as follows:

- (1) A risk retention group shall, pursuant to the provisions of this chapter, be chartered and licensed to write only liability insurance pursuant to this subtitle, and, except as otherwise provided in this subtitle, shall comply with all of the laws, regulations, and requirements applicable to such insurers chartered and licensed in this state and with KRS 304.45-040 to the extent such requirements are not a limitation on laws, regulations, or requirements of this state.
- (2) Notwithstanding any other provision to the contrary, all risk retention groups chartered in this state shall file with the ~~department~~~~office~~ and the National Association of Insurance Commissioners (NAIC), an annual statement in a form prescribed by the NAIC and completed in accordance with the NAIC instructions and the NAIC accounting practices and procedures manual.
- (3) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the ~~commissioner~~~~executive director~~ of this state a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional kinds of liability insurance. The group shall not offer any additional kinds of liability insurance in this state or any other state until a revision of such plan or study is approved by the ~~commissioner~~~~executive director~~.
- (4) At the time of filing its application for charter, the risk retention group shall provide to the ~~commissioner~~~~executive director~~ in summary form the identity of the initial members of the group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of the information, the ~~commissioner~~~~executive director~~ shall forward such information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners is in addition to and shall not be sufficient to satisfy the requirements of KRS 304.45-040 and all other sections of this subtitle.
- (5) A risk retention group shall, within ten (10) days, notify the ~~commissioner~~~~executive director~~ of any changes in the identity of those individuals who provide administrative services or otherwise influence or control the activities of the group, the coverages afforded, and the states in which the group operates.
- (6) A risk retention group chartered and licensed in this state as a product liability risk retention group under the provisions of KRS Chapter 304 in effect prior to July 13, 1990, may continue to act as such without complying with this subtitle as long as it complies with the provisions of KRS Chapter 304 in effect prior to July 13, 1990. The exception provided in this subsection shall cease to apply to any product liability risk retention group which offers any other kind of liability insurance other than product liability or completed operations liability insurance.

➔Section 1575. KRS 304.45-040 is amended to read as follows:

Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall observe and abide by the laws of this state as follows:

- (1) Before offering insurance in this state, a risk retention group shall submit to the ~~commissioner~~~~executive director~~:
 - (a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering and licensing, its principal place of business, and such other information, including information on its membership, as the ~~commissioner~~~~executive director~~ of this state may require to verify that the risk retention group is qualified under KRS 304.45-020(11);

- (b) A copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile, but the provision relating to the submission of a plan of operation or a feasibility study shall not apply as to any kind or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered before such date by any risk retention group which had been chartered and operating for not less than three (3) years before such date; and
 - (c) A statement of registration which designates the Secretary of State as its agent for the purpose of receiving service of legal documents or process.
- (2) Any risk retention group doing business in this state shall submit to the *commissioner*~~{executive director}~~:
- (a) A copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;
 - (b) A copy of each financial, market conduct, or other examination of the risk retention group as certified by the *commissioner*~~{executive director}~~ or public official conducting the examination;
 - (c) Upon request by the *commissioner*~~{executive director}~~, a copy of any audit performed with respect to the risk retention group; and
 - (d) Such information as may be required to verify its continuing qualification as a risk retention group under KRS 304.45-020(11).
- (3) A risk retention group shall, within ten (10) days, notify the *commissioner*~~{executive director}~~ of any changes in any of the information required in subsections (1) and (2).
- (4) Any risk retention group shall submit to an examination by the *commissioner*~~{executive director}~~ to determine its financial condition if the *commissioner*~~{executive director}~~ of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the *commissioner*~~{executive director}~~ of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' examiner handbook. Such examinations shall be conducted in accordance with KRS 304.2-210 to 304.2-300.
- (5) Any application used or any policy issued by a risk retention group shall contain in ten (10) point boldface type the following legend:

NOTICE

THIS POLICY IS ISSUED BY YOUR RISK RETENTION GROUP. YOUR RISK RETENTION GROUP MAY NOT BE SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATIONS OF YOUR STATE. STATE INSURANCE INSOLVENCY GUARANTY FUNDS ARE NOT AVAILABLE FOR YOUR RISK RETENTION GROUP.

- (6) In the solicitation or sale of insurance, a risk retention group shall not:
 - (a) Solicit or sell insurance to any person who is not eligible for membership in such group; and
 - (b) Solicit or sell insurance issued by, or otherwise operate, a risk retention group that is in a hazardous financial condition or is financially impaired.
- (7) No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, except if all members of the risk retention group are insurance companies.
- (8) A risk retention group shall not offer insurance policy coverage prohibited by statute or regulation or declared unlawful by the highest court of this state.
- (9) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a

commissioner~~{executive director}~~ if there has been a finding of financial impairment after an examination under subsection (4) of this section.

- (10) A risk retention group registered in this state as a product liability risk retention group under the provisions of KRS Chapter 304 in effect prior to July 13, 1990, may continue to act as such without complying with this subtitle as long as it complies with the provisions of KRS Chapter 304 in effect prior to July 13, 1990. The exception provided in this subsection shall cease to apply to any product liability risk retention group which offers kinds of liability insurance other than product liability or completed operations liability insurance.

➔Section 1576. KRS 304.45-060 is amended to read as follows:

- (1) A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the *commissioner*~~{executive director}~~ which shall:
- (a) Identify the state in which the purchasing group is domiciled;
 - (b) Specify the kinds and classification of liability insurance which the purchasing group intends to purchase;
 - (c) Identify the insurance company or companies from which the purchasing group intends to purchase its insurance and the domicile or domiciles of such insurance company or insurance companies;
 - (d) Specify the method by which and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state;
 - (e) Identify the principal place of business of the purchasing group; and
 - (f) Provide such other information as may be required by the *commissioner*~~{executive director}~~ to verify that the purchasing group is qualified under KRS 304.45-020(10) and is otherwise in compliance with the laws of this state.
- (2) A purchasing group shall, within ten (10) days, notify the *commissioner*~~{executive director}~~ of any changes in any of the items set forth in subsection (1).
- (3) The purchasing group shall register with and designate the Secretary of State as its agent solely for the purpose of receiving legal documents or process, except that such requirement shall not apply in the case of a purchasing group:
- (a) Which in any state of the United States:
 1. Was domiciled before April 1, 1986; and
 2. Is domiciled on and after October 27, 1986;
 - (b) Which:
 1. Before October 27, 1986, purchased insurance from an insurer licensed in any state; and
 2. Since October 27, 1986, purchased its insurance from an insurer licensed in any state;
 - (c) Which was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 (P.L. 97-45) before October 27, 1986; and
 - (d) Which does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.
- (4) Any purchasing group which was doing business in this state prior to July 13, 1990, shall, within thirty (30) days after July 13, 1990, furnish notice to the *commissioner*~~{executive director}~~ pursuant to the provisions of this subtitle and furnish the information required pursuant to this subtitle.

➔Section 1577. KRS 304.45-080 is amended to read as follows:

- (1) All risk retention groups and insurers providing liability insurance to purchasing groups shall be subject to taxation and shall be deemed to be insurers for the purpose of assessing and collecting taxes on premiums. All risk retention groups and insurers issuing liability insurance policies to purchasing groups shall be subject to the taxes set forth in KRS 91A.080 and 136.340 and the surcharge imposed by KRS 136.392.

- (2) All persons involved in the solicitation, negotiation, or procurement of liability insurance from a risk retention group or from an insurer issuing a liability insurance group to a purchasing group shall cooperate in the reporting and payment of taxes on premiums for risks located in this state.
- (3) Failure of risk retention groups, insurers issuing liability insurance policies to purchasing groups, and any person involved in the solicitation, negotiation, or procurement of liability insurance from a risk retention group or from an insurer issuing a liability insurance policy to a purchasing group to pay taxes in accordance with this section or to cooperate in accordance with this section is a ground for suspension or revocation of certificates of authority, licenses, or permission to do business in this state, imposition of civil penalties, or both. The **commissioner**~~{executive director}~~ may take any action necessary to assure that applicable premium taxes are paid to the appropriate taxing authorities.

➔Section 1578. KRS 304.45-110 is amended to read as follows:

- (1) A risk retention group doing business in this state shall be subject to all applicable unfair claims settlement practices laws and regulations as provided in KRS 304.3-200, 304.12-220, and 304.12-230.
- (2) The **commissioner**~~{executive director}~~ is authorized to make use of any of the powers established under the insurance statutes and regulations of this state to enforce the laws of this state so long as those powers are not specifically preempted by the Product Liability Risk Retention Act of 1981 (P.L. 97-45) and the Liability Risk Retention Act of 1986 (P.L. 99-563), 15 U.S.C. secs. 3901 et seq. This includes, but is not limited to, the **commissioner's**~~{executive director's}~~ administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. Without regard to any investigation, administrative proceedings, or litigation, the **commissioner**~~{executive director}~~ can rely on the procedural law and regulations of the state. The injunctive authority of the **commissioner**~~{executive director}~~ in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

➔Section 1579. KRS 304.45-140 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall apply the fees set forth in KRS 304.4-010 to risk retention groups. Subtitle 4 of this chapter applies to this subtitle.

➔Section 1580. KRS 304.45-150 is amended to read as follows:

The **commissioner**~~{executive director}~~ may promulgate reasonable regulations necessary for, or as an aid to the effectuation of, this subtitle.

➔Section 1581. KRS 304.47-010 is amended to read as follows:

As used in Subtitle 47 of this chapter, unless the context requires otherwise:

- (1) "Insurer" means any person, entity, organization, or reinsurer, including fraternal benefit societies as defined in Subtitle 29 of this chapter, nonprofit hospital, medical-surgical, dental, and health service corporation as defined in Subtitle 32 of this chapter, health maintenance organization as defined in Subtitle 38 of this chapter, prepaid dental plan organization as defined in Subtitle 43 of this chapter, or unauthorized insurer as defined in Subtitle 11 of this chapter, subject to regulation by or registration with the **Department**~~{Office}~~ of Insurance under this chapter, and any "carrier," "self-insurer," or "insurance carrier" as defined by KRS Chapter 342.
- (2) "Insurance policy" or "policy" means any individual or group policy, including those defined by KRS Chapter 342, certificate, or contract of an insurer as defined in subsection (1) of this section including reinsurance affecting the rights of any Kentucky resident or bearing a reasonable relation to Kentucky regardless of whether delivered or issued for delivery in Kentucky.
- (3) "Insured" means any person who is a named insured or beneficiary under a policy as defined in subsection (2) of this section or a person who is not a named insured or beneficiary under a policy due to the fraudulent action of another, but who in good faith believes himself *or herself* to be an insured or beneficiary.
- (4) "Law enforcement agency" means any federal, state, county, or consolidated police or law enforcement department and any prosecuting official of the federal, state, county, local, or consolidated government.
- (5) "Statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or physician record or report,

X-ray, test result, or other evidence of loss, injury, or expense. A statement may be in any form, including oral, written, and electronic transmissions.

- (6) "Division" means the Division of Insurance Fraud Investigation of the Kentucky ~~Department~~~~Office~~ of Insurance, its employees, or authorized representatives.
- (7) "Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any fraudulent insurance act, as set forth in KRS 304.47-020(1), on a continuing basis.

➔Section 1582. KRS 304.47-020 is amended to read as follows:

- (1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance act" if he or she engages in any of the following, including but not limited to matters relating to workers' compensation:
- (a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, Special Fund, or any agent thereof, any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;
 - (b) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, or any agent thereof, any statement as part of, or in support of, an application for an insurance policy, for renewal, reinstatement, or replacement of insurance, or in support of an application to a lender for money to pay a premium, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;
 - (c) Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;
 - (d) Knowingly and with intent to defraud or deceive, receives money for the purpose of purchasing insurance, and fails to obtain insurance;
 - (e) Knowingly and with intent to defraud or deceive, fails to make payment or disposition of money or voucher as defined in KRS 304.17A-750, as required by agreement or legal obligation, that comes into his or her possession while acting as a licensee under this chapter;
 - (f) Issues or knowingly presents fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, insurance binders, or any other documents that purport to evidence insurance;
 - (g) Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;
 - (h) Engages in unauthorized insurance, as defined in KRS 304.11-030;
 - (i) Knowingly and with intent to defraud or deceive, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or to the ~~commissioner~~~~executive director~~, any statement, knowing that the statement contains any false, incomplete, or misleading information concerning any material fact or thing, as part of, or in support of one (1) or more of the following:
 1. The rating of an insurance policy;
 2. The financial condition of an insurer;
 3. The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one (1) or more lines of insurance in all or part of this Commonwealth by an insurer; or
 4. A document filed with the ~~commissioner~~~~executive director~~;
 - (j) Knowingly and with intent to defraud or deceive, engages in any of the following:
 1. Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or
 2. Removal, concealment, alteration, tampering, or destruction of money, records, or any other property or assets of an insurer; or

- (k) Assists, abets, solicits, or conspires with another to commit a fraudulent insurance act in violation of this subtitle.
- (2) (a) Except as provided in paragraphs (b) and (c) of this subsection, a person convicted of a violation of subsection (1) of this section shall be guilty of a misdemeanor where the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is less than or equal to three hundred dollars (\$300), and shall be punished by:
 - 1. Imprisonment for not more than one (1) year;
 - 2. A fine, per occurrence, of not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
 - 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.
- (b) Except as provided in paragraph (c) of this subsection, where the claim, benefit, or money referred to in subsection (1) of this section exceeds an aggregate of three hundred dollars (\$300), a person convicted of a violation of subsection (1) of this section shall be guilty of a felony and shall be punished by:
 - 1. Imprisonment for not less than one (1) nor more than five (5) years;
 - 2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
 - 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.
- (c) Any person, with the purpose to establish or maintain a criminal syndicate, or to facilitate any of its activities, as set forth in KRS 506.120(1), shall be guilty of engaging in organized crime, a Class B felony, and shall be punished by:
 - 1. Imprisonment for not less than ten (10) years nor more than twenty (20) years;
 - 2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or
 - 3. Both imprisonment and a fine, as set forth in subparagraphs 1. and 2. of this paragraph.
- (d) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a violation of paragraph (a), (b), or (c) of subsection (2) of this section may be ordered to make restitution to any victim who suffered a monetary loss due to any actions by that person which resulted in the adjudication of guilt, and to the division for the cost of any investigation. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.
- (3) Any person damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.
- (4) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (3) of this section.

➔Section 1583. KRS 304.47-025 is amended to read as follows:

- (1) Any person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, and who knowingly engages or participates in the business of insurance in this Commonwealth, shall be guilty of a Class D felony.
- (2) Any insurer that knowingly permits the participation in the business of insurance in this Commonwealth by a person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, shall be guilty of a criminal violation.

- (3) Any person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, may engage in the business of insurance in this Commonwealth if he or she has received written consent from the *commissioner*~~[executive director]~~, and that consent specifically refers to this subsection.

➔Section 1584. KRS 304.47-030 is amended to read as follows:

- (1) All applications shall contain a statement in a form approved by the *Department*~~[Office]~~ of Insurance that clearly states in substance the following: "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime."
- (2) All claim forms shall contain a statement in a form approved by the *Department*~~[Office]~~ of Insurance that clearly states in substance the following: "Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime."
- (3) Fraud warning statements shall not be required on applications or claim forms used by reinsurers.

➔Section 1585. KRS 304.47-040 is amended to read as follows:

- (1) There is created within the *Department*~~[Office]~~ of Insurance a Division of Insurance Fraud Investigation~~[- which shall include a Workers' Compensation Branch]~~.
- (2) (a) The *commissioner*~~[executive director]~~ shall appoint qualified persons to serve as special investigators for the Division of Insurance Fraud Investigation who shall have general police powers including the power to arrest, and they shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, and their jurisdiction shall be coextensive with the state.
- (b) The *division staff also* ~~[executive director shall appoint appropriate staff for the Workers' Compensation Branch which]~~ shall include, at a minimum, three (3) special investigators, one (1) attorney, and one (1) administrative assistant. The *positions*~~[appointments]~~ authorized by this paragraph shall be in addition to the staff employed by the division as of December 12, 1996.
- (3) The special investigator may:
- (a) Administer oaths and affirmations;
 - (b) Order the attendance of witnesses or proffering of information and documentation;
 - (c) Collect evidence; and
 - (d) Make arrests for criminal violations established as a result of its investigations. The general laws applicable to arrests by sheriffs of the Commonwealth shall also be applicable to special investigators, who may:
 1. Execute arrest warrants and search warrants for the criminal violations revealed as a result of their investigations;
 2. Serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations; and
 3. Arrest upon probable cause without warrant any person found in the act of violating any of the provisions of applicable laws.
- (4) The division may implement its powers if, based upon its own inquiries or as a result of information received, it has reason to believe that a person has engaged in, is engaging in, or is about to engage in a fraudulent insurance act.
- (5) If the information the division seeks to obtain is located outside the state, the person so requested may make it available to the division or its representative to examine at the place where it is located. The division may designate representatives, including officials of the state in which the matter is located, to inspect the information on the division's behalf, and it may respond to similar requests from officials of other states.

- (6) It shall be unlawful for any person to resist an arrest authorized by this subtitle or in any manner to interfere, either by abetting or assisting this resistance or otherwise interfering, with special investigators employed by the *commissioner*~~[executive director]~~ under this subtitle in the duties imposed upon them by law, and shall be punishable as provided in KRS 520.090.
- (7) The *commissioner*~~[executive director]~~ may obtain any evidence for use in criminal investigations according to KRS 304.2-340.

➔Section 1586. KRS 304.47-050 is amended to read as follows:

- (1) Any person, other than those specified in subsection (2) of this section, having knowledge or believing that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under the subtitle is being or has been committed may send to the division a report of information pertinent to this knowledge of or belief and any additional relevant information the *commissioner*~~[executive director]~~ may request.
- (2) The following individuals having knowledge or believing that a fraudulent insurance act or any other act or practice which may constitute a felony or misdemeanor under this subtitle is being or has been committed shall send to the division a report or information pertinent to the knowledge or belief and additional relevant information that the *commissioner*~~[executive director]~~ or *the commissioner's*~~[his]~~ employees or agents may require:
- (a) Any professional practitioner licensed or regulated by the Commonwealth, except as provided by law;
 - (b) Any private medical review committee;
 - (c) Any insurer, agent, or other person licensed under this chapter; and
 - (d) Any employee of the persons named in paragraphs (a) to (c) of this subsection.
- (3) The division or its employees or agents shall review this information or these reports and select the information or reports that, in the judgment of the division, may require further investigation. The division shall then cause an investigation of the facts surrounding the information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this subtitle is being committed.
- (4) The *Department*~~[Office]~~ of Workers' Claims shall provide the division access to all relevant information the *commissioner*~~[executive director]~~ may request.
- (5) The division shall report any alleged violations of law which the investigations disclose to the appropriate licensing agency and the Commonwealth's attorney, Attorney General, or other prosecuting agency having jurisdiction with respect to a violation. If prosecution by the Commonwealth's attorney, Attorney General, or other prosecuting agency is not begun within sixty (60) days of the report, the prosecuting attorney shall inform the division of the reasons for the lack of prosecution. In addition to filing a report with the appropriate prosecuting agency, the *commissioner*~~[executive director]~~ may, through the Attorney General, prosecute violations of this subtitle in the Circuit Court of the county in which the alleged wrongdoer resides or has his *or her* principal place of business, in the Circuit Court of the county in which the fraudulent insurance act has been committed, or, with consent of the parties, in the Franklin Circuit Court.
- (6) Notwithstanding the provisions of subsections (1) to (5) of this section, any person having knowledge or believing that a fraudulent insurance act or any other act that may be prohibited under this subtitle is being or has been committed, may notify any law enforcement agency of his or her knowledge or belief and provide information relevant to the act, as may be requested by that agency, including, but not limited to, insurance policy information including the application for insurance, policy premium payment records, history of previous claims made by the insured, and other information relating to the investigation of the claim, including statements of any person, proofs of loss, and notice of loss. Reporting to any other agency does not relieve those listed in subsection (2) of this section of their mandatory duty to report to the division.
- (7) If the information referred to in this section is specifically requested by the division, any other law enforcement agency, or a prosecuting attorney, the insurer shall provide certified copies of the requested information within ten (10) business days of the request or as soon thereafter as reasonable.

- (8) In the absence of malice, fraud, or gross negligence, no insurer or agent authorized by an insurer to act on its behalf, law enforcement agency, the **Department**~~{Office}~~ of Workers' Claims, their respective employees, or an insured shall be subject to any civil liability for libel, slander, or related cause of action by virtue of filing reports or for releasing or receiving any information pursuant to this subsection.

➔Section 1587. KRS 304.47-055 is amended to read as follows:

- (1) Documents, materials, or other information in the possession or control of the **commissioner**~~{executive director}~~ that is provided according to this subtitle shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.872 to KRS 61.884. These documents, materials, or other information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, unless, after notice to the **commissioner**~~{executive director}~~ and a hearing, a court of competent jurisdiction determines the **commissioner**~~{executive director}~~ would not be unnecessarily hindered. However, the **commissioner**~~{executive director}~~ may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the **commissioner's**~~{executive director's}~~ official duties.
- (2) Neither the **commissioner**~~{executive director}~~ nor any person who received documents, materials, or other information while acting under the authority of the **commissioner**~~{executive director}~~ shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.
- (3) In order to assist in the performance of the **commissioner's**~~{executive director's}~~ duties, the **commissioner**~~{executive director}~~:
- (a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsections (1) and (2) of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;
 - (b) May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any documents, materials, or information received with notice or the understanding that it is confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, or information;
 - (c) May enter into agreements governing the sharing and use of information including the furtherance of any regulatory or legal action brought as part of the recipient's official duties.
- (4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the **commissioner**~~{executive director}~~ under this subtitle or as a result of sharing as authorized in subsection (3) of this section.

➔Section 1588. KRS 304.47-060 is amended to read as follows:

- (1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information required by this chapter or requested by the division or its authorized representative. No civil cause of action of any nature shall arise against the person:
- (a) For any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents, or employees;
 - (b) For any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this subtitle, including those designated by KRS 304.47-080;
 - (c) For any information furnished to or received from the **Department**~~{Office}~~ of Workers' Claims, its agents, or employees; or
 - (d) For any information furnished in reports to the **commissioner**~~{executive director}~~ or the National Association of Insurance Commissioners.

- (2) The *commissioner*~~{executive director}~~ or any employee or agent of the *Department*~~{Office}~~ of Insurance shall not be subject to civil liability for libel, slander, or any other relevant tort. No civil cause of action shall exist against these persons by virtue of the execution of official activities or duties of the *commissioner*~~{executive director}~~ or the division or by virtue of the publication of any report or bulletin related to the official activities or duties of the *commissioner*~~{executive director}~~.
- (3) This subtitle shall not abrogate or modify any common law or statutory privilege or immunity enjoyed by any person.

➔Section 1589. KRS 304.47-070 is amended to read as follows:

All costs of administration and operation of the division shall be borne by the *Department*~~{Office}~~ of Insurance. Any money or other property that is awarded to the division as costs of investigation or as a fine shall be credited to the *Department*~~{Office}~~ of Insurance, and the money shall be used to help finance the division.

➔Section 1590. KRS 304.48-020 is amended to read as follows:

- (1) "Administrator" means an individual, partnership, corporation, association, or other legal entity engaged by a liability self-insurance group's board of trustees to carry out the policies established by the group's board of trustees and to provide day-to-day management of the group.
- (2) "Bona fide association" as used in KRS 304.48-030 shall mean an association which has a substantial noninsurance purpose or has other characteristics of stability in finances and membership.
- (3) "*Commissioner*~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance.
- (4) "Deceptive" means an act, practice, or statement which has the tendency or capacity to deceive, without regard to whether there is an intent to deceive or whether any person has suffered loss or injury as a result of the act, practice, or statement.
- (5) "Governmental entity" means the Commonwealth of Kentucky, other states, or the United States, their political subdivisions, municipal corporations, or public agencies.
- (6) "Insolvent" or "insolvency" means the inability of a liability self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liability over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.
- (7) "Liability self-insurance group" means a group described in KRS 304.48-030.
- (8) "Person" includes, but is not limited to, any individual, partnership, association, trust, or corporation.
- (9) "Qualified actuary" means a member of the American Academy of Actuaries or a fellow of the Casualty Actuarial Society.
- (10) "Service company" means a person or entity which provides services not provided by the administrator, including, but not limited to, claims adjustment, safety engineering, compilation of statistics in preparation of contribution and assessments, loss, and tax reports, preparation of other required self-insurance reports, development of members' contributions, assessments, and fees, and administration of a claim fund.
- (11) "Unfair" refers to an act, practice, or statement which is unconscionable.
- (12) "Agent" means any person directly or indirectly associated with such organization who engages in solicitation or enrollment of persons for profit or pecuniary gain in a liability self-insurance group.

➔Section 1591. KRS 304.48-040 is amended to read as follows:

No person shall in this state be, act as, or hold himself *or herself* out as a liability self-insurance group unless he *or she* holds a certificate of filing from the *commissioner*~~{executive director}~~. All certificates of filing issued by the *commissioner*~~{executive director}~~ prior to July 15, 1994, shall remain in full force and effect unless revoked or suspended by the *commissioner*~~{executive director}~~ pursuant to KRS 304.48-220.

➔Section 1592. KRS 304.48-050 is amended to read as follows:

A proposed liability self-insurance group shall file with the *commissioner*~~{executive director}~~ an application for a certificate of filing accompanied by a nonrefundable filing fee of five dollars (\$5). Each application for a certificate of filing shall be submitted to the *commissioner*~~{executive director}~~ upon a form prescribed by *the commissioner* ~~{him}~~ and shall set forth or be accompanied by:

- (1) The group's name, location of its principal office, date of organization, name and address of each member (if known at the time of application; if unknown, a description of the group to be solicited for membership), and identification of its fiscal year;
- (2) A copy of the articles of association;
- (3) A copy of agreements with the administrator and with any service company;
- (4) A copy of the bylaws of the proposed group;
- (5) A copy of the agreement between the group and each member jointly and severally binding the group and each member thereof to comply with the provisions of this subtitle and the decision of the trustees for operation of the liability self-insurance group. If the liability self-insurance group is composed of governmental entities and received its certificate of filing prior to the enactment of this section, the agreement may provide that it does not jointly and severally bind group members to pay the debts of others. Liability self-insurance groups may limit group members' joint and several liability and the limits shall be established in terms of members' annual contributions;
- (6) Designation of the initial board of trustees and administrator; and
- (7) The address where books and records of the group will be maintained at all times.

➔Section 1593. KRS 304.48-060 is amended to read as follows:

Upon receipt of an application for issuance for a certificate of filing, the *commissioner*~~{executive director}~~ shall issue or deny the same. Issuance of a certificate of filing shall be granted only if the *commissioner*~~{executive director}~~ finds that the applicant has complied with KRS 304.48-050, has paid the application fee, and the *commissioner*~~{executive director}~~ is satisfied that the following conditions are met:

- (1) The persons responsible for the conduct of the affairs of the liability self-insurance group are competent, trustworthy, and possess good reputation;
- (2) The liability self-insurance group is financially responsible and may reasonably be expected to meet its obligations to participants and prospective participants. In making this determination, the *commissioner*~~{executive director}~~ may consider:
 - (a) The adequacy of working capital;
 - (b) Any agreement with an insurer, a government, or any other organization for insuring the payment of liability claims or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the self-insurance group; and
 - (c) Compliance with KRS 304.48-070, as a guarantee that the obligations will be duly performed.

➔Section 1594. KRS 304.48-070 is amended to read as follows:

- (1) This section applies to a group applying for and holding a certificate of filing as a liability self-insurance group.
- (2) To obtain and to maintain its certificate of filing a liability self-insurance group shall have sufficient financial strength to pay all public or professional liabilities covered by the group, including known claims and expenses and incurred but not reported claims and expenses.
- (3) The *commissioner*~~{executive director}~~, if not satisfied with the financial strength of a liability self-insurance group, may require any or all of the following of a liability self-insurance group:
 - (a) Security in the form and amount prescribed by the *commissioner*~~{executive director}~~ as follows:
 1. A surety bond issued by a corporate surety authorized to transact business in the Commonwealth of Kentucky; or
 2. Any financial security endorsement issued as part of an acceptable excess insurance contract issued by an authorized insurer may be used to meet all or part of the security requirement. The

bond or financial security endorsement shall be for the benefit of the insured creditors solely to pay claims and associated expenses and shall be payable upon the failure of the group to pay professional or public liability claims it is legally obligated to pay. The *commissioner*~~{executive director}~~ may establish and adjust the requirements for the amount of security based on differences among groups in their size, types or business, years in existence, or other relevant factors.

- (b) Specific and aggregate excess insurance in a form, in an amount, and issued by an insurer acceptable to the *commissioner*~~{executive director}~~.
- (c) A fidelity bond for the administrator and a fidelity bond for the service company in forms and amounts prescribed by the *commissioner*~~{executive director}~~. The *commissioner*~~{executive director}~~ may require the service company providing claim service to furnish a performance bond in a form and amount prescribed by the *commissioner*~~{executive director}~~.

➔Section 1595. KRS 304.48-090 is amended to read as follows:

The funds of a liability self-insurance group shall be invested only in securities or other investments permitted by subtitle 7 of this chapter, or such other securities or investments as the *commissioner*~~{executive director}~~ may permit by administrative regulation.

➔Section 1596. KRS 304.48-110 is amended to read as follows:

The *commissioner*~~{executive director}~~ or any person authorized by him *or her* shall have power to examine the financial condition, affairs, and management of any liability self-insurance group subject to the provisions of this subtitle. *The commissioner*~~{He}~~ shall have free access to all the books, papers, and documents relating to the business of the organization, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of any group, or any person in relation to its affairs, transactions, or conditions. *The commissioner*~~{He}~~ shall so examine each liability self-insurance group subject to the provisions of this subtitle not less frequently than every four (4) years. Information and other data obtained through the examination shall be subject to the provisions of KRS 304.2-210 to 304.2-290.

➔Section 1597. KRS 304.48-130 is amended to read as follows:

- (1) A certificate of filing remains in effect until terminated at the request of the group or suspended or revoked by the *commissioner*~~{executive director}~~ pursuant to KRS 304.48-220.
- (2) The *commissioner*~~{executive director}~~ shall not grant the request of the liability self-insurance group to terminate its certificate of filing unless the group has filed with the *commissioner*~~{executive director}~~ a statement describing what arrangements, if any, have been made to pay obligations of the group, including both known claims and expenses and incurred but not reported claims and expenses.
- (3) Subject to filing with the *commissioner*~~{executive director}~~, a liability self-insurance group may merge with another liability self-insurance group. As a result of any merger, the resulting liability self-insurance group shall assume in full all obligations of the constituent groups.

➔Section 1598. KRS 304.48-140 is amended to read as follows:

- (1) Each group shall be operated by a board of trustees which shall consist of not less than two (2) persons selected in the manner prescribed by the liability self-insurance group or by other laws of the Commonwealth. Except for liability self-insurance groups formed by governmental entities, the trustees shall not be officers, employees, or agents of an administrator or servicing organization. All trustees shall be residents of Kentucky or officers of corporations authorized to do business in Kentucky. The trustees shall have the authority to administer the operations of the liability self-insurance group, such as assuring that there is adequate funding to cover professional or public liabilities, assuring that all claims are paid promptly, and that all necessary precautions are taken to safeguard the assets of the group.
- (2) The board of trustees shall:
 - (a) Maintain responsibility for all moneys collected or disbursed from the group;
 - (b) Maintain minutes of its meetings and make the minutes available to the *commissioner*~~{executive director}~~; and,

- (c) Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.
- (3) The board of trustees shall not:
 - (a) Extend credit to individual group members for payment of contributions or assessments, except pursuant to payment plans filed with the **commissioner**~~{executive director}~~; or
 - (b) Permit the loan of any moneys to, or borrow any moneys from, the group or in the name of the group. However, a liability self-insurance group formed by governmental entities may borrow moneys in the name of the group.
- (4) In its discretion, the liability self-insurance group may refer to its trustees as directors. If this is done, the provisions of this subtitle referring to trustees shall be construed as referring to directors.

➔Section 1599. KRS 304.48-170 is amended to read as follows:

- (1) All liability self-insurance groups shall file with the **commissioner**~~{executive director}~~ a statement of financial condition audited by an independent certified public accountant on or before one hundred and twenty (120) days from the end of the group's fiscal year for the immediately preceding fiscal year. The financial statement shall be in a form approved by the **commissioner**~~{executive director}~~ and shall include:
 - (a) Actuarially-appropriate reserves for:
 - 1. Known claims and expenses associated therewith.
 - 2. Claims incurred but not reported and any expenses associated therewith.
 - 3. Unearned contributions and assessments.
 - 4. Bad debts, which reserves shall be known as liabilities.
 - (b) An actuarial opinion by a qualified actuary and a supporting reserve study regarding reserves for known claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods.
- (2) No person shall make a deceptive statement or fail to correct a misstatement in connection with the solicitation of membership of a group.
- (3) The financial statements required by this section shall be completed in accordance with administrative regulations promulgated by the **commissioner**~~{executive director}~~.

➔Section 1600. KRS 304.48-180 is amended to read as follows:

Liability self-insurance groups shall file with the **commissioner**~~{executive director}~~ their rates, underwriting guidelines, evidence of coverage, and any changes therein. The filing shall be accompanied by a filing fee of five dollars (\$5) per filing.

➔Section 1601. KRS 304.48-220 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may suspend or revoke any certificate of filing issued to a liability self-insurance group under this subtitle if **the commissioner**~~{he}~~ finds that any of the following conditions exist:
 - (a) The liability self-insurance group is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under this subtitle, unless amendments to the submissions have been filed with and approved by the **commissioner**~~{executive director}~~;
 - (b) The liability self-insurance group is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to participants or prospective participants;
 - (c) The liability self-insurance group, or any person at its direction, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;
 - (d) The liability self-insurance group has engaged in any unfair or deceptive practices under its certificate of filing;

- (e) The liability self-insurance group has failed to correct a violation of this subtitle or the administrative regulations adopted thereunder, within a reasonable time period established by the **commissioner**~~[executive director]~~ in administrative regulations.
- (2) A certificate of filing shall be suspended or revoked only after compliance with the hearing procedure set forth in KRS 304.2-310 to 304.2-370.
- (3) When a certificate of filing of a liability self-insurance group is suspended, the group shall not, during the period of suspension, enroll any new participants and shall not engage in any advertising or solicitation.
- (4) If the certificate of filing of a liability self-insurance group is revoked, the group shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation. The **commissioner**~~[executive director]~~ may, by written order, prevent further operation of the group as he *or she* may find to be in the best interest of the participants, to the end that the participants will be afforded the greatest practical opportunity to obtain liability coverage elsewhere. If the **commissioner**~~[executive director]~~ permits further operation, the liability self-insurance group shall continue to collect the contributions and assessments required of participants.

➔Section 1602. KRS 304.48-230 is amended to read as follows:

The **commissioner**~~[executive director]~~ may promulgate reasonable administrative regulations not inconsistent with the provisions of this subtitle that **the commissioner**~~[he]~~ deems necessary for the proper administration of this subtitle. Nothing in this subtitle nor any administrative regulation adopted under the authority of this subtitle shall require any liability self-insurance group formed by public entities or its members, to take any action in violation of the Constitution of the Commonwealth of Kentucky.

➔Section 1603. KRS 304.48-240 is amended to read as follows:

- (1) No person shall make any deceptive statement or omit material facts in connection with solicitation for membership in a liability self-insurance group.
- (2) Liability self-insurance groups shall not engage in unfair claims settlement practices and shall:
- (a) Respond to claimant inquiries within fifteen (15) working days.
 - (b) Respond to **Department**~~[Office]~~ of Insurance inquiries concerning claims within fifteen (15) working days.
 - (c) Complete the investigation of losses within thirty (30) days from the date the group has notice of a loss. An additional thirty (30) day period may be taken if reasonably necessary and upon written notice to the claimant.
 - (d) Not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations, a policy, or contract time limit without giving the claimant written notice at least sixty (60) days before the date on which the time limit shall expire and affect the claimant's rights.
 - (e) Not commit any other unfair or deceptive act or practice relating to claim settlement.
- (3) Liability self-insurance groups shall not commit unfair or deceptive acts or practices under its certificate of filing from the **commissioner**~~[executive director]~~.

➔Section 1604. KRS 304.48-250 is amended to read as follows:

- (1) If the assets of a liability insurance group are at any time insufficient to enable the group to discharge its legal liabilities, other obligations, and to maintain the required reserves under this subtitle, the group shall immediately levy an assessment upon its members for the amount necessary to make up the deficiency.
- (2) If there is a deficiency in any fund year, the deficiency shall be made up immediately, from the following:
- (a) Surplus from a fund year other than the current fund year after prior notice of the transfer has been given to the **commissioner**~~[executive director]~~;
 - (b) Administrative funds;

- (c) Assessment of membership; or
 - (d) Alternate methods as the **commissioner**~~[executive director]~~ may direct or approve.
- (3) If a liability self-insurance group fails to assess its members within thirty (30) days to make up a deficit, the **commissioner**~~[executive director]~~ shall order it to do so. This subsection shall not apply to liability self-insurance groups formed by governmental entities which do not have joint and several liability.
- (4) If a liability self-insurance group fails to make the required assessment of its members within thirty (30) days after the **commissioner**~~[executive director]~~ orders it to do so, or if the deficiency is not fully made up within sixty (60) days after the date on which the assessment is made, or within a longer period of time as may be permitted by the **commissioner**~~[executive director]~~, the group shall be determined to be insolvent.

➔Section 1605. KRS 304.48-260 is amended to read as follows:

- (1) After a hearing or upon agreement by the liability self-insurance group, the **commissioner**~~[executive director]~~ may suspend or revoke the certificate of filing of a liability self-insurance group, impose a civil penalty of up to five thousand dollars (\$5,000) per violation on a liability self-insurance group, or both, for:
- (a) Violations of this subtitle or administrative regulations adopted thereunder;
 - (b) Obtaining a certificate of filing by unfair or deceptive means;
 - (c) Operating in a financially hazardous manner;
 - (d) Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled thereto by the group or its administrator; or
 - (e) Unfair or deceptive business practices.
- (2) The **commissioner**~~[executive director]~~, in his *or her* discretion and without advance notice or a hearing thereon, may suspend or revoke the certificate of filing of any liability self-insurance group upon the commencement of the following proceedings:
- (a) Receivership;
 - (b) Conservatorship;
 - (c) Rehabilitation; or
 - (d) Other delinquency proceedings.

➔Section 1606. KRS 304.49-010 is amended to read as follows:

As used in KRS 304.49-010 to 304.49-230, unless the context requires otherwise:

- (1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.
- (2) "Agency captive insurer" means a captive insurer that is owned by one (1) or more business entities that are licensed insurance producers and that only insure risks on policies placed through their owners.
- (3) "Captive insurer" means any pure captive insurer, consortium captive insurer, sponsored captive insurer, or industrial insured captive insurer formed or issued a certificate of authority under the provisions of KRS 304.49-010 to 304.49-230. For purposes of KRS 304.49-010 to 304.49-230, a branch captive insurer shall be a pure captive insurer with respect to operations in Kentucky, unless otherwise permitted by the **commissioner**~~[executive director]~~.
- (4) "Consortium" means any legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one (1) year, the member organizations of which collectively, or which does itself:
- (a) Own, control, or hold with power to vote all of the outstanding voting securities of a consortium captive insurer incorporated as a stock insurer; or
 - (b) Have complete voting control over a consortium captive insurer incorporated as a mutual insurer; or
 - (c) The member organizations of which collectively constitute all of the subscribers of a consortium captive insurer formed as a reciprocal insurer.

- (5) "Consortium captive insurer" means any company that insures risks of the member organizations of the consortium and their affiliated companies.
- (6) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per incident or aggregate limit established by the **commissioner**~~executive director~~.
- (7) "Industrial insured" means an insured as defined in KRS 304.11-020(1).
- (8) "Industrial insured captive insurer" means any company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies.
- (9) "Industrial insured group" means any group that meets either of the following criteria:
- (a) Any group of industrial insureds that collectively:
 - 1. Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurer incorporated as a stock insurer;
 - 2. Have complete voting control over an industrial insured captive insurer incorporated as a mutual insurer; or
 - 3. Constitute all of the subscribers of an industrial insured captive insurer formed as a reciprocal insurer; or
 - (b) Any group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. secs. 3901 et seq., as amended, as a corporation or other limited liability association.
- (10) "Member organization" means any individual, corporation, partnership, or association that belongs to a consortium.
- (11) "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurer.
- (12) "Pure captive insurer" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.
- (13) "Controlled unaffiliated business" means any company:
- (a) That is not in the corporate system of a parent and affiliated companies;
 - (b) That has an existing contractual relationship with a parent or affiliated company; and
 - (c) Whose risks are managed by a pure captive insurer in accordance with KRS 304.49-170.
- (14) "Foreign captive insurer" means any insurer formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of any state other than Kentucky which imposes statutory or regulatory standards in a form acceptable to the **commissioner**~~executive director~~ on companies transacting the business of insurance in that jurisdiction. Under KRS 304.49-010 to 304.49-230, captive insurers formed under the laws of any jurisdiction other than a state of the United States shall be treated as a foreign captive insurer unless the context requires otherwise.
- (15) "Branch business" means any insurance business transacted by a branch captive insurer in Kentucky.
- (16) "Branch captive insurer" means any foreign captive insurer issued a certificate of authority by the **commissioner**~~executive director~~ to transact the business of insurance in Kentucky through a business unit with a principal place of business in Kentucky.
- (17) "Branch operations" means any business operations of a branch captive insurer in Kentucky.
- (18) "Participant" means an entity as defined in KRS 304.49-210, and any affiliates thereof, that are insured by a sponsored captive insurer, where the losses of the participant are limited through a participant contract to the assets of a protected cell.
- (19) "Participant contract" means a contract by which a sponsored captive insurer insures the risks of a participant and limits the losses of the participant to the assets of a protected cell.

- (20) "Protected cell" means a separate account established and maintained by a sponsored captive insurer for one (1) participant.
- (21) "Reciprocal insurer" means an insurer engaging in reciprocal insurance as defined by KRS 304.27-010.
- (22) "Special purpose captive insurer" means any person that is licensed under this chapter and designated as a special purpose captive insurer by the **commissioner**~~[executive director]~~. A person may be designated as a special purpose captive insurer if it is established for one (1) specific purpose or transaction, and where it is desirable to isolate the purpose or transaction from the other activities of a party or parties involved in the transaction, or where the transaction dictates that the vehicle should not be treated as controlled or owned by any other party to that transaction.
- (23) "Sponsor" means any entity that meets the requirements of KRS 304.49-200 and is approved by the **commissioner**~~[executive director]~~ to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurer.
- (24) "Sponsored captive insurer" means any captive insurer:
- (a) In which the minimum capital and surplus required by applicable law is provided by one (1) or more sponsors;
 - (b) That is formed or issued a certificate of authority under the provisions of this subtitle;
 - (c) That insures the risks of separate participants through contract; and
 - (d) That segregates each participant's liability through one (1) or more protected cells.

➔Section 1607. KRS 304.49-020 is amended to read as follows:

- (1) Any captive insurer, when permitted by its articles of incorporation, charter, or other organizational document, may apply to the **commissioner**~~[executive director]~~ for a certificate of authority to engage in any and all kinds of insurance defined in Subtitle 5 of this chapter; provided, however, that:
- (a) No pure captive insurer may insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;
 - (b) No consortium captive insurer may insure any risks other than those of the member organizations of its consortium and their affiliated companies;
 - (c) No industrial insured captive insurer may insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;
 - (d) No captive insurer may provide personal motor vehicle or homeowner's insurance coverage or any component thereof;
 - (e) No captive insurer may accept or cede reinsurance except as provided in KRS 304.49-110;
 - (f) No captive insurer that is issued an initial certificate of authority on or after July 1, 2006, shall directly provide workers' compensation insurance; however, any captive insurer may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by the laws of the state having jurisdiction over the transaction. Any captive insurer may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies;
 - (g) Any captive insurer which insures risks described in KRS 304.5-020 and 304.5-040 shall comply with all applicable state laws;
 - (h) No branch captive insurer may write any business in Kentucky except insurance or reinsurance of the employee benefit business of its parent and affiliated companies which is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended; and
 - (i) No sponsored captive insurer may insure any risks other than those of its participants.
- (2) No captive insurer shall do any insurance business in Kentucky unless:
- (a) It first obtains from the **commissioner**~~[executive director]~~ a certificate of authority authorizing it to do insurance business in Kentucky;
 - (b) Its board of directors, or in the case of a reciprocal insurer, its subscribers' advisory committee, holds at least one (1) meeting each year in Kentucky; and

- (c) It maintains its principal place of business in Kentucky or, in the case of a branch captive insurer, maintains the principal place of business for its branch operations in Kentucky.
- (3) Before receiving a certificate of authority, a captive insurer formed as a corporation shall file with the **commissioner**~~{executive director}~~ a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the **commissioner**~~{executive director}~~;
- (4) Before receiving a certificate of authority, a captive insurer formed as a reciprocal insurer shall:
- (a) File with the **commissioner**~~{executive director}~~ a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the **commissioner**~~{executive director}~~; and
- (b) Submit to the **commissioner**~~{executive director}~~ a sample of the coverages, deductibles, coverage limits, and rates, together with any additional information required by the **commissioner**~~{executive director}~~. In the event of any subsequent material change in any item in the samples, the reciprocal captive insurer shall submit to the **commissioner**~~{executive director}~~ for approval an appropriate revision. The reciprocal captive insurer shall not offer any coverage until the forms are approved by the **commissioner**~~{executive director}~~. The reciprocal captive insurer shall not use any initial rate until it is approved by the **commissioner**~~{executive director}~~ and shall inform the **commissioner**~~{executive director}~~ of any material change in rates within thirty (30) days of the adoption of the change.
- (5) In addition to the information required by subsection (3) or (4) of this section, each applicant captive insurer shall file with the **commissioner**~~{executive director}~~ evidence of the following:
- (a) The amount and liquidity of its assets relative to the risks to be assumed;
- (b) The adequacy of the expertise, experience, and character of the person or persons who will manage it;
- (c) The overall soundness of its plan of operation;
- (d) The adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and
- (e) Any other factors deemed relevant by the **commissioner**~~{executive director}~~ in ascertaining whether the proposed captive insurer will be able to meet its policy obligations.
- (6) In addition to the information required by subsections (3), (4), and (5) of this section, each applicant-sponsored captive insurer shall file with the **commissioner**~~{executive director}~~ the following:
- (a) A business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the **commissioner**~~{executive director}~~ and how it will report the experience to the **commissioner**~~{executive director}~~;
- (b) A statement acknowledging that all financial records of the sponsored captive insurer, including records pertaining to any protected cells, shall be made available for inspection or examination by the **commissioner**~~{executive director}~~;
- (c) All contracts or sample contracts between the sponsored captive insurer and any participants; and
- (d) Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.
- (7) All portions of license applications reasonably designated confidential by the applicant, and all examination reports, preliminary examination reports, working papers, recorded information, other documents, and any copies of any of the foregoing, produced or obtained by or submitted or disclosed to the **commissioner**~~{executive director}~~ related to an examination pursuant to this subtitle shall, unless the prior written consent of the captive insurer to which it pertains has been obtained, be given confidential treatment, and shall not be subject to civil subpoena, made public by the **commissioner**~~{executive director}~~, or provided or disclosed to any other person at any time except to:
- (a) The insurance department of any state, country, or alien jurisdiction; or

- (b) To a law enforcement official or agency of the Commonwealth of Kentucky, any other state, or alien jurisdiction, as long as the official or agency agrees in writing to hold it confidential and in a manner consistent with this section.
- (8) Each captive insurer shall pay to the **commissioner**~~{executive director}~~ a nonrefundable fee as stated in KRS 304.4-010 for examining, investigating, and processing its application for certificate of authority. The **commissioner**~~{executive director}~~ is authorized to retain legal, financial, and examination services from outside the **department**~~{office}~~ to assist in examining and investigating the applicant, the reasonable cost of which may be charged against the applicant. In addition, each captive insurer shall pay a certificate of authority fee for the year of registration and a renewal fee for each year thereafter.

➔Section 1608. KRS 304.49-040 is amended to read as follows:

- (1) No captive insurer shall be issued a certificate of authority unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of:
- (a) In the case of a pure captive insurer, not less than two hundred fifty thousand dollars (\$250,000);
 - (b) In the case of an consortium captive insurer, not less than seven hundred fifty thousand dollars (\$750,000);
 - (c) In the case of an industrial insured captive insurer, not less than five hundred thousand dollars (\$500,000);
 - (d) In the case of a sponsored captive insurer, not less than one million dollars (\$1,000,000);
 - (e) In the case of an agency captive insurer, not less than five hundred thousand dollars (\$500,000); and
 - (f) In the case of a special purpose captive insurer, not less than two hundred fifty thousand dollars (\$250,000), or another amount determined by the **commissioner**~~{executive director}~~.
- (2) Notwithstanding the requirements of subsection (1) of this section, no captive insurer organized as a reciprocal insurer under KRS 304.49-010 to 304.49-230 shall be issued a certificate of authority unless it shall possess and thereafter maintain free surplus of one million dollars (\$1,000,000).
- (3) The **commissioner**~~{executive director}~~ may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.
- (4) Capital and surplus may be in the form of cash or an irrevocable letter of credit issued by a bank approved by the **commissioner**~~{executive director}~~ and chartered by the Commonwealth of Kentucky or a member bank of the Federal Reserve System, or other assets as may be approved by the **commissioner**~~{executive director}~~.
- (5) In the case of a branch captive insurer, as security for the payment of liabilities attributable to the branch operations, the **commissioner**~~{executive director}~~ shall require that a separate trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurer through its branch operations. The amount of this security may be no less than the capital and surplus required in this section and the reserves on the insurance policies or the reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, the **commissioner**~~{executive director}~~ may permit a branch captive insurer that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in Kentucky or a member bank of the Federal Reserve System.

➔Section 1609. KRS 304.49-050 is amended to read as follows:

No captive insurer may pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in KRS 304.24-320 and 304.24-330 without the prior approval of the **commissioner**~~{executive director}~~. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the **commissioner**~~{executive director}~~.

➔Section 1610. KRS 304.49-060 is amended to read as follows:

- (1) A pure captive insurer or a sponsored captive insurer shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.
- (2) A consortium captive insurer or an industrial insured captive insurer may be:
 - (a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or
 - (b) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its consortium; or
 - (c) Organized as a reciprocal insurer in accordance with Subtitle 27 of this chapter.
- (3) A special purpose captive insurer may be:
 - (a) Incorporated as a stock corporation;
 - (b) Incorporated as a nonstock corporation;
 - (c) Formed as a limited liability company;
 - (d) Formed as a partnership;
 - (e) Formed as a limited partnership;
 - (f) Formed as a statutory trust; or
 - (g) Such other person approved by the **commissioner**~~[executive director]~~, other than a natural person in his or her individual capacity.
- (4) A sponsored captive insurer may be:
 - (a) Incorporated as a stock corporation;
 - (b) Incorporated as a nonstock corporation;
 - (c) Formed as a limited liability company;
 - (d) Formed as a partnership;
 - (e) Formed as a limited partnership; or
 - (f) Formed as a statutory trust.
- (5) A risk retention group may take any form permitted under the Liability Risk Retention Act of 1986, 15 U.S.C. sec. 3901 et seq., as amended.
- (6) A captive insurer incorporated or organized in Kentucky shall have not less than three (3) incorporators or two (2) organizers.
- (7) In the case of a captive insurer, the **commissioner**~~[executive director]~~ shall find, in order to issue a certificate of authority, that the establishment and maintenance of the proposed captive insurer will promote the general good of the state. In arriving at such a finding, the **commissioner**~~[executive director]~~ shall consider:
 - (a) The character, reputation, financial standing, and purposes of the incorporators or organizers;
 - (b) The character, reputation, financial responsibility, insurance experience, and business qualifications of the persons responsible for the conduct of the captive insurer's affairs; and
 - (c) Any other aspects the **commissioner**~~[executive director]~~ deems advisable.
- (8) The capital stock of a captive insurer incorporated as a stock insurer may be authorized with no par value.
- (9) Captive insurance companies formed as corporations under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of KRS Chapter 271B as well as the applicable provisions contained in KRS 304.49-010 to 304.49-230. If there is a conflict between the provisions of KRS Chapter 271B and the provisions of this chapter, the latter shall control. The provisions of this chapter, pertaining to mergers, consolidations, conversions, mutualizations, and redomestications, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that:

- (a) The **commissioner**~~{executive director}~~ may, upon request of an insurer party to a merger authorized under this subsection, waive the requirement of KRS 304.24-390(4); and
 - (b) The **commissioner**~~{executive director}~~ may waive or modify the requirements for public notice and hearing in accordance with rules which the **commissioner**~~{executive director}~~ may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, then the **commissioner**~~{executive director}~~ may cancel the hearing.
- (10) Captive insurance companies formed as reciprocal insurers under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of Subtitle 27 of this chapter in addition to the applicable provisions of this subtitle. In the event of a conflict between the provisions of Subtitle 27 of this chapter and the provisions of this subtitle, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this subtitle pursuant to Subtitle 27 of this chapter, those provisions shall not be applicable to a reciprocal insurer formed under KRS 304.49-010 to 304.49-230 unless the provisions are expressly made applicable to captive insurance companies under KRS 304.49-010 to 304.49-230.
- (11) In addition to the provisions of subsection (10) of this section, captive insurance companies organized as reciprocal insurers that are industrial insured groups as defined in this subtitle shall have the privileges and be subject to the provisions of Subtitle 45 of this chapter, in addition to the applicable provisions of this subtitle.
- (12) The articles of incorporation or bylaws of a captive insurer formed as a corporation may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors.
- (13) The subscribers' agreement or other organizing document of a captive insurer formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third (1/3) of the number of its members.
- (14) Each owner of an agency captive insurer shall be licensed as an insurance producer.
- ➔Section 1611. KRS 304.49-070 is amended to read as follows:
- (1) Captive insurance companies shall not be required to make any annual report except as provided in KRS 304.49-010 to 304.49-230.
 - (2) On or before March 1 of each year, each captive insurer shall submit to the **commissioner**~~{executive director}~~ a report of its financial condition, verified by oath of two (2) of its executive officers. Each captive insurer shall report using generally accepted accounting principles, unless the **commissioner**~~{executive director}~~ approves the use of statutory accounting principles or international accounting standards, with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the **commissioner**~~{executive director}~~ for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the **commissioner**~~{executive director}~~. Any captive insurer whose use of statutory accounting principles is approved by the **commissioner**~~{executive director}~~ may make modifications and adaptations as are necessary to record as admitted the full value of all investments by the captive insurer permitted under this subtitle and, subject to the **commissioner's**~~{executive director's}~~ approval, to make its reports under this section consistent with the purposes of this subtitle. Except as otherwise provided, all captive insurers, with the exception of those formed as a risk retention group, shall file reports on a form prescribed by the **commissioner**~~{executive director}~~ through administrative regulation. A captive insurer formed as a risk retention group shall file reports pursuant to KRS 304.2-205, with additional information or modification as the **commissioner**~~{executive director}~~ may prescribe. The **commissioner**~~{executive director}~~ shall by administrative regulation propose the forms in which captive insurers shall report.
 - (3) Any pure captive insurer or an industrial insured captive insurer insuring the risks of industrial insured groups as defined in KRS 304.49-010(9)(a) may make written application for filing the required report on a fiscal year end. If an alternative reporting date is granted, the annual report is due sixty (60) days after the fiscal year end.
 - (4) Sixty (60) days after the fiscal year end, a branch captive insurer shall file with the **commissioner**~~{executive director}~~ a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the foreign captive insurer is formed, verified by oath of two (2) of its executive officers. If the **commissioner**~~{executive director}~~ is satisfied that the annual report filed by the foreign captive insurer in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurer, the **commissioner**~~{executive director}~~ may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

➔Section 1612. KRS 304.49-080 is amended to read as follows:

- (1) Any insurer holding a certificate of authority issued under this subtitle shall be subject to provisions of KRS 304.2-210 to 304.2-300 and provisions of Subtitle 2 of this chapter for determining market conduct and business practices. However, the *commissioner*~~[executive director]~~ upon application, in his *or her* discretion, may extend the period between examinations, provided the captive insurer is subject to a comprehensive annual audit during that period, of a scope satisfactory to the *commissioner*~~[executive director]~~, by independent auditors approved by the *commissioner*~~[executive director]~~.
- (2) The examination for a branch captive insurer shall be of branch business and branch operations only, as long as the branch captive insurer provides annually to the *commissioner*~~[executive director]~~ a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurer is formed, and demonstrates to the *commissioner's*~~[executive director's]~~ satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction.
- (3) As a condition for issuance of a certificate of authority to a branch captive insurer, the foreign captive insurer shall grant authority to the *commissioner*~~[executive director]~~ for examination of the affairs of the foreign captive insurer in the jurisdiction in which the foreign captive insurer is formed.

➔Section 1613. KRS 304.49-100 is amended to read as follows:

- (1) A consortium captive insurer, sponsored captive insurer, and an industrial insured captive insurer insuring the risks of an industrial insured group defined in KRS 304.49-010(9)(b) shall comply with the investment requirements contained in Subtitle 7 of this chapter. Notwithstanding any other provision of this chapter, the *commissioner*~~[executive director]~~ may approve the use of alternative reliable methods of valuation and rating.
- (2) No pure captive insurer or industrial insured captive insurer insuring the risks of an industrial insured group as defined in KRS 304.49-010(8)(a) shall be subject to any restrictions on allowable investments whatever, including those limitations contained in Subtitle 7 of this chapter; provided, however, that the *commissioner*~~[executive director]~~ may prohibit or limit any investment that threatens the solvency or liquidity of any such company.
- (3) Only a pure captive insurer may make loans to its parent company or affiliates. No loans to a parent company or any affiliate shall be permitted without prior written approval of the *commissioner*~~[executive director]~~ and shall be evidenced by a note in a form approved by the *commissioner*~~[executive director]~~.
- (4) All captive insurers are subject to KRS 304.37-030 regarding material transactions.

➔Section 1614. KRS 304.49-140 is amended to read as follows:

The *commissioner*~~[executive director]~~ may establish and from time to time amend administrative regulations relating to captive insurance companies that are necessary to enable the *commissioner*~~[executive director]~~ to carry out the provisions of KRS 304.49-010 to 304.49-230.

➔Section 1615. KRS 304.49-170 is amended to read as follows:

The *commissioner*~~[executive director]~~ shall promulgate administrative regulations establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurer.

➔Section 1616. KRS 304.49-180 is amended to read as follows:

- (1) A consortium captive insurer or industrial insured group formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan therefor and the provisions of this section.
- (2) Any plan for such conversion or merger shall be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer.
- (3) In the case of a conversion authorized under subsection (1) of this section:
 - (a) The conversion shall be accomplished under any reasonable plan and procedure approved by the *commissioner*~~[executive director]~~, but the *commissioner*~~[executive director]~~ shall not approve any plan of conversion unless the plan:

1. Satisfies the provisions of subsection (2) of this section;
 2. Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom shall have the right to appear at the hearing, except that the **commissioner**~~{executive director}~~ may waive or modify the requirements for the hearing, provided that if a notice of hearing is required, but no hearing is requested, the **commissioner**~~{executive director}~~ may cancel the hearing;
 3. Provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer; and
 4. Is approved:
 - a. In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
 - b. In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
- (b) The **commissioner**~~{executive director}~~ shall approve the plan of conversion if the **commissioner**~~{executive director}~~ finds that the conversion will promote the general good of the state in conformity with those standards set forth in KRS 304.49-060(7);
- (c) If the **commissioner**~~{executive director}~~ approves the plan, the **commissioner**~~{executive director}~~ shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue an amended certificate of authority to the company's attorney-in-fact;
- (d) Upon the issuance of an amended certificate of authority of a reciprocal insurer by the **commissioner**~~{executive director}~~, the conversion shall be effective; and
- (e) Upon the effectiveness of the conversion, the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of the conversion.
- (4) A merger authorized under subsection (1) of this section shall be accomplished substantially in accordance with the procedures set forth in KRS 304.24-390, except that, solely for purposes of the merger:
- (a) The plan of merger shall satisfy the provisions of subsection (2) of this section;
 - (b) The subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurer;
 - (c) The subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurer;
 - (d) If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties shall be deemed the president or secretary of the committee;
 - (e) The **commissioner**~~{executive director}~~ may, upon request of an insurer party to a merger authorized under subsection (1) of this section, waive the requirement of KRS 304.24-390(4);
 - (f) The **commissioner**~~{executive director}~~ shall approve the articles of merger if the **commissioner**~~{executive director}~~ finds that the merger will promote the general good of the state in conformity with those standards set forth in KRS 304.49-060(7). If the **commissioner**~~{executive director}~~ approves the articles of merger, the **commissioner**~~{executive director}~~ shall indorse his or her approval thereon and the surviving insurer shall present and file them with the Secretary of State;
 - (g) Notwithstanding KRS 304.49-040, the **commissioner**~~{executive director}~~ may permit the formation, without surplus, of a captive insurer organized as a reciprocal insurer, into which an existing captive insurer may be merged for the purpose of facilitating a transaction under this section; however, there shall be no more than one (1) authorized insurer surviving the merger; and
 - (h) An alien insurer may be a party to a merger authorized under subsection (1) of this section, provided that the requirements for a merger between a domestic and a foreign insurer under KRS 304.24-390 shall apply to a merger between a domestic and an alien insurer under this subsection. The alien insurer

shall be treated as a foreign insurer under KRS 304.24-390 and the other jurisdictions shall be the equivalent of a state for purposes of KRS 304.24-390.

➔Section 1617. KRS 304.49-190 is amended to read as follows:

- (1) One (1) or more sponsors may form a sponsored captive insurer under KRS 304.49-010 to 304.49-230.
- (2) A sponsored captive insurer formed or issued a certificate of authority under the provisions of KRS 304.49-010 to 304.49-230 may establish and maintain one (1) or more protected cells to insure risks of one (1) or more participants, subject to the following conditions:
 - (a) The shareholders of a sponsored captive insurer shall be limited to its participants and sponsors;
 - (b) Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurer to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends, or other distributions to participants, and any other factors provided in the participant contract or required by the *commissioner*~~{executive director}~~;
 - (c) The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurer may conduct;
 - (d) No sale, exchange, or other transfer of assets may be made by the sponsored captive insurer between or among any of its protected cells without the consent of the protected cells;
 - (e) No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the *commissioner's*~~{executive director's}~~ approval and, in no event, shall such approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;
 - (f) Each sponsored captive insurer shall annually file with the *commissioner*~~{executive director}~~ those financial reports required by the *commissioner*~~{executive director}~~, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;
 - (g) Each sponsored captive insurer shall notify the *commissioner*~~{executive director}~~, in writing, within ten (10) business days, of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations; and
 - (h) No participant contract shall take effect without the *commissioner's*~~{executive director's}~~ prior written approval, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell shall constitute a change in the business plan requiring the *commissioner's*~~{executive director's}~~ prior written approval.

➔Section 1618. KRS 304.49-220 is amended to read as follows:

- (1) Every captive insurer holding a certificate of authority under KRS 304.49-010 to 304.49-230 shall return to the Department of Revenue a statement under oath of all premium receipts on business written by the captive insurer during the preceding year and shall pay, on or before March 1 in each year, a tax at the rate of four-tenths of one percent (0.4%) on the first twenty million dollars (\$20,000,000), and three-tenths of one percent (0.3%) on the next twenty million dollars (\$20,000,000), and two-tenths of one percent (0.2%) on the next twenty million dollars (\$20,000,000), and seventy-five thousandths of one percent (0.075%) on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurer during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.
- (2) Every captive insurer holding a certificate of authority under KRS 304.49-010 to 304.49-230 shall return to the Department of Revenue a statement under oath of all assumed reinsurance premium receipts during the preceding year and shall pay, on or before March 1 in each year, a tax at the rate of two hundred twenty-five thousandths of one percent (0.225%) on the first twenty million dollars (\$20,000,000) of assumed reinsurance premiums, and one hundred fifty thousandths of one percent (0.150%) on the next twenty million dollars (\$20,000,000), and fifty thousandths of one percent (0.050%) on the next twenty million dollars (\$20,000,000), and twenty-five thousandths of one percent (0.025%) of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to

subsection (1) of this section. No reinsurance premium tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer, and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurer.

- (3) If the aggregate taxes to be paid by a captive insurer calculated under subsections (1) and (2) of this section amount to less than five thousand dollars (\$5,000) in any year, the captive insurer shall pay a tax of five thousand dollars (\$5,000) for such year.
- (4) Two (2) or more captive insurance companies under common ownership and control shall be taxed as though they were a single captive insurer.
- (5) For the purposes of this section, common ownership and control shall mean:
 - (a) In the case of stock corporations, the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock of two (2) or more corporations by the same shareholder or shareholders; and
 - (b) In the case of mutual corporations, the direct or indirect ownership of eighty percent (80%) or more of the surplus and the voting power of two (2) or more corporations by the same member or members.
- (6) In the case of a branch captive insurer, the tax provided for in this section shall apply only to the branch business of the company.
- (7) The tax provided for in this section shall constitute all taxes collectible under the laws of Kentucky from any captive insurer, and the taxes imposed under this section shall be in lieu of all excise, license, occupational, or other taxes imposed by the state, county, city, or other taxing district except as provided in KRS 136.320(6) and (7).
- (8) The Kentucky Department of Revenue shall annually distribute ten percent (10%) of the premium tax revenues collected pursuant to this section to the **Department**~~Office~~ of Insurance for the regulation of captive insurance companies under KRS 304.49-010 to 304.49-230.

➔Section 1619. KRS 304.49-222 is amended to read as follows:

- (1) A captive insurer shall engage a manager who is a resident of this state.
- (2) The captive manager shall maintain the books and records of the captive insurer's business, transactions, and affairs at a location that is in this state or shall make them available to the **commissioner**~~executive director~~ at a location that is in this state.
- (3) The captive manager shall promptly notify the **commissioner**~~executive director~~ of any failure of the captive insurer to comply with this section.
- (4) The **commissioner**~~executive director~~ may require a captive insurer to discharge a captive manager for failure to substantively fulfill the captive manager's duties under this subtitle.

➔Section 1620. KRS 304.49-224 is amended to read as follows:

The **commissioner**~~executive director~~ may promulgate administrative regulations to set minimum standards for the formation, structure, examination, and operation of a special purpose captive insurer or an agency captive insurer.

➔Section 1621. KRS 304.49-226 is amended to read as follows:

- (1) If there is any material change in the financial condition or management of a captive insurer, the captive insurer shall notify the **commissioner**~~executive director~~, in writing, within ten (10) business days of the change.
- (2) No captive insurer shall voluntarily take any of the following material actions without providing the **commissioner**~~executive director~~ at least thirty (30) days' prior written notice and receiving the **commissioner's**~~executive director's~~ approval of the action within the thirty (30) day period:
 - (a) The dissolution of the captive insurer;
 - (b) Any sale, exchange, lease, mortgage, assignment, pledge, or other transfer of, or granting of a security interest in, all or substantially all of the assets of the captive insurer;
 - (c) Any incurrence of material indebtedness by the captive insurer;
 - (d) Any making of a material loan or other material extension of credit by the captive insurer;

- (e) Any payment or distribution that materially reduces capital and surplus;
- (f) Any merger or consolidation to which the captive insurer is a constituent party;
- (g) Any conversion of the captive insurer to another business form;
- (h) Any transfer to or domestication in any jurisdiction by the captive insurer; or
- (i) Any material amendment of the organizational documents of the captive insurer.

➔Section 1622. KRS 304.49-228 is amended to read as follows:

A sponsored captive insurer may establish and maintain one (1) or more protected cells to insure risks of one (1) or more participants, subject to the following conditions:

- (1) The owners of a sponsored captive insurer shall be limited to its participants and sponsors, provided that a sponsored captive insurer may issue nonvoting securities or interests to other persons on terms approved by the **commissioner**~~{executive director}~~;
- (2) The assets of each protected cell shall be held and accounted for separately on the books and records of the sponsored captive insurer to reflect the financial condition and results of operations of the protected cell, net income or loss of the protected cell, dividends or other distributions to participants of the protected cell, and other factors regarding the protected cell as may be provided in the applicable participant contract or required by the **commissioner**~~{executive director}~~;
- (3) The assets of a protected cell shall not be chargeable with liabilities of any other protected cell or, unless otherwise agreed in the applicable participant contract, of the sponsored captive insurer generally;
- (4) No sale or transfer of assets, or dividend or other distribution, may be made with respect to a protected cell by such sponsored captive insurer without the consent of the participants of each affected protected cell;
- (5) No sale, exchange, or transfer of assets, or dividend or other distribution, other than a payment to a sponsor in accordance with the applicable participant contract, may be made with respect to a protected cell to a sponsor or a participant without the **commissioner's**~~{executive director's}~~ approval;
- (6) Each sponsored captive insurer shall annually file with the **commissioner**~~{executive director}~~ financial reports as the **commissioner**~~{executive director}~~ shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;
- (7) Each sponsored captive insurer shall notify the **commissioner**~~{executive director}~~, in writing, within ten (10) business days of any protected cell that has become insolvent or is otherwise unable to meet its claim or expense obligations;
- (8) No participant contract shall take effect without the **commissioner's**~~{executive director's}~~ prior written approval. The addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in the plan of operation of the sponsored captive insurer requiring the **commissioner's**~~{executive director's}~~ prior written approval; and
- (9) (a) The business written by a sponsored captive insurer, with respect to each protected cell, shall be:
 - 1. Fronted by an insurance company licensed under the laws of this state or any other state;
 - 2. Reinsured by a reinsurer authorized or approved by this state;
 - 3. Secured by a trust fund in this state for the benefit of policyholders and claimants; or
 - 4. Funded by an irrevocable letter of credit or other arrangement that is approved in writing by the **commissioner**~~{executive director}~~.
- (b) The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the protected cell.
- (c) The **commissioner**~~{executive director}~~ may, for any reason, require the sponsored captive insurance company to increase the funding of any security arrangement established under this subsection in order to protect claimants or potential claimants.

- (d) If the form of security is a letter of credit, the letter of credit shall be established, issued, or confirmed by a financial institution chartered by or licensed or otherwise authorized to do banking business in this state, or by any other financial institution approved by the *commissioner*~~{executive director}~~.
- (e) A trust maintained pursuant to this subsection shall be established in a form and upon such terms as approved by the *commissioner*~~{executive director}~~.

➔Section 1623. KRS 304.49-230 is amended to read as follows:

This subtitle shall not apply to any foreign captive insurer lawfully transacting the business of insurance in Kentucky prior to July 14, 2000, unless the foreign captive insurer petitions the *commissioner*~~{executive director}~~ requesting that this subtitle be applicable to the foreign captive insurer.

➔Section 1624. KRS 304.50-010 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ may authorize twenty (20) or more employers with common interests or membership in a bona fide trade association, or two (2) or more governmental entities, to enter into agreements to pool their liabilities under KRS Chapter 342 for the purpose of qualifying as a workers' compensation self-insured group under this subtitle and KRS 342.350.
- (2) The *commissioner*~~{executive director}~~ shall promulgate administrative regulations as necessary to govern admission, certification, and regulation of workers' compensation self-insured groups as authorized by this section and KRS 342.350. The *commissioner*~~{executive director}~~ shall take any and all action necessary to effectuate the provisions of this subtitle. The *commissioner*~~{executive director}~~ shall be responsible for maintaining records obtained or prepared in association with this oversight.
- (3) The Governor may assign the regulatory authority under this subtitle to another board or agency pursuant to KRS 12.028.
- (4) Except as specifically provided in this subtitle, no other provision of this chapter shall apply to a workers' compensation self-insured group.

➔Section 1625. KRS 304.50-015 is amended to read as follows:

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

- (1) "Adjuster" means any person required to be licensed as an adjuster under Subtitle 9 of this chapter, who for a fee or compensation investigates or settles claims arising under contracts issued by a workers' compensation self-insured group on behalf of either the group member or the group.
- (2) "Administrator" means an individual or legal entity engaged by a self-insured group's board of trustees to carry out the policies established by the self-insured group's board of trustees and provide day-to-day management of the self-insured group.
- (3) "Agent" means an individual or business entity required to be licensed by the *Department*~~{Office}~~ of Insurance under Subtitle 9 of this chapter, to sell or solicit applications for insurance or to negotiate insurance contracts.
- (4) "Aggregate excess insurance" means insurance which provides that the excess insurer pays on behalf of or reimburses a self-insurer for its payment of benefits on claims incurred during a policy period in excess of the retention amount to the excess insurer's limit of liability.
- (5) "Assessment" means a levy made on members of the group to fund deficiencies.
- (6) "Bona fide trade association" means an association of employers created for a noninsurance trade purpose and which has been operating in the Commonwealth for at least two (2) years prior to its sponsorship of a self-insured group.
- (7) "Certificate of filing" means the certificate issued to a workers' compensation self-insured group to indicate that it has complied with the provisions of this subtitle which are prerequisites to its operation.
- (8) "Common interests" means employers that are engaged in similar activities, share common standard industrial classification codes and common risk factors.
- (9) "Consultant" means an individual, required to be licensed under Subtitle 9 of this chapter, who as an independent contractor in relation to his *or her* client, for fee or compensation other than from a workers' compensation self-insured group, in any manner advises or purports to advise any person actually or

prospectively a member of such a group concerning coverage, advisability, rights, or interests under the contract or relative to the retention, exchange, surrender, or exercise of rights thereunder.

- (10) "Coverage form" means coverage contract forms, endorsements, applications, indemnity agreements, clauses, riders, and all other documents regarding coverage.
- (11) "Deficiency" means that the self-insured group's assets are insufficient to enable the group to discharge its legal liabilities and other obligations and maintain the reserves required under this subtitle, or that the group has a negative members' fund balance.
- (12) "Deficit" means the amount of any deficiency in the self-insured group or group self-insurance fund.
- (13) "Dividends" means disbursements from surplus funds to group members in accordance with a plan filed with, and approved by, the *commissioner*~~{executive director}~~.
- (14) "Earned premium" means the prorated portion of the full, actual premium charged to the group members that is applicable to the group's accounting period or fiscal year.
- (15) "Employee" means those persons covered under the provisions of KRS 342.640 and those persons voluntarily covered under KRS 342.660.
- (16) "Employer" means an employer mandatorily subject to and required to comply with the provisions of KRS Chapter 342, and those voluntarily covering excluded employees pursuant to KRS 342.660.
- (17) "*Commissioner*~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of the Kentucky *Department*~~{Office}~~ of Insurance.
- (18) "Fiscal agent" means a person or legal entity, other than a service organization or employees or agents of a service organization, designated by the trustees to receive, invest, and disburse the self-insured group's funds.
- (19) "Forms" means coverage contract forms, endorsements, applications, indemnity agreements, clauses, riders, articles of association, articles of incorporation, trust agreements or bylaws of the proposed group, and all other documents regarding coverage and membership.
- (20) "Governmental entities" means cities, counties, urban-county governments, charter county governments, consolidated local governments, school districts, and other political subdivisions of the Commonwealth, and their boards, agencies, authorities, and commissions.
- (21) "Group members" means employers who have joined a self-insured group.
- (22) "Group self-insurance fund" means the contractual arrangement whereby twenty (20) or more employers with common interests or two (2) or more governmental entities associate to jointly self-insure their workers' compensation liability.
- (23) "Insolvent" or "insolvency" means the inability of a self-insured group to pay its outstanding lawful obligations as they mature in the regular course of business, or to hold sufficient assets to prospectively pay all incurred workers' compensation benefits when due.
- (24) "Insurance producer" means an individual or business entity required to be licensed under Subtitle 9 of this chapter to sell, solicit, or negotiate insurance. "Insurance producer" includes agent, consultant, managing general agent, surplus lines broker, reinsurance intermediary broker and manager, and, for a workers' compensation self-insured group, a third-party administrator.
- (25) "Person" includes, but is not limited to, any individual, partnership, association, limited liability company, trust, or corporation.
- (26) "Premium" means the amount of money charged each member of the self-insured group to fund the obligations and expenses of the self-insured group.
- (27) "Qualified actuary" means an associate or fellow of the Casualty Actuarial Society.
- (28) "Rate" means the expected value of the future cost of insurance per exposure unit which accounts for the treatment of losses, expenses, and profit prior to any application of individual risk variations based on loss or expense considerations, but does not include minimum premium.
- (29) "Self-insured group" means a group self-insurance fund.

- (30) "Self-insurance year" means the annual period of certification of the self-insured group authorized under KRS 304.50-010 and 342.350.
- (31) "Service organization" means a person or entity that provides services to a self-insured group and includes claims adjustment, safety engineering, statistical compilation, preparation of premium charges, loss and tax reports or other reports required by the *commissioner*~~{executive director}~~, administration of the self-insured group, marketing services, placement of excess insurance, development of member payroll audits, administration of investments, or legal assistance.
- (32) "Specific excess insurance" means an insurance policy which insures the amount of a claim from one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount to a stated limit.
- (33) "Supplementary rating information" means any manual or plan of rates, classification, rating schedule, minimum premium, policy fees, rating rules, or any similar information needed to determine the applicable rate or premium. This shall include underwriting rules, but only to the extent necessary to determine the rate or premium that will be applicable to a risk should the self-insured group decide to provide coverage. This does not include guidelines that relate to the selection of those risks that are acceptable to a workers' compensation self-insured group.
- (34) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any other data relied on by the filer, descriptions of methods used in making the rates, and any other information required by the *commissioner*~~{executive director}~~.
- (35) "Surplus funds" means the excess of the self-insured group's assets over its liabilities.
- (36) "Trustees" means persons elected by the group members or appointed by the board of directors of the sponsoring trade association or association of governmental entities to oversee the administration of the self-insured group.

➔Section 1626. KRS 304.50-020 is amended to read as follows:

The provisions of this subtitle apply to a group or bona fide trade association of employers subject to the provisions of KRS Chapter 342, which may include employers voluntarily complying with the provisions of KRS Chapter 342, who join together to self-insure against workers' compensation risks. Any workers' compensation self-insured group operating under a certificate of filing as of March 1, 2005, shall have one (1) year from that date to comply with the provisions of this subtitle, to the extent that these provisions differ from prior requirements in KRS Chapter 342 and the administrative regulations promulgated thereunder. Extensions of time may be granted for good cause shown at the discretion of the *commissioner*~~{executive director}~~.

➔Section 1627. KRS 304.50-025 is amended to read as follows:

- (1) Except for an activity arising in the creation of a workers' compensation self-insured group, a person or entity shall not issue a binder or certificate of insurance for workers' compensation coverage unless the workers' compensation self-insured group has been certified to do so by the *commissioner*~~{executive director}~~. A certification issued by the *commissioner*~~{executive director}~~ shall remain in effect until revoked or modified by the *commissioner*~~{executive director}~~ in accordance with KRS 304.50-140.
- (2) All certificates of filing issued by the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Workers' Claims prior to March 1, 2005, shall remain in full force and effect, unless revoked or suspended by the *commissioner*~~{executive director}~~ in accordance with KRS 304.50-140. The *commissioner*~~{executive director}~~ shall issue replacement certificates of filing within thirty (30) days of March 1, 2005.

➔Section 1628. KRS 304.50-030 is amended to read as follows:

- (1) A proposed workers' compensation self-insured group seeking initial certification shall file with the *commissioner*~~{executive director}~~ an application for a certificate of filing accompanied by a nonrefundable filing fee of six hundred dollars (\$600). An application for initial certification as a workers' compensation self-insured group shall be filed on a form approved by the *commissioner*~~{executive director}~~ by:
- (a) A group of twenty (20) or more employers having common interests or membership in a bona fide trade association. Any group member having more than fifty percent (50%) common ownership shall constitute one (1) group member; or

- (b) Two (2) or more governmental entities.
- (2) Each initial application shall set forth or be accompanied by:
- (a) The self-insured group's name, location of its principal office, date of organization, name and address of each group member, if known at the time of application, or if unknown, a description of the members to be solicited for membership, and identification of its fiscal year;
 - (b) A copy of the articles of association, articles of incorporation, trust agreement, or bylaws of the proposed self-insured group, including a description of the time and method by which premiums shall be determined, assessed, and collected during regular operations and in the event of insolvency of the self-insured group;
 - (c) A copy of any agreements with an administrator, service organization, and fiscal agent, including third-party administrators and consultants;
 - (d) A copy of the agreement between the self-insured group and each member jointly and severally binding the group and each member of the group to comply with the provisions of this subtitle and the decisions of the trustees relating to the operation of the self-insured group;
 - (e) A description of the group members' common interests or a description of the bona fide trade association, including date of organization, articles of incorporation, and a history of the association's activities;
 - (f) The managed care and utilization review plans, if any, established under KRS Chapter 342 for the self-insured group;
 - (g) A copy of each instrument by which the self-insured group or its agent or consultant has made a commitment to pay for a past or future good or service;
 - (h) Identification by name, address, and term of the initial board of trustees, administrator, and service organization together with an attested statement that a pecuniary or personal conflict does not exist between the official duties of the trustees, administrators, and service organizations and the interests of the members;
 - (i) The name of the custodian and the address where the self-insured group's books and records will be kept;
 - (j) Specimen of the proposed policy and certificate of insurance for the specific and aggregate excess coverage, clearly stating any deductible or retention amount;
 - (k) Copies of security deposits and fidelity bonds required under this subtitle;
 - (l) A proposed schedule of projected annual premium rates and any factor or plan by which rates may be modified. Experience modification factors shall be calculated according to the rules of the advisory organization designated by the *commissioner* ~~executive director~~ in accordance with Subtitle 13 of this chapter;
 - (m) Financial statements for initial group members audited by a certified public accountant, and signed by an owner or officer of each member, demonstrating a combined net worth of not less than ten million dollars (\$10,000,000) for the group, except for governmental entities, and the financial condition of each member;
 - (n) A feasibility study prepared by a qualified actuary demonstrating the overall adequacy and soundness of the proposed plan of operation for the self-insured group; and
 - (o) A three (3) year financial projection including income statements, balance sheets, statements of cash flow, and all material assumptions relating to the financial projection for the self-insured group.
- (3) (a) Except as provided in paragraph (b) of this subsection, the premium of one (1) group member shall not exceed twenty percent (20%) of the estimated total premium for the workers' compensation self-insured group.
- (b) If the group consists of two (2) or more governmental entities, the premium of one (1) group member shall not exceed sixty percent (60%) of the estimated total premium for the self-insured group.

- (4) The first year's premium for the initial certification of the self-insured group shall not be less than one million dollars (\$1,000,000). Verification shall be presented that twenty-five percent (25%) of the initial estimated premium has been paid and deposited with the self-insured group's fiscal agent.
- (5) The initial application shall be filed a minimum of ninety (90) days prior to the proposed inception date of the self-insured group.

➔Section 1629. KRS 304.50-035 is amended to read as follows:

Certification as a workers' compensation self-insured group shall be granted only if the **commissioner**~~executive director~~ finds that the applicant has complied with the provisions of this subtitle, paid the application fee, and met the following conditions:

- (1) All persons responsible for the conduct of the affairs of the workers' compensation self-insured group are financially stable and experienced in the administration of a workers' compensation self-insured group;
- (2) The workers' compensation self-insured group is financially responsible and has demonstrated the ability to meet all of its obligations to participants and prospective participants and injured workers as required in KRS Chapter 342. In making this determination, the **commissioner**~~executive director~~ may consider:
 - (a) The adequacy of working capital; and
 - (b) The applicant's compliance with all requirements of this subtitle, including but not limited to:
 1. The adequacy of the funding mechanisms;
 2. The existence and adequacy of appropriate excess insurance;
 3. The participating members' financial strength;
 4. The stability of the membership;
 5. The risks of the industry;
 6. The experience of management and all persons responsible for the conduct of the affairs of the workers' compensation self-insured group; and
 7. An initial and ongoing minimum surplus funds requirement of not less than one million dollars (\$1,000,000), except for a workers' compensation self insured group currently operating under a plan approved by the **commissioner**~~executive director~~ pursuant to KRS 304.50-135 or a remedial action plan approved by the predecessor regulatory agency prior to August 3, 2004.

➔Section 1630. KRS 304.50-040 is amended to read as follows:

- (1) A certificate of filing shall remain in effect until terminated at the request of the self-insured group or suspended or revoked by the **commissioner**~~executive director~~ in accordance with the provisions of this subtitle.
- (2) The **commissioner**~~executive director~~ shall not grant the request of a workers' compensation self-insured group to terminate its certificate of filing unless the group has filed with the **commissioner**~~executive director~~ a statement describing arrangements that have been made to pay obligations of the group, including both known claims and expenses and incurred but not reported claims and expenses.
- (3) Subject to the approval of the **commissioner**~~executive director~~, a workers' compensation self-insured group may merge with another workers' compensation self-insured group. As a result of any merger, the resulting workers' compensation self-insured group shall assume in full all obligations of the constituent groups.

➔Section 1631. KRS 304.50-045 is amended to read as follows:

- (1) To obtain and maintain a certificate of filing, a workers' compensation self-insured group shall have sufficient financial strength to pay all benefits for compensation required by KRS Chapter 342 for risks covered by the group, including known claims and expenses and incurred but not reported claims and expenses.
- (2) (a) The trustees and administrators shall provide a fidelity bond to the **commissioner**~~executive director~~ in the amount of not less than three hundred thousand dollars (\$300,000), which may be subject to a deductible not exceeding ten thousand dollars (\$10,000), for each trustee, each administrator and the administrator's employees.

- (b) The fiscal agent shall provide a fidelity bond to the trustees of not less than fifty percent (50%) or one million dollars (\$1,000,000), whichever is lower, of the funds to be handled by the fiscal agent. This requirement shall be waived if the fiscal agent is a national bank.
- (c) The service organization shall provide a fidelity bond to the trustees of not less than two (2) times the amount of the revolving fund.
- (d) In lieu of the bonds required under paragraphs (a), (b), and (c) of this subsection, the trustees may secure a fidelity blanket bond in an amount not less than fifty percent (50%) of the self-insured group's premium or two million dollars (\$2,000,000), whichever is lower. The fidelity blanket bond shall include the trustees, the administrator, the service organization, personnel of the service organization, and the fiscal agent, unless the fiscal agent is a national bank.

➔Section 1632. KRS 304.50-050 is amended to read as follows:

- (1) The group shall provide security deposits to the **commissioner**~~{executive director}~~ on a form prescribed by the **commissioner**~~{executive director}~~ in an amount not less than two hundred fifty thousand dollars (\$250,000), ten percent (10%) of the annual premium, or ten percent (10%) of the reserve requirement as established in the most recent audited statement of financial condition on file with the **commissioner**~~{executive director}~~, whichever is greater.
- (2) The trustees may file cash, cash equivalents, or United States Treasuries as security deposit or a bank letter of credit on a form or forms prescribed by the **commissioner**~~{executive director}~~, in satisfaction of the security deposit requirement. Notwithstanding any other provision of law to the contrary, the deposit required under this section shall be under trust agreements to which depositories, a self-insured group, and the **commissioner**~~{executive director}~~ are parties. The **commissioner**~~{executive director}~~ may at any time inventory assets on deposit for any self-insured group. Assets shall not be removed or deposited in or from the bank or trust company in which the assets are deposited, except upon a written order, approved by the **commissioner**~~{executive director}~~, of at least two (2) officers authorized for such purpose by the workers' compensation group self-insurance fund's board of directors or other governing body, except that assets may be deposited or removed under the direction and upon the order of a court of competent jurisdiction, and in the presence of the **commissioner**~~{executive director}~~. Deposit assets shall be valued at market.
- (3) (a) Unless a fund fails to cure a deficiency, is insolvent, subject to a delinquency proceeding, or is in default as to taxes or other charges due under state law, a group self-insurance fund shall be entitled:
 - 1. To collect and receive interest, dividends, and payments accruing upon assets held on deposit for its account.
 - 2. From time to time, to exchange and substitute for any such assets, other assets eligible for deposits.
- (b) If the group self-insurance fund fails to cure a deficiency when required, is insolvent, subject to delinquency proceedings, or is in default as to taxes or other charges due to the Commonwealth under law, the **commissioner**~~{executive director}~~ shall collect such interest, dividends, and payments and add them to the group self-insurance fund's deposit.
- (4) (a) Any required deposit shall be released, in addition to circumstances already provided for in the following instances only:
 - 1. Upon extinguishment of substantially all liabilities of the group self-insurance fund for the security for which the deposit is held;
 - 2. If the deposit is no longer required under this subtitle; or
 - 3. Upon proper order of a court of competent jurisdiction, the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the group self-insurance fund.
- (b) No release of a deposit shall be made except on application to and written order of the **commissioner**~~{executive director}~~ made upon proof satisfactory to the **commissioner**~~{executive director}~~ of the existence of one (1) of the grounds required in paragraph (a) of this subsection. The **commissioner**~~{executive director}~~ shall not have any personal liability for any such release of any deposit or part thereof so ordered by the **commissioner**~~{executive director}~~ in good faith.

- (5) (a) A proposed custodian bank or trust company for security deposits shall be approved by the **commissioner**~~{executive director}~~ and shall be under a custodial agreement approved by the **commissioner**~~{executive director}~~.
- (b) An approved custodian bank or trust company shall possess the following qualifications:
1. The custodian bank or trust company's custodial functions for the self-insured group shall be carried out under its trust department;
 2. The custodian bank or trust company shall be audited annually by independent certified public accountants, and the audit report, related financial statements, and report on internal controls shall be available to the self-insured group and the **commissioner**~~{executive director}~~;
 3. The custodian bank or trust company shall be organized under the laws recognizing that the custodied securities are special deposits rather than general deposits, remain the specific property of the self-insured group, and are not subject to any creditor relationship of the custodian bank or trust company;
 4. The custodian bank or trust company shall maintain blanket coverage relating to its custodial functions with limits to or exceeding those suggested by the American Bankers Association;
 5. The custodian bank or trust company's capital and surplus shall equal or exceed twenty-five million dollars (\$25,000,000) unless it is licensed and regulated by the Commonwealth of Kentucky, in which case its capital and surplus shall equal or exceed ten million dollars (\$10,000,000); and
 6. The custodian bank or trust company has demonstrated sufficient experience in handling custodial accounts.
- (6) The **commissioner**~~{executive director}~~ shall publish a list of banks or trust companies for the security deposits or letter of credit as proposed by the group self-insurance fund.

➔Section 1633. KRS 304.50-055 is amended to read as follows:

- (1) A workers' compensation self-insured group shall establish plans for premium payment, determination and collection of assessments, and for declaration and payment of dividends or other disbursements, which shall be filed for prior approval with the **commissioner**~~{executive director}~~. Any change in the plans for premium payment, assessments, or dividends shall be filed for prior approval with the **commissioner**~~{executive director}~~. Approval of plans for assessments and dividends does not constitute approval of any particular assessment or dividend by the **commissioner**~~{executive director}~~.
- (2) Prior to the inception of each group member's self-insurance year, the trustees shall collect from that member at least twenty-five percent (25%) of the estimated premium for the ensuing year, except that in the case of a self-insured group formed by governmental entities twenty-five percent (25%) of the estimated premium for the ensuing year shall be collected no later than thirty (30) days after the beginning of the self-insured group's self-insurance year. The balance of the estimated premium shall be collected in either quarterly or monthly installments as set forth in the enabling documents described in KRS 304.50-030(2)(b) or 304.50-060(2)(b). Each group member's payroll shall be audited annually and an adjustment to premium shall be made accordingly.
- (3) A disbursement from a workers' compensation self-insured group fund shall be for a purpose related to the self-insured group. A dividend shall not be approved or paid until at least thirty-six (36) months after the expiration of the self-insurance year and shall be paid from surplus funds not required for payment of claims or other liabilities. The dividends shall be paid or credited to members according to the reasonable classifications the trustees may establish. A dividend shall not be paid which unfairly discriminates between members of the same classifications. A dividend plan shall specify whether past group members are eligible for the dividend. Payment of a dividend under a dividend plan shall not be made unless the self-insured group has notified the **commissioner**~~{executive director}~~ of its intent to make a dividend payment at least thirty (30) days prior to the payment, and the **commissioner**~~{executive director}~~ has not disapproved the payment within that time.
- (4) The formula to be used for collection of assessments shall be determined by the trustees and approved by the **commissioner**~~{executive director}~~. Assessments shall be fair and equitable and shall not unfairly discriminate between members of the same classification.

- (5) A trustee, fiscal agent, or service organization shall not utilize an asset of the self-insured group for a purpose unrelated to workers' compensation. The trustees shall maintain cash or cash equivalent accounts as may be prudently necessary to pay expenses without having to liquidate long-term investments.
- (6) The trustees may invest funds in:
- (a) United States Government bonds, United States Treasury notes, Treasury bills, or other direct obligations guaranteed by the full faith and credit of the United States Government or its agencies;
 - (b) Tax exempt obligations issued by the Commonwealth of Kentucky or its agencies with a minimum rating of "A" by Standard & Poor;
 - (c) Obligations issued by a county, district, municipality, or other legal authority within the Commonwealth with a minimum rating of "AA" by Standard & Poor;
 - (d) Investment share accounts in a savings and loan association in the Commonwealth whose deposits are insured by a federal agency;
 - (e) Certificates of deposit if issued by a duly chartered commercial bank;
 - (f) At the time of purchase, equity securities actively traded on the New York or NASDAQ Stock Exchanges or other registered national securities exchanges with no individual equity holding comprising greater than ten percent (10%) of the equity portion of the portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the *commissioner*~~{executive director}~~.
 1. An investment in an individual equity holding shall not represent at the time of purchase more than five percent (5%) of the total market value of the security.
 2. At the time of purchase, investments in equity securities shall not exceed twenty percent (20%) of the total market value of the investment portfolio of the self-insured group reflected on the most recent quarterly or annual statement of financial condition on file with the *commissioner*~~{executive director}~~;
 - (g) Corporate bonds if:
 1. The bond is issued, assumed, or guaranteed by a solvent institution created or existing under the laws of the United States, or a state, province, district, or territory;
 2. At the time of purchase, the corporate bond investments do not exceed twenty-five percent (25%) of the total market value of the investment portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the *commissioner*~~{executive director}~~; and
 3. The bond has a minimum rating of "A" by Standard and Poor; and
 - (h) At the time of purchase, mutual funds and exchange traded funds if the investments do not exceed twenty percent (20%) of the total market value of the investment portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the *commissioner*~~{executive director}~~.
- (7) Of the aggregate investments made by the trustees of the self-insured group under this section:
- (a) Not less than fifty percent (50%) of the total market value of the entire investment portfolio shall be held in cash, cash equivalents, or securities as described in subsection (6)(a) to (e) of this section; and
 - (b) A minimum of five percent (5%) of the total investment portfolio value shall be maintained in cash or cash equivalent accounts or United States Treasury and Federal Agency Securities with a remaining maturity of one (1) year or less.
- (8) The *commissioner*~~{executive director}~~ may permit variation from the requirements of this section for good cause.
- ➔Section 1634. KRS 304.50-060 is amended to read as follows:
- (1) The information and reports required by this section shall be filed by the self-insured group with the *commissioner*~~{executive director}~~ on an annual basis.

- (2) Within one hundred twenty (120) days from the end of the self-insured group's fiscal year, the self-insured group shall file:
 - (a) Copies of all fidelity bonds, security deposits, and letters of credit;
 - (b) Any material change in the administration of the group, including any change in the organizational documents, change in the administrator, or a change in the service organization or fiscal agent;
 - (c) An attested statement relating to conflicts of interest and compliance with KRS 304.50-105; and
 - (d) Any other information the *commissioner*~~{executive director}~~ may require.
- (3) Within ten (10) days before the expiration of each self-insurance year, the self-insured group shall file proof of:
 - (a) Specific excess insurance coverage for the ensuing year; and
 - (b) Aggregate excess insurance coverage for the ensuing year unless such coverage is exempted or waived under KRS 304.50-120(1).
- (4) Within one hundred twenty (120) days from the end of the self-insured group's fiscal year, the group shall file the statement of financial condition required by KRS 304.50-110 and any other relevant financial information requested by the *commissioner*~~{executive director}~~. Within forty-five (45) days from the end of each fiscal quarter, the self-insured group shall file a statement of financial condition along with an acknowledgment signed by the board of trustees or its authorized agent indicating that the statement has been presented to the board and any other relevant financial information requested by the *commissioner*~~{executive director}~~, including a balance sheet, and income and cash flow statement, on a form prescribed by the *commissioner*~~{executive director}~~.
- (5) Upon the request of a group member, a self-insured group shall make available the statement of financial condition required in KRS 304.50-110.

➔Section 1635. KRS 304.50-065 is amended to read as follows:

A workers' compensation self-insured group shall notify the *commissioner*~~{executive director}~~ immediately of any material change in the information required to be filed under this subtitle or in the manner of its compliance with KRS Chapter 342.

➔Section 1636. KRS 304.50-075 is amended to read as follows:

The *commissioner*~~{executive director}~~ or his or her designee shall have power to examine the financial condition, affairs, and management of any workers' compensation self-insured group subject to the provisions of this subtitle. He or she shall have free access to all the books, papers, and documents relating to the business of the organization, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of any group, or any person in relation to the workers' compensation self-insured group's affairs, transactions, or conditions relating to workers' compensation. The *commissioner*~~{executive director}~~ shall examine each workers' compensation self-insured group not less frequently than every four (4) years. Information and other data obtained through the examination shall be subject to the provisions of KRS 304.2-230 to 304.2-290. All examination expenses shall be borne by the self-insured group being examined.

➔Section 1637. KRS 304.50-085 is amended to read as follows:

- (1) Each self-insured group shall be operated by a board of trustees. Except for a self-insured group formed by governmental entities, the board of trustees for each self-insured group shall consist of at least two (2) but not more than twenty (20) persons selected in the manner prescribed in the bylaws of the self-insured group or other laws of the Commonwealth.
- (2) The board of trustees shall:
 - (a) Be residents of Kentucky or officers of corporations authorized to do business in Kentucky;
 - (b) Administer the operations of the workers' compensation self-insured group ensuring that there is adequate funding to pay compensation required by KRS Chapter 342, that all claims are paid promptly and processed to conclusion, and that all necessary precautions are taken to safeguard the assets of the group;
 - (c) Maintain responsibility for all moneys collected or disbursed from the group;

- (d) Maintain minutes of its meetings and make the minutes available to the *commissioner*~~{executive director}~~ and group members;
 - (e) Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the self-insured group;
 - (f) Develop rates and collect premium and assessments; and
 - (g) Invest the self-insured group's funds.
- (3) The board of trustees shall not:
- (a) Extend credit to individual group members for payment of premiums or assessments, except in accordance with payment plans filed with the *commissioner*~~{executive director}~~;
 - (b) Permit the loan of any moneys to or borrow any moneys from the self-insured group or in the name of the group, except that a workers' compensation self-insured group formed by governmental entities may borrow moneys in the name of the group; or
 - (c) Have a direct or indirect pecuniary interest in a service organization.
- (4) (a) The trustees may contract with a service organization, an administrator, or a fiscal agent to carry out the administration of the workers' compensation self-insured group.
- (b) A service organization and its employees and agents shall be duly licensed to perform those functions for which a license is required under Kentucky law.
- (c) A revolving fund of not more than twenty percent (20%) of estimated premiums may be established for use by a service organization for the payment of claims.
- (5) In its discretion, the workers' compensation self-insured group may refer to its trustees as directors. If this is done, the provisions of this subtitle referring to trustees shall be construed as referring to directors.

➔Section 1638. KRS 304.50-090 is amended to read as follows:

- (1) An employer joining a workers' compensation self-insured group after the group has been issued a certificate of filing shall submit an application for membership to the board of trustees or its administrator and enter into an indemnity agreement. Membership shall not take effect earlier than each member's date of application. The application for membership and its approval shall be maintained as permanent records of the board of trustees. The board of trustees shall require each member to execute a joint and several liability agreement, or other annual ratification or affirmation of indemnity, upon each renewal.
- (2) The self-insured group shall be considered an individual employer for all purposes of taxation and the individual members of the group shall not be exposed to tax liability other than liability existing as a result of the indemnity agreement with the other group members and the self-insured group.
- (3) At the discretion of the trustees, the self-insured group may include the Kentucky employees of foreign (out-of-state) employers.
- (4) Individual members of a workers' compensation self-insured group shall be subject to expulsion, nonrenewal, or cancellation by the group by giving the member and the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Workers' Claims thirty (30) days advance notice. Such expulsion, nonrenewal, or cancellation shall be executed in accordance with the bylaws of the group and for reasons including but not limited to:
 - (a) Adverse claims experience;
 - (b) Lack of cooperation with safety and loss prevention policies; or
 - (c) Failure to report payroll in accordance with the rules and rating plan of the self-insured group.
- (5) At least thirty (30) days prior to the due date, the trustees shall notify each group member of all premiums due, including adjustments. Failure by a member to pay the premium or assessments due prior to the due date may result in immediate cancellation from the group by the trustees. Ten (10) days advance notice of such cancellation shall be given to the member and the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Workers' Claims.

- (6) Individual group members may elect to withdraw from the group only upon sixty (60) days written notice to the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workers' Claims and the trustees.
- (7) The trustees shall report to the **commissioner**~~{executive director}~~ any person who behaves fraudulently as described in Subtitle 47 of this chapter.
- (8) A workers' compensation self-insured group shall pay all workers' compensation benefits required under KRS Chapter 342 for which each member incurs liability during its period of membership, including assessments. A member who elects to withdraw its membership or is terminated by a group remains liable for workers' compensation liabilities, obligations, and assessments during the terminated or withdrawn group member's period of membership. A group member shall not be relieved of its workers' compensation liabilities incurred, including assessments, during its period of membership, except through payment by the group or the member of these liabilities.
- (9) The insolvency or bankruptcy of a group member shall not relieve the workers' compensation self-insured group or any group member of liability for the payment of workers' compensation benefits incurred during the insolvent or bankrupt group member's period of membership.

➔Section 1639. KRS 304.50-100 is amended to read as follows:

- (1) If a self-insured group decides to dissolve its self-insured program, the trustees shall:
 - (a) File a detailed plan of dissolution with the **commissioner**~~{executive director}~~ for prior approval;
 - (b) Provide sixty (60) days written notice by certified mail to the **commissioner**~~{executive director}~~ and each group member;
 - (c) Pay approved dividends; and
 - (d) Establish arrangements for the continued payment and servicing of all outstanding claims, including incurred but not reported claims.
- (2) The **commissioner**~~{executive director}~~ shall approve the plan unless the **commissioner**~~{executive director}~~ determines it to be unlawful, unfair, inequitable, or prejudicial to the interests of the members or injured workers, or the plan does not fully discharge all obligations of the group.

➔Section 1640. KRS 304.50-110 is amended to read as follows:

- (1) In addition to reports required under KRS 304.50-060, each workers' compensation self-insured group shall file with the **commissioner**~~{executive director}~~ an annual statement of financial condition audited by an independent certified public accountant on or before one hundred and twenty (120) days from the end of the group's fiscal year for the immediately preceding fiscal year. The annual financial statement shall be on a form approved by the **commissioner**~~{executive director}~~ and in accordance with generally accepted accounting principles.
- (2) The annual financial statement shall include actuarially appropriate reserves for:
 - (a) Known claims and expenses related to such claims;
 - (b) Claims incurred but not reported and any expenses associated such claims; and
 - (c) Unearned premiums, contributions, and assessments.
- (3) The annual financial statement shall also include an actuarial opinion by a qualified actuary and a supporting reserve study regarding reserves for known claims and expenses associated with such claims. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods.
- (4) The following statements shall be included with the annual financial statement:
 - (a) Balance sheet;
 - (b) Statement of gain or loss from operations;
 - (c) Statement of changes in financial position; and
 - (d) Notes to financial statements required by generally accepted accounting principles, which shall include a narrative explanation of all material transactions and balances of the self-insured group.

- (5) No person shall make a deceptive statement or fail to correct a misstatement in connection with the solicitation of membership of a self-insured group.

➔Section 1641. KRS 304.50-115 is amended to read as follows:

- (1) A workers' compensation self-insured group shall file with the **commissioner**~~executive director~~ its rates and supplementary rating information and any changes made to its rates and supplementary information.
- (a) Within one (1) year of March 1, 2005, each existing workers' compensation self-insured group shall place on file with the **commissioner**~~executive director~~ its existing rates and supplementary rating information.
- (b) The initial rates and supplementary rating information of any workers' compensation self-insured group newly formed after March 1, 2005, shall not become effective until filed with and approved by the **commissioner**~~executive director~~.
- (c) Any changes made to a workers' compensation self-insured group's rates or supplementary rating information shall be filed pursuant to KRS 304.13-053.
- (2) A workers' compensation self-insured group shall file with the **commissioner**~~executive director~~ its existing coverage forms and any changes made to such forms, in accordance with KRS 304.14-120.
- (a) Within one (1) year of March 1, 2005, each existing workers' compensation self-insured group shall place on file with the **commissioner**~~executive director~~ its existing coverage forms.
- (b) The initial coverage forms of any workers' compensation self-insured group newly formed after March 1, 2005, shall not be used or delivered until filed with and approved by the **commissioner**~~executive director~~ pursuant to KRS 304.14-120.
- (c) Any changes made to a workers' compensation self-insured group's coverage forms shall be filed in accordance with KRS 304.14-120.
- (d) The **commissioner**~~executive director~~ shall disapprove any coverage form required to be filed under KRS 304.14-120, or withdraw any previous approval of such form, only on one (1) or more of the following grounds:
1. If the coverage form is in any respect in violation of, or does not comply with, this subtitle or KRS Chapter 342.
 2. If the coverage form contains or incorporates by reference, where the incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.
 3. If the coverage form has any title, heading, or other indication of its provisions which is misleading, or is printed in a size of type or manner of reproduction as to make the form substantially illegible.
- (3) Coverage form and rate filings shall be accompanied by a filing fee as set forth in KRS 304.4-010 and administrative regulations promulgated by the **commissioner**~~executive director~~. Filings shall be open to public inspection at any reasonable time. Copies may be obtained by any person on request and on payment of a fee specified in Subtitle 4 of this chapter.

➔Section 1642. KRS 304.50-120 is amended to read as follows:

- (1) The **commissioner**~~executive director~~ shall promulgate administrative regulations setting forth the requirements for aggregate excess insurance and the standards for granting a waiver, but a workers' compensation self-insured group shall not be required to purchase aggregate excess insurance if the group's fund balance is thirty percent (30%) or more of earned premiums.
- (2) Except for a worker's compensation self-insured group granted a waiver or exempted under subsection (1) of this section, the trustees shall purchase aggregate excess insurance.
- (3) The trustees shall purchase specific excess insurance coverage with a limit of at least twenty-five million dollars (\$25,000,000) per occurrence.

- (4) To be eligible to write excess liability coverage for a self-insured group, a casualty insurance company shall at all times maintain twenty-five million dollars (\$25,000,000) of minimum policyholder surplus.

➔Section 1643. KRS 304.50-125 is amended to read as follows:

- (1) In the computation of the retained liabilities of the self-insured group, reserves for claims or projected reserves for claims may be discounted for their present value if:
- (a) The discounting is based upon the computation of a qualified actuary; and
 - (b) The computations and supporting documentation are filed annually in writing with the *commissioner*~~[executive director]~~.
- (2) Discounting shall be approved by the *commissioner*~~[executive director]~~ unless:
- (a) The actuary is found to be unqualified by the *commissioner*~~[executive director]~~; or
 - (b) The computations and supporting documentation presented by the actuary are rejected based on the opinion of the *commissioner's*~~[executive director's]~~ qualified actuary.

➔Section 1644. KRS 304.50-130 is amended to read as follows:

- (1) Each member of a workers' compensation self-insured group shall receive written evidence of coverage by the group.
- (2) All evidences of coverage issued pursuant to this section shall contain coverage terms, conditions, and exclusions.
- (3) All evidences of coverage issued pursuant to this section by a self-insured group shall contain the following disclosure in prominent contrasting type: THIS COVERAGE HAS BEEN PLACED WITH A WORKERS' COMPENSATION SELF-INSURED GROUP WHICH IS REGULATED BY THE KENTUCKY ~~DEPARTMENT~~~~OFFICE~~ OF INSURANCE AND HAS RECEIVED A CERTIFICATE OF FILING FROM THE COMMONWEALTH OF KENTUCKY. CLAIMS AGAINST GROUP MEMBERS ARE COVERED BY THE SELF-INSURED GROUP INSURANCE GUARANTY ASSOCIATION, BUT ARE NOT COVERED BY THE KENTUCKY INSURANCE GUARANTY ASSOCIATION. GROUP MEMBERS SHALL BE ASSESSED IN THE EVENT OF INSOLVENCY OF THE WORKERS' COMPENSATION SELF-INSURED GROUP.
- (4) All evidences of coverage issued pursuant to this section by a workers' compensation self-insured group formed by governmental entities which have joint and several liability shall contain the following disclosure in prominent contrasting type: THIS COVERAGE HAS BEEN PLACED WITH A WORKERS' COMPENSATION SELF-INSURED GROUP WHICH HAS RECEIVED A CERTIFICATE OF FILING FROM THE COMMONWEALTH OF KENTUCKY. CLAIMS AGAINST GROUP MEMBERS ARE NOT COVERED BY THE KENTUCKY INSURANCE GUARANTY ASSOCIATION.

➔Section 1645. KRS 304.50-135 is amended to read as follows:

- (1) If a workers' compensation self-insured group has a members' fund balance that is less than the minimum amount required by this subtitle of one million dollars (\$1,000,000) and not a negative members' fund balance reported on an annual financial filing or by a report on examination, then within thirty (30) days of the filing or report, the self-insured group shall file with the *commissioner*~~[executive director]~~ a written report that identifies the cause of the decrease in the fund balance, describes a plan for remedying the decrease in the fund balance, and identifies measures to be implemented to avoid similar future decreases in the fund balance. A report filed with the *commissioner*~~[executive director]~~ under this subsection may be approved, disapproved, or modified by the *commissioner*~~[executive director]~~. A self-insured group may cease operating under a report filed with the *commissioner*~~[executive director]~~ under this subsection after the self-insured group's members' fund balance is one million dollars (\$1,000,000) or greater and the *commissioner*~~[executive director]~~ has approved in writing the lifting of the terms of the report. A report filed with the *commissioner*~~[executive director]~~ under this subsection shall be deemed part of the self-insured group's organizational documents for purposes of KRS 304.50-060.
- (2) A workers' compensation self-insured group shall report any deficiency to the *commissioner*~~[executive director]~~ as soon as it is identified. A deficiency reported on an annual financial filing or by a report on examination shall be deemed a verified deficiency. If a workers' compensation self-insured group has a verified deficiency, the deficit amount shall be made up immediately from the following:

- (a) Surplus funds from a fund year other than the current fund year after prior notice of the transfer has been given to the **commissioner**~~{executive director}~~;
 - (b) Implementation of the previously approved assessment plan; or
 - (c) Alternative methods as the **commissioner**~~{executive director}~~ may direct or approve that provide financial security in the form of surety, deposit, letter of credit, guarantee, or other assets or obligation.
- (3) If a workers' compensation self-insured group fails to remedy a deficit as required in subsection (2) of this section, the **commissioner**~~{executive director}~~ shall order the group to do so.
 - (4) If a workers' compensation self-insured group fails to remedy a deficit or make the required assessment of its members within thirty (30) days after the **commissioner**~~{executive director}~~ orders the group to do so, the group shall be deemed to be in hazardous financial condition and insolvent, under Subtitle 33 of this chapter, and the **commissioner**~~{executive director}~~ may file a petition for delinquency proceedings, as defined in Subtitle 33 of this chapter, in Franklin Circuit Court.
 - (5) The **commissioner**~~{executive director}~~ shall place a workers' compensation self-insured group into delinquency proceedings in accordance with the provisions of Subtitle 33 of this chapter if the workers' compensation self-insured group is in hazardous financial condition, insolvent or about to become insolvent, no longer financially responsible and may reasonably be expected to be unable to meet its obligations to members or prospective members, has failed to remedy a deficiency in a reasonable and timely manner, or any other grounds that are provided in Subtitle 33 of this chapter. A self-insured group shall be placed in delinquency proceedings as an insurer, pursuant to Subtitle 33 of this chapter.
 - (6) The **commissioner**~~{executive director}~~ may approve bulk reinsurance or any other transfer of the book of business if he or she finds that it is in the best interests of the members and their employees.

➔Section 1646. KRS 304.50-140 is amended to read as follows:

- (1) After a hearing or upon agreement by the workers' compensation self-insured group, the **commissioner**~~{executive director}~~ may suspend or revoke the certificate of filing of a self-insured group, impose a civil penalty of up to ten thousand dollars (\$10,000) per violation, or both if the group:
 - (a) Operates significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under this subtitle, or administrative regulations relating to this subtitle, unless amendments to the submissions have been filed with and approved by the **commissioner**~~{executive director}~~ or there has been a significant and adverse change in the management of the self-insured group;
 - (b) Or any person at the direction of the group advertises or merchandises its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner, or engages in unfair or deceptive practices as defined in Subtitle 12 of this chapter;
 - (c) Violates the provisions of this subtitle or administrative regulations adopted thereunder;
 - (d) Obtains a certificate of filing by unfair or deceptive means;
 - (e) Misappropriates, converts illegally, withholds, or refuses to pay upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled to such moneys by the group or its administrator; or
 - (f) Violated or failed to correct a violation of this subtitle or administrative regulations promulgated under this subtitle within a reasonable time period established by the **commissioner**~~{executive director}~~ in administrative regulations.
- (2) In addition, the **commissioner**~~{executive director}~~ may impose a civil penalty of up to ten thousand dollars (\$10,000) per day for continuing violations.
- (3) The **commissioner**~~{executive director}~~ shall conduct a hearing under this section in accordance with Subtitle 2 of this chapter. The ruling of the **commissioner**~~{executive director}~~ may be appealed to Franklin Circuit Court in accordance with KRS 304.2-370. The **commissioner**~~{executive director}~~, during the pendency of an appeal or request for a hearing, may utilize the security deposit provided by the self-insured group to make payments of any workers' compensation benefits currently due.

- (4) If the **commissioner**~~[executive director]~~ revokes a self-insured group's certification, the **commissioner**~~[executive director]~~ shall immediately notify the Kentucky group self-insurance guaranty fund as established in KRS 342.906(2).
- (5) When a certificate of filing of a self-insured group is suspended, the group shall not, during the period of suspension, enroll any new participants or engage in any advertising or solicitation.
- (6) If the certificate of filing of a self-insured group is revoked for reasons other than hazardous financial condition, the group shall proceed, immediately following the effective date of the order of revocation, to conclude its affairs and shall conduct no further business, except as may be essential to the orderly conclusion of the affairs of the group. The group shall engage in no further advertising or solicitation. The **commissioner**~~[executive director]~~ may, by written order, prevent further operation of the self-insured group if further operation is not deemed to be in the best interest of the members, and the self-insured group's members will be afforded the greatest practical opportunity to obtain workers' compensation coverage elsewhere. If the **commissioner**~~[executive director]~~ permits further operation, the workers' compensation self-insured group shall continue to collect the premiums and assessments required of its members.
- (7) The **commissioner**~~[executive director]~~, in his or her discretion and without advance notice or a hearing, may suspend or revoke the certificate of filing of any workers' compensation self-insured group upon commencement of the following proceedings:
 - (a) Receivership;
 - (b) Conservatorship;
 - (c) Rehabilitation; or
 - (d) Other delinquency proceedings.

➔Section 1647. KRS 304.50-150 is amended to read as follows:

- (1) A person shall not:
 - (a) Make any deceptive statement or omit material facts in connection with solicitation for membership in a workers' compensation self-insured group; or
 - (b) Guarantee the payment of dividends or use statements or words in, or in connection with, any coverage which imply that the payment of dividends is guaranteed to occur.
- (2) A workers' compensation self-insured group shall not engage in unfair business practices as defined by KRS Chapter 342, and shall:
 - (a) Respond to an inquiry from the **commissioner**~~[executive director]~~ on matters other than workers' compensation claims within fifteen (15) working days of receipt of such inquiry; and
 - (b) Respond to an inquiry from the **commissioner**~~[executive director]~~ of the **Department**~~[Office]~~ of Workers' Claims on matters concerning workers' compensation claims within fifteen (15) working days of receipt of such inquiry.

➔Section 1648. KRS 304.50-160 is amended to read as follows:

Annually on or before the fifteenth day of December, the **commissioner**~~[executive director]~~ shall make a report to the Governor and the Interim Joint Committees of Banking and Insurance and Labor and Industry on the status of workers' compensation self-insured groups.

➔Section 1649. KRS 304.99-010 is amended to read as follows:

In addition to or in lieu of the specific penalties provided for by this code, any person who violates any provision of this code or who knowingly violates any proper order of the **commissioner**~~[executive director]~~ shall, upon conviction by a court of competent jurisdiction, be fined not less than one hundred dollars (\$100) or twice the amount of the gain from the commission of the violation, whichever is greater, be subject to revocation of certificate of authority or license, or both.

➔Section 1650. KRS 304.99-015 is amended to read as follows:

- (1) Any deputy director or any examiner who has knowledge of the statutory insolvency, or hazardous financial condition as defined by administrative regulation, of an authorized insurer, or that it is inexpedient to permit the authorized insurer to continue business, and who fails to immediately present a signed report of the facts to

the **commissioner**~~[executive director]~~, or who violates any of the provisions of this chapter, shall forfeit his or her office or employment contract and shall be fined not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) for each offense.

- (2) Any **commissioner**~~[executive director]~~ who has knowledge of the statutory insolvency, or hazardous financial condition as defined by administrative regulation, of an authorized insurer, or that it is inexpedient to permit the authorized insurer to continue business, and who willfully fails to take the action prescribed by this chapter, or who violates any of the provisions of this chapter, shall forfeit his or her office and shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each offense.

➔Section 1651. KRS 304.99-020 is amended to read as follows:

- (1) For any violation of this code where the **commissioner**~~[executive director]~~ has the power to revoke or suspend a license or certificate of authority, **the commissioner**~~[he]~~ may in lieu thereof or in addition to such revocation or suspension impose a civil penalty against the violator in the case of an insurer, a fraternal benefit society, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization of not more than ten thousand dollars (\$10,000) per violation; in the case of an agent, surplus lines broker, rental vehicle agent or managing employee, specialty credit producer or managing employee, or reinsurance intermediary broker or manager of not more than one thousand dollars (\$1,000) per violation; in the case of an adjuster, administrator, life settlement broker, life settlement provider, or consultant of not more than two thousand dollars (\$2,000) per violation.
- (2) Such civil penalty may be recovered in an action brought thereon in the name of the Commonwealth of Kentucky in any court of appropriate jurisdiction.
- (3) In any court action with respect to a civil penalty, the court may review the penalty as to both liability and reasonableness of amount.

➔Section 1652. KRS 304.99-025 is amended to read as follows:

If any consultant or agent is found by the **commissioner**~~[executive director]~~, after a hearing, to be in violation of KRS 304.9-350, the **commissioner**~~[executive director]~~ may, in addition to any applicable suspension, revocation, or refusal to continue the consultant's or agent's license, impose a fine in the amount of the consultant's or agent's fees or commissions associated with the sale of the product which is the subject of the violation.

➔Section 1653. KRS 304.99-060 is amended to read as follows:

- (1) (a) The owner of any vehicle who fails to have in full force and effect the security required by Subtitle 39 of this chapter shall:
1. Be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or sentenced to not more than ninety (90) days in jail, or both;
 2. Have the registration of the motor vehicle revoked and the license plates of the vehicle suspended for a period of one (1) year or until such time as proof, in a form satisfactory to the **commissioner**~~[executive director]~~, is furnished that the security is then and will remain in effect; and
 3. For the second and each subsequent offense within any five (5) year period, have his **or her** operator's license revoked in accordance with KRS 186.560, and may be sentenced to one hundred and eighty (180) days in jail, or fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500), or both.
- (b) Penalties under paragraph (a) of this subsection for the first offense are subject to conditional discharge, suspension, or other forms of reduction of penalty by judicial discretion upon production of proof of security.
- (c) For the second and each subsequent offense, minimum fines, suspensions, and penalties under paragraph (a) of this subsection are subject to conditional discharge, suspension, or other forms of reduction of penalty, by judicial discretion only upon production of proof of security and a receipt showing that a premium for a minimum policy period of six (6) months has been paid.
- (d) Upon expiration of the minimum six (6) month policy period, the court shall order the vehicle owner to appear before it to verify renewal of the security required by Subtitle 39 of this chapter by production of

proof of security and a receipt showing that a premium for a minimum six (6) month policy period has been paid.

- (e) Failure to appear shall result in the suspension of the vehicle owner's operator's license pursuant to KRS 186.570.
 - (f) Unless uninterrupted coverage is maintained, cancellation or expiration of the procured security before the end of the minimum six (6) month policy period shall be a Class B misdemeanor.
 - (g) Unless the requirement of paragraph (d) of this subsection is satisfied, the court shall revoke any conditional discharge, suspension, or other form of reduction of penalty granted under paragraph (c) of this subsection.
- (2) A person who operates a motor vehicle without security on the motor vehicle as required by Subtitle 39 of this chapter shall:
- (a) Be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) or sentenced to not more than ninety (90) days in jail, or both; and
 - (b) For the second and each subsequent offense within any five (5) year period, have his *or her* operator's license revoked in accordance with KRS 186.560, and may be sentenced to not more than one hundred eighty (180) days in jail or fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500), or both.
- (3) If the person who operates a motor vehicle without security on the motor vehicle as required by Subtitle 39 of this chapter is also the owner of the motor vehicle, the person shall be subject to penalties under both subsection (1) and subsection (2) of this section.

➔Section 1654. KRS 304.99-070 is amended to read as follows:

- (1) Any private employer who is subject to the provisions of KRS 304.32-300 and who fails to purchase a conversion health insurance policy as required by subsection (1) shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), and each day that a private employer fails to purchase a conversion policy as required herein shall constitute a separate offense.
- (2) Any private employer who is subject to the provisions of KRS 304.32-320 and who fails to give to the **Department**~~{Office}~~ of Insurance the notice therein required shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each day that an employer fails to give notice after the date on which notice is required shall constitute a separate offense.

➔Section 1655. KRS 304.99-085 is amended to read as follows:

- (1) If any broker fails to file his *or her* annual statement as provided by KRS 304.10-170, he *or she* shall be liable for a fine of ten dollars (\$10) for each day of delinquency commencing with the first day of April.
- (2) If any broker fails to remit the tax provided by KRS 304.10-180, unless it is shown to the satisfaction of the **commissioner**~~{executive director}~~ that the failure is due to reasonable cause, five percent (5%) of the tax found to be due by the **commissioner**~~{executive director}~~ shall be added to the tax for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it was filed, but the total penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall a penalty be less than twenty-five dollars (\$25).

➔Section 1656. KRS 304.99-090 is amended to read as follows:

If any insurance company, association, or exchange is found by the **commissioner**~~{executive director}~~, after a hearing, to have committed any of the acts set out in subsections (1) and (2) of KRS 304.6-030, the **commissioner**~~{executive director}~~ may require such company, association, or exchange to pay a fine not exceeding ten thousand dollars (\$10,000).

➔Section 1657. KRS 304.99-110 is amended to read as follows:

Any person violating KRS 304.12-140 shall be punished by a fine of not more than two hundred fifty dollars (\$250) or by imprisonment of not more than ninety (90) days, or both; and if he *or she* holds a license from the **commissioner**~~{executive director}~~, he *or she* shall forfeit the same. The Circuit Court of Franklin County on complaint by any person that KRS 304.12-140 is being violated, may issue an injunction against such violation and may hold in contempt and punish therefor in case of disregard of such injunction.

➔Section 1658. KRS 304.99-120 is amended to read as follows:

The *commissioner*~~[executive director]~~ may, if he *or she* finds that any person or organization has violated any provision of Subtitle 13, impose a penalty of not more than one thousand dollars (\$1,000) for each violation, but if *the commissioner*~~[he]~~ finds such violation to be willful he *or she* may impose a penalty of not more than five thousand dollars (\$5,000) for each such violation. Such penalties may be in addition to any other penalties provided by law.

➔Section 1659. KRS 304.99-123 is amended to read as follows:

- (1) In addition to any other penalty or remedy authorized by law, the *department*~~[office]~~ may assess the following fines for noncompliance with KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123:
 - (a) A fine of one thousand dollars (\$1,000) per day or ten percent (10%) of the unpaid claim amount, whichever is greater, for each day that a clean claim remains unpaid in violation of KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123.
 - (b) Except for the late payment of claims under subsection (2) of this section, a fine of up to ten thousand dollars (\$10,000) where the *commissioner*~~[executive director]~~ determines that an insurer has willfully and knowingly violated KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 or has a pattern of repeated violations of KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123.
- (2) For purposes of paragraph (a) of subsection (1) of this section, an insurer is in compliance when:
 - (a) Ninety-five percent (95%) of the clean claims received by the insurer, its agent, or designee during each calendar quarter, excluding pharmaceutical claims, were adjudicated within the claims payment timeframes in accordance with KRS 304.17A-702; and
 - (b) At least ninety percent (90%) of the total dollar amount for clean claims received by the insurer, its agent, or designee during each calendar quarter, excluding pharmaceutical claims, that were not denied or contested, was paid within the claims payment timeframes established in KRS 304.17A-702.

➔Section 1660. KRS 304.99-126 is amended to read as follows:

- (1) When a license issued under KRS 304.15-700 is suspended or revoked, the licensee, if the *commissioner*~~[executive director]~~ directs, shall proceed, immediately following the effective date of the suspension or revocation to conclude the affairs it is transacting under its license. The licensee shall not solicit, negotiate, advertise, or effectuate new contracts. The *department*~~[office]~~ shall retain jurisdiction over the licensee and trust until all life contracts have been fulfilled or canceled or have expired.
- (2) During the suspension or revocation period in which the licensee is concluding existing contracts, the licensee shall continue to comply with KRS 304.15-020, 304.15-700 to 304.15-720, and 304.42-190 and this section as if the license were in force.
- (3) Any person who violates any provisions of KRS 304.15-020, 304.15-700 to 304.15-720, and 304.42-190 and this section shall be subject to civil fines by the *commissioner*~~[executive director]~~ in an amount not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000). Each violation shall constitute a separate offense.
- (4) The *department*~~[office]~~ shall refer violations to the Division of Insurance Fraud Investigation for further investigation, and, if appropriate, the Division of Insurance Fraud Investigation shall proceed as set forth in KRS 304.47-050(5).

➔Section 1661. KRS 304.99-130 is amended to read as follows:

- (1) A fraternal benefit society neglecting to file the annual statement in the form and within the time provided for in Subtitle 29 of this chapter shall forfeit one hundred dollars (\$100) for each day during which such neglect continues, and, upon notice by the *commissioner*~~[executive director]~~ to that effect, its authority to do business in this state shall cease while such default continues.
- (2) Any person who willfully makes a false or fraudulent statement or statements in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any fraternal benefit society, shall

upon conviction be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisonment in the county jail of not less than thirty (30) days nor more than one (1) year, or both.

- (3) Any person who willfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by Subtitle 29 of this chapter, or of any material fact or thing contained in a sworn statement concerning the death or disability of a member for the purpose of procuring payment of a benefit named in the certificate, shall be guilty of perjury and shall be subject to the penalties therefor prescribed by law.
- (4) Any person who solicits membership for, or in any manner assists in procuring membership in, any fraternal benefit society not licensed to do business in this state shall upon conviction be fined not less than one hundred dollars (\$100).

➔Section 1662. KRS 304.99-140 is amended to read as follows:

- (1) Any person who shall engage in the business of financing insurance premiums in this state without obtaining a license as provided by KRS 304.30-030(1) shall, upon conviction by a court of competent jurisdiction, be guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars (\$1,000) or be imprisoned not more than one (1) year, or both.
- (2) In lieu of or in addition to revoking or suspending the license of an insurance premium finance company for any of the causes enumerated in KRS 304.30-050, after a hearing as provided in KRS 304.30-050 the **commissioner**~~executive director~~ may subject such company to a penalty of not more than one thousand dollars (\$1,000) for each offense.

➔Section 1663. KRS 304.99-150 is amended to read as follows:

- (1) Any person acting pursuant to Subtitle 45 of this chapter who violates any applicable provision of this chapter or other applicable insurance laws shall be subject to suspension or revocation of licenses, certificates of authority, or permission to do business in this state, imposition of civil penalties of up to ten thousand dollars (\$10,000) per violation, or both. The penalties prescribed in this subsection may be imposed through administrative proceedings in the **Department**~~Office~~ of Insurance, an action, or such other proceedings specified by law. Any civil penalty not paid may be recovered in an action brought thereon in the name of the Commonwealth of Kentucky in any court of appropriate jurisdiction.
- (2) This section applies to Subtitle 45 of this chapter.

➔Section 1664. KRS 304.99-151 is amended to read as follows:

- (1) Any person who violates a cease and desist order of the **commissioner**~~executive director~~ under KRS 304.37-130(5) may, after notice and hearing and upon order of the **commissioner**~~executive director~~, be subject at the discretion of the **commissioner**~~executive director~~ to a civil penalty of not more than ten thousand dollars (\$10,000) for every day of violation, suspension, or revocation of the person's license or certificate of authority, or both.
- (2) Any insurer or other person who fails to make any filing required by KRS 304.37-120 and who also fails to demonstrate a good faith effort to comply with any filing requirement shall be subject to a civil penalty of not more than ten thousand dollars (\$10,000).

➔Section 1665. KRS 304.99-152 is amended to read as follows:

- (1) Any insurer failing, without just cause, to file any registration statement as required by Subtitle 37 of this chapter, shall be required, after notice and hearing, to pay a civil penalty of ten thousand dollars (\$10,000) for each day's delay to the **commissioner**~~executive director~~. The maximum civil penalty under this section shall be one hundred thousand dollars (\$100,000). The **commissioner**~~executive director~~ may reduce the civil penalty if the insurer demonstrates to the **commissioner**~~executive director~~ that the imposition of the penalty would constitute a financial hardship to the insurer.
- (2) Every director or officer of an insurance holding company system who knowingly violates, participates in, assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to KRS 304.37-020(1), 304.37-030(2), or 304.37-030(5), or which violate Subtitle 37 of this chapter, shall pay, in their individual capacities, a civil penalty of not more than five thousand dollars (\$5,000) per violation, after notice and hearing before the **commissioner**~~executive director~~. In determining the amount of the civil penalty, the

commissioner~~{executive director}~~ shall take into account the appropriateness of the civil penalty with respect to the gravity of the violation, the history of previous violations, and other matters justice may require.

- (3) If it appears that any insurer subject to Subtitle 37 of this chapter, or any director, officer, employee, or agent has engaged in any transaction or entered into any contract which is subject to KRS 304.37-030 and which would not have been approved had approval been requested, the **commissioner**~~{executive director}~~ may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the **commissioner**~~{executive director}~~ may also order the insurer to void the contracts and restore the status quo if the action is in the best interest of the policyholders, creditors, or the public.
- (4) If it appears that any insurer or any director, officer, employee, or agent has committed a willful violation of Subtitle 37 of this chapter, the **commissioner**~~{executive director}~~ may cause criminal proceedings to be instituted in the Circuit Court for the county in which the principal office of the insurer is located, or if the insurer has no office in Kentucky, in the Franklin Circuit Court against the insurer or the responsible director, officer, employee, or agent. Any insurer which willfully violates Subtitle 37 of this chapter, may be fined not more than one hundred thousand dollars (\$100,000). Any individual who willfully violates Subtitle 37 of this chapter, may be fined in his *or her* individual capacity not more than one thousand dollars (\$1,000), be imprisoned for not more than one (1) to three (3) years, or both.
- (5) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the **commissioner**~~{executive director}~~ in the performance of his *or her* duties under Subtitle 37 of this chapter, upon conviction, shall be imprisoned for not more than one (1) year or more than five (5) years, or fined ten thousand dollars (\$10,000), or both. Any fines imposed shall be paid by the officer, director, or employee in his *or her* individual capacity.

➔Section 1666. KRS 309.131 is amended to read as follows:

- (1) There is hereby created the Kentucky Board of Licensure for Professional Art Therapists that shall be attached to the **Office**~~{Division}~~ of Occupations and Professions in the~~{Environmental and}~~ Public Protection Cabinet for administrative purposes. The board shall consist of five (5) members who are United States citizens and have been Kentucky residents for at least five (5) years prior to their appointment. The board membership shall be determined as follows:
 - (a) Four (4) members shall be professional art therapists who are licensed pursuant to KRS 309.133, and shall have engaged in art therapy practice for at least five (5) years. These members shall not hold any elected or appointed office in any professional organization of art therapy or closely related field during their tenure on the board; and
 - (b) One (1) member shall represent the public. The public member shall not have been licensed or have practiced as a professional art therapist, nor have any significant financial interest, either direct or indirect, in the profession of art therapy.
- (2) All members of the board shall be appointed by the Governor for staggered terms of four (4) years.
- (3) The four (4) professional members shall be appointed from a list of eight (8) names submitted by the board of directors of the Kentucky Art Therapy Association, Inc., and the one (1) public member shall be a citizen at large. Each member shall hold office until a successor is appointed. Vacancies shall be filled in the same manner as original appointments. No board member shall serve more than two (2) consecutive terms.
- (4) Each board candidate shall be licensed as an art therapist prior to nomination and shall be actively engaged in the practicing or teaching of art therapy, except for the one (1) public member.
- (5) Members of the board shall receive no compensation, perquisite, or allowance.
- (6) The board shall elect annually from its membership a chairman, secretary, and other officers as necessary to carry out its duties.
- (7) The board shall meet at least two (2) times each year. Additional meetings may be called by the chairman, upon the written request of at least two (2) members of the board. A simple majority of the board members shall constitute a quorum of the board.

➔Section 1667. KRS 309.354 is amended to read as follows:

- (1) There is created a board to be known as the Kentucky Board of Licensure for Massage Therapy, which shall be an independent agency ~~attached to the Division of Occupations and Professions for administrative and clerical purposes~~.
- (2) The Governor shall appoint seven (7) members to serve on the board with the following representation:
 - (a) Five (5) members who are massage therapists licensed under KRS 309.350 to 309.364, who have been in the practice of massage therapy for at least five (5) of the last seven (7) years prior to June 24, 2003, and who are residents of Kentucky;
 - (b) Of these five (5), at least one (1) but no more than two (2) shall own or direct a board-approved massage therapy training program; and
 - (c) Two (2) members shall be appointed by the Governor and shall serve as members at large who are neither licensed massage therapists nor spouses of persons who are licensed, or have a direct or indirect interest in the profession regulated under KRS 309.350 to 309.364. One (1) of the two (2) may hold a license in another health care profession.
- (3) Appointments shall be for three (3) years with initial appointments as follows: three (3) appointees shall serve three (3) year terms; two (2) shall serve two (2) year terms; and two (2) shall serve one (1) year terms. The Governor shall assign terms to initial members at his or her discretion.
- (4) The board shall elect initially, and annually thereafter, a chair, vice chair, and secretary from its membership and shall meet at least once per year, and more often as deemed necessary, at a time and at a place in Kentucky for the board to fulfill its duties.
- (5) Each member of the board shall receive a per diem not to exceed one hundred dollars (\$100) and other actual and necessary expenses for each day he or she is actually engaged in the discharge of the board's official duties.
- (6) Upon recommendation of the board, the Governor may remove any member of the board for a poor attendance record, neglect of duty, or malfeasance in office.

➔Section 1668. KRS 310.040 is amended to read as follows:

- (1) The Kentucky Board of Licensure and Certification for Dietitians and Nutritionists is hereby created to be comprised of seven (7) members appointed by the Governor. Three (3) members shall be licensed dietitians, three (3) members shall be certified nutritionists and one (1) member shall be a public member who shall have no pecuniary interest in the nutrition field. Of the members from the nutrition field, one (1) shall represent hospitals, one (1) shall represent health care facilities other than hospitals, one (1) shall represent state or local nutritional programs or shall be in private practice and one (1) shall be a dietetic educator. Appointments may be made from a list of nominees submitted to the Governor by the Kentucky Dietetic Association, the Kentucky Hospital Association, the Kentucky Association of Health Care Facilities, and the Kentucky Medical Association;
- ~~(2) The board shall be placed for administrative purposes under the Division of Occupations and Professions of the Environmental and Public Protection Cabinet.~~
- ~~(3)~~ Each member of the board shall serve for a term of four (4) years, except that for initial appointments, one (1) shall be for four (4) years, two (2) shall be for three (3) years, and two (2) shall be for two (2) years and one (1) shall be for one (1) year. No member shall serve more than two (2) consecutive terms and each member on July 15, 1994, shall serve on the board until his successor is appointed. Vacancies shall be filled by appointment of the Governor for the unexpired term.
- ~~(3)~~~~(4)~~ The board shall organize annually and elect one (1) of its members as chairman and one (1) of its members as secretary. A quorum of the board shall consist of four (4) members. The board shall meet at least quarterly and upon the call of the chairman, or at the request of two (2) or more members to the secretary of the board.
- ~~(4)~~~~(5)~~ Each member of the board shall receive compensation for services in an amount determined by the department, not to exceed one hundred dollars (\$100) dollars per meeting. The members shall be reimbursed for all travel expenses for attending the meetings of the board. The compensation of members and employees of the board shall be paid from the revolving fund established in KRS 310.041(7).

➔Section 1669. KRS 317A.110 is amended to read as follows:

- (1) The principal office of the board created by this chapter shall be located in such place as will enable the board to have access to records and technical assistance of the *Office*~~[Division]~~ of Occupations and Professions;
- (2) The *Office*~~[Division]~~ of Occupations and Professions shall give cooperation and technical advice and assistance to the board created by this chapter.

➔Section 1670. KRS 318.010 is amended to read as follows:

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

- (1) "*Department*~~[Office]~~" means *Department*~~[Office]~~ of Housing, Buildings and Construction;
- (2) "Journeyman plumber" means a person who engages or offers to engage, either as an occupation or otherwise, in the construction, installation, alteration, maintenance, repair, remodeling or removal, and replacement of plumbing under the supervision, direction, and responsibility of a master plumber;
- (3) "Master plumber" means a person who assumes responsible charge, supervision, or direction of journeyman plumbers, plumbers' apprentices, and other persons in the construction, installation, or alteration of plumbing or who engages in, offers to engage in, or advertises or otherwise represents that he is permitted or qualified to engage in the design, planning, superintending, contracting for, or responsible charge of plumbing;
- (4) "Plumbing" means the art of installing in buildings the pipes for distributing the water supply, the fixtures for using water and drainage pipes for removing waste water and sewage, together with fittings, appurtenances, and appliances of various kinds, all within or adjacent to the building. It shall not include the installation of on-site sewage disposal systems, except for the piping, fixtures, or other appurtenances needed within the building. It shall include:
 - (a) The water service pipe which forms the connection between the property line and the building, other than piping serving firefighting equipment;
 - (b) Private water supply systems;
 - (c) House sewers which convey the waste water and sewage from the building to the property line or other points of disposal, but not including sewers located between manholes and sewers extending five (5) feet from a main or manhole on private property;
 - (d) Storm sewers and rain water piping located within a building to a point two (2) feet outside of the building; and
 - (e) Medical gas piping;
- (5) "Public building" means any building intended for public use or built with public funds and includes but is not limited to the following: schools, industrial establishments, housing projects, restaurants, food-handling establishments, private clubs, theaters including drive-ins, trailer coach parks, camping areas, hospitals, nursing homes, hotels, motels, tourist courts, rooming houses, boarding houses, and other establishments furnishing public sleeping accommodations;
- (6) "Maintenance man" means a person employed to maintain and keep plumbing in good repair;
- (7) "Apprentice" means a person in the process of learning the plumbing trade who assists and is under the personal supervision of a licensed master or licensed journeyman plumber;
- (8) "Farmstead" means a farm dwelling together with other farm buildings and structures incident to the operation and maintenance of the farm situated on ten (10) acres or more of land which is located outside the corporate limits of a municipality;
- (9) "Person" means any individual, public or private corporation, political subdivision, government agency, municipality, copartnership, association, firm, trust, estate, or other entity whatsoever;
- (10) "*Commissioner*~~[Executive director]~~" means the *commissioner*~~[executive director]~~ of the *Department*~~[Office]~~ of Housing, Buildings and Construction; and
- (11) "Code" means the Kentucky State Plumbing Code.

➔Section 1671. KRS 318.015 is amended to read as follows:

- (1) This chapter applies and shall be in full force and effect in all counties of the Commonwealth.

- (2) The state plumbing code promulgated by the *department*~~{office}~~ under the provisions of this chapter applies and shall be in full force and effect for all public buildings regardless of location in the Commonwealth.
- (3) This chapter shall not apply to farmsteads.

➔Section 1672. KRS 318.030 is amended to read as follows:

- (1) No person shall engage in plumbing or engage in or work at the trade of plumbing:
 - (a) Unless he or she is the holder of a valid and effective active master plumber's license duly issued by the *department*~~{office}~~ in accordance with the provisions of this chapter; or
 - (b) Unless he or she is the holder of a valid and effective journeyman plumber's license duly issued by the *department*~~{office}~~ in accordance with the provisions of this chapter.
- (2)
 - (a) No person, firm, or corporation shall engage in plumbing or engage in or work at the trade of plumbing unless the person, firm, or corporation maintains general liability insurance in an amount not less than two hundred fifty thousand dollars (\$250,000) and submits proof of compliance with workers' compensation and unemployment insurance laws of the Commonwealth.
 - (b) Proof of insurance required in this subsection shall be submitted to the *department*~~{office}~~ prior to issuance or renewal of the active master plumber license required under this chapter.
 - (c) No license shall be valid without insurance as required in this subsection, and insurance carriers shall notify the *department*~~{office}~~ upon cancellation of the insurance of any licensee required to maintain insurance.
 - (d) The insurance required in this subsection shall not apply to an employee of a person, firm, or corporation engaged in plumbing as defined in this chapter.

➔Section 1673. KRS 318.040 is amended to read as follows:

- (1) An applicant for a master or journeyman plumber's license shall:
 - (a) Be at least eighteen (18) years of age;
 - (b) Be of good moral character;
 - (c) Be a citizen of the United States or be a resident alien who is authorized to work in the United States; and
 - (d) Possess all the other qualifications that may be prescribed by administrative regulations of the *commissioner*~~{executive director}~~.
- (2) Except as otherwise provided in this chapter, no master or journeyman plumber's license shall be issued except upon a successful passage of an examination as prescribed by the *department*~~{office}~~.
- (3) Examinations for a license as a master plumber or journeyman plumber shall be conducted at times and places fixed by the regulations of the *commissioner*~~{executive director}~~. Applicants for an examination shall furnish the information required by the *commissioner*~~{executive director}~~ and shall receive from the *department*~~{office}~~ due notice of the time and place of the examination.
- (4) The *department*~~{office}~~ shall prepare or cause to be prepared under its supervision examinations consisting of written and practical tests with such questions and tests by which the *department*~~{office}~~ will determine:
 - (a) With respect to master plumber's license applicants, that applicants are qualified in view of the definitions, provisions, and purposes of this chapter to carry on responsibly, reasonably, and competently, the activities which a licensed master plumber is authorized to engage in by this chapter; and
 - (b) With respect to journeyman plumber's license applicants, their knowledge and competency to carry on the activities which a licensed journeyman plumber is authorized to engage in by this chapter.
- (5) The examination papers shall be preserved by the *department*~~{office}~~ for a period of one (1) year.
- (6) The *department*~~{office}~~ may issue a license to any person who holds a valid license in another state if that state has a statewide plumbing code and, in the opinion of the Plumbing Code Committee, the other state's examination is at least equal to that of Kentucky and the other state agrees to reciprocate with Kentucky.

➔Section 1674. KRS 318.050 is amended to read as follows:

Each application for a license as a master or journeyman plumber shall be accompanied by a reasonable fee as established by the *department*{office}.

➔Section 1675. KRS 318.054 is amended to read as follows:

- (1) The initial license for a master or journeyman plumber shall expire on the last day of the licensee's birth month in the following year. The *department*{office} may reduce the license fee on a pro rata basis for initial licenses issued for less than twelve (12) months. Renewed licenses shall expire on the last day of the licensee's birth month of each year after the date of issuance of the renewed license.
- (2) The *department*{office} shall require an applicant for renewal of a license to show evidence of completing the continuing education requirements set forth by the *department*{office}, with advice from the State Plumbing Code Committee, in its administrative regulations issued under KRS 318.130.
- (3) The *department*{office} shall send each licensed master and journeyman plumber a notice advising them that the annual license renewal fee is due. The notice shall be sent to the licensee's last known address no later than thirty (30) days prior to the expiration of the license. The annual license renewal fee shall be a reasonable fee set by regulation of the *department*{office}. The fee for the renewal of a master plumber's license shall exceed the fee charged for a journeyman plumber's license.
- (4) Any master or journeyman plumber who fails to renew his license prior to expiration may have his license renewed upon payment of the required renewal fee, a revival fee, and upon showing the completion of continuing education requirements. The revival fee for a master plumber shall be five dollars (\$5) and for a journeyman plumber three dollars (\$3). If the renewal and revival fees are not paid one hundred eighty (180) days after the license expires, such licenses shall be automatically canceled by operation of law for nonpayment; provided, however, that such licenses may be reinstated upon payment of all delinquent renewal fees plus a revival fee of ten dollars (\$10) for a master plumber and six dollars (\$6) for a journeyman plumber. Upon presentation of proper evidence, the *department*{office} may waive payment of any renewal or revival fee specified herein for persons serving on active duty in the Armed Forces of the United States.

➔Section 1676. KRS 318.064 is amended to read as follows:

The *department*{office} may revoke or suspend any plumber's license issued by it upon proof that the licensee has:

- (1) Knowingly violated the provisions of this chapter or the Kentucky State Plumbing Code, or the rules and regulations of the *department*{office};
- (2) Practiced fraud or deception in applying for or obtaining a license;
- (3) Is incompetent to perform services as a licensed master plumber or a licensed journeyman plumber;
- (4) Permitted his or her license to be used directly or indirectly by another to obtain or perform plumbing work or services; or
- (5) Is guilty of such other unprofessional or dishonorable conduct of a character likely to deceive or defraud the public.

➔Section 1677. KRS 318.066 is amended to read as follows:

- (1) No license shall be suspended or revoked by the *department*{office} unless a hearing has been conducted or an opportunity afforded therefor in accordance with KRS Chapter 13B.
- (2) A licensee aggrieved by a final order of the *department*{office} suspending or revoking a license may appeal therefrom to the Circuit Court of the county in which the principal office of the office is located in accordance with KRS Chapter 13B.

➔Section 1678. KRS 318.071 is amended to read as follows:

- (1) There is hereby created a State Plumbing Code Committee which shall be established within the *Department*{Office} of Housing, Buildings and Construction for administrative purposes. The State Plumbing Code Committee shall consist of seven (7) members, one (1) of whom shall be a builder member of the Home Builders Association of Kentucky, one (1) of whom shall be a member of the Association of General Contractors, one (1) of whom shall be a member of the Kentucky Master Plumbers Association, one (1) of

whom shall be a member of the Kentucky Society of Professional Engineers (who shall have a background in sanitary engineering), one (1) of whom shall be a member of the American Institute of Architects, one (1) of whom shall be a member of the United Association of Journeyman Plumbers, and one (1) of whom shall be a member of the Mechanical Contractors Association. Each member of the State Plumbing Code Committee shall receive twenty-five dollars (\$25) per day for attending each meeting and shall be reimbursed for all necessary expenses. The members of the committee shall be appointed by the Governor from lists of three (3) names submitted by the above mentioned organizations.

- (2) Each member shall be appointed for and hold office a term of two (2) years or until his or her successor is appointed and qualified.
- (3) At all times in the filling of vacancies of membership on the committee the balance of representation set out in subsection (1) shall be maintained.

➔Section 1679. KRS 318.074 is amended to read as follows:

The committee shall elect from its members one (1) to serve as chairman, one (1) as vice chairman, and the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Housing, Buildings and Construction or his or her designee shall serve as ex officio member of the committee (without a vote) and secretary. The committee shall meet at least quarterly and upon special call by the chairman or the secretary.

➔Section 1680. KRS 318.077 is amended to read as follows:

The committee shall hold hearings, upon adequate notice to affected parties specifying the matters to be considered before the submission to the ~~commissioner~~~~executive director~~ of its suggested amendments to the code. No amendment of the code or any other related regulation shall be issued or promulgated by the ~~department~~~~office~~ without the prior review and comment of the committee under the requirements of KRS 198B.030(9) and (10) and 198B.040(11). Any person aggrieved by any rule, regulation, or amendment approved by the ~~department~~~~office~~, within 30 days after such action has become final, may appeal therefrom to the Circuit Court. For the purposes of this section, "persons aggrieved" shall include any person directly or indirectly injured or threatened with injury on account of any such regulation, rule, or amendment, whether or not such person was a party to the proceedings out of which the order, rule, regulation, or amendment arose.

➔Section 1681. KRS 318.080 is amended to read as follows:

- (1) In order to conduct examinations for persons to qualify as licensed master plumbers or journeyman plumbers, the ~~department~~~~office~~ shall appoint as examiners the following persons to a State Plumbers Examining Committee: An employee of the ~~department~~~~office~~ and three (3) other persons who shall be licensed either as master or journeyman plumbers. The ~~commissioner~~~~executive director~~ shall be an ex officio examiner and permanent commissioner of the committee. With the exception of the issuance of any order involving the revocation, suspension or cancellation of a master or journeyman plumber's license, the ~~commissioner~~~~executive director~~ may delegate to a subordinate employee in the ~~department~~~~office~~ the power to be present and participate, including the right to vote, as his or her representative at any meeting, hearing or other proceeding of the State Plumbers Examining Committee. Plumber examiners shall serve at the pleasure of the ~~department~~~~office~~.
- (2) The ~~department~~~~office~~ shall appoint assistant plumber examiners who shall be qualified licensed master or journeyman plumbers who shall serve at the pleasure of the ~~department~~~~office~~. Assistant plumber examiners shall perform such duties as are delegated to them by the State Plumbers Examining Committee.
- (3) Plumber examiners and assistant plumber examiners shall receive no compensation for their services but shall be reimbursed for their necessary traveling expenses.

➔Section 1682. KRS 318.090 is amended to read as follows:

- (1) The ~~department~~~~office~~ shall appoint and assign plumbing inspectors to each county subject to the provisions of this chapter.
- (2) Each plumbing inspector shall have at least eight (8) years experience as a journeyman or master plumber. At the time of his or her appointment he or she shall be licensed in accordance with the provisions of this chapter.

➔Section 1683. KRS 318.100 is amended to read as follows:

No person shall advertise or hold himself or herself out as a licensed master or licensed journeyman plumber within the Commonwealth of Kentucky unless he or she is a holder of a license from the *department{office}* in accordance with the provisions of this chapter.

→Section 1684. KRS 318.110 is amended to read as follows:

A company or individual principal may engage in the business of plumbing within any county of the Commonwealth if some person connected with such a company or individual principal in responsible charge of the plumbing work is a licensed master plumber. Any master plumber, in responsible charge of plumbing work for a company or individual engaged in the plumbing business, shall notify the *department{office}* at any time he or she commences or severs his or her connection with the company or individual principal.

→Section 1685. KRS 318.130 is amended to read as follows:

In order to administer this chapter, the *department{office}* shall promulgate and thereafter from time to time may amend a code to be known as the Kentucky State Plumbing Code, regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, and methods and materials to be used therein within this state, using as a minimum standard the basic principles of the National Plumbing Code Coordinating Committee, as evidenced by that committee's final report of 1951 with variations thereof or additions thereto as the committee considers are warranted by local, climatic, or other conditions. The code may also designate the number of plumbing fixtures for public buildings. The *department{office}* may adopt any other reasonable rule or regulation to administer this chapter if the rule or regulation has been subject to review and comment by the committee under the requirements of KRS 198B.030(9) and (10) and 198B.040(11). No rules or regulations so approved by the committee shall become effective except upon adoption by the *department{office}*, in satisfaction of the requirements of KRS Chapter 13A. The *department{office}* shall furnish to the committee proposed amendments to the code for the committee's review and comment prior to their adoption by the *department{office}*. The *department{office}* shall not promulgate any rules or regulations related to this chapter without granting the committee the opportunity to comment on the administrative regulation.

→Section 1686. KRS 318.134 is amended to read as follows:

- (1) No person, firm, or corporation shall:
 - (a) Construct, install, or alter, or cause to be constructed, installed, or altered, any plumbing without first having procured a plumbing installation permit therefor from the *department{office}*;
 - (b) Use or continue to use, or permit the use or continued use of, any plumbing constructed, installed, or altered under a plumbing installation permit issued therefor where the *department{office}* through a duly authorized inspector, employee, or agent, finds that the plumbing was not constructed, installed, or altered in accordance with such permit and the Kentucky State Plumbing Code.
- (2) All applications for plumbing installation permits shall be accompanied by plans and specifications of the proposed plumbing installation, location, and construction of the water supply system to be used. If an on-site sewage disposal system that does not have a surface discharge is proposed, a valid on-site sewage disposal permit issued by the Cabinet for Health and Family Services or its designated agent shall accompany the application.
- (3) The *department{office}* shall fix a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. The *department{office}* shall also fix a reasonable schedule of fees and charges to be paid for necessary inspections of the construction, installation, or alteration of plumbing in public buildings.

→Section 1687. KRS 318.136 is amended to read as follows:

All license fees, permit and inspection fees and charges, and other moneys collected by the *department{office}*, under the provisions of this chapter and the rules and regulations of the *department{office}* adopted hereunder, shall be paid into the State Treasury and credited to a trust and agency fund to be used by the *department{office}* in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth. All moneys held in a trust and agency fund or other fund to the credit of the *department{office}* for the administration and enforcement of this chapter on June 16, 1960, are hereby transferred to the trust and agency fund herein created.

→Section 1688. KRS 318.140 is amended to read as follows:

- (1) Any local government may, by ordinance, enact the Kentucky State Plumbing Code, regulating the construction, installation, or alteration of plumbing within such local government, providing for the issuance of plumbing installation permits and fixing permit and inspection fees. Two (2) or more local governments may, by ordinance of each local government, enact the plumbing code as described in this section which shall be jointly enforced and administered by said local governments within their boundaries. Agreements for joint enforcement shall conform to the provisions of KRS Chapter 65. The ~~department~~{office} may authorize any such local government or combination of local governments to administer, carry out, and enforce the Kentucky State Plumbing Code and the rules and regulations of the ~~department~~{office} relating thereto and to issue permits and make inspections thereunder within such local government, in which event a permit issued under the provisions of the local government plumbing code ordinance shall be deemed a permit issued by the ~~department~~{office}; provided, however, that inspectors of the ~~department~~{office} shall have concurrent jurisdiction with local government plumbing inspectors in the enforcement in such local governments of the Kentucky State Plumbing Code.
- (2) Any local government enacting a plumbing code ordinance may appoint and fix the compensation of local government plumbing inspectors. No person shall be eligible for appointment as a local government plumbing inspector unless he or she has at least eight (8) years' experience as a master or journeyman plumber. At the time of his or her appointment, he or she shall be licensed in accordance with the provisions of this chapter.
- (3) Nothing contained in this chapter shall be construed as prohibiting a local government from collecting occupational license fees from persons, firms, or corporations engaged in the plumbing business.

➔Section 1689. KRS 318.160 is amended to read as follows:

Except as otherwise provided by law or by regulation of the ~~department~~{office}, no person shall construct, install, or extensively alter any plumbing, sewerage, or water supply system of any public building or establishment without having first obtained the approval of the ~~department~~{office} in writing. Detailed plans and specifications of the proposed facility showing the plumbing system, sewage disposal system, and water supply system shall be submitted to the ~~department~~{office} prior to the construction or alteration of the facility. In the event no public sewer is available, the plan shall include the proposed type of sewage disposal system. In the event a sewage subsoil drainage system is used, or some other type of on-site sewage disposal system that does not have a surface discharge, the application for construction, installation, or alteration of such system shall be submitted to the Cabinet for Health and Family Services or its designated agent. All other plans and specifications shall be submitted in triplicate to the ~~department~~{office}. The ~~department~~{office} shall notify the applicant in writing of the approval or disapproval of the plans. The construction, installation, or alteration shall be done in accordance with the approved plans.

➔Section 1690. KRS 318.170 is amended to read as follows:

For the purpose of enforcing the provisions of this chapter and the State Plumbing Code, officers, agents and inspectors of the ~~department~~{office} shall have the power and authority to enter upon premises at all reasonable times for the purpose of making inspections, to interrogate all persons and to require the production of plumbing installation permits and other evidence. Officers, agents, and inspectors of the ~~department~~{office} are empowered to issue a stop order to any owner, agent, or occupant of real property whenever the plumbing thereon is found by the officer, agent or inspector of the ~~department~~{office} to be in violation of this chapter or the State Plumbing Code.

➔Section 1691. KRS 318.180 is amended to read as follows:

- (1) Notwithstanding the existence or pursuit of any other remedy (civil or criminal) the ~~department~~{office}, or its officers, agents, or inspectors, are hereby authorized to institute and maintain actions to restrain and enjoin any violation of this chapter, the State Plumbing Code, or the rules and regulations of the ~~department~~{office} relating thereto.
- (2) City, county and Commonwealth's attorneys, and the Attorney General, shall within their respective jurisdictions represent the ~~department~~{office}, its officers, agents, and inspectors, in the enforcement of the provisions of this chapter, the State Plumbing Code, and the rules and regulations of the ~~department~~{office} relating thereto, but when the ~~department~~{office} deems it necessary, it may employ, at its discretion, special attorneys to assist the ~~department~~{office}, or its officers, agents, or inspectors, and may pay reasonable compensation, fees and other costs from any unexpended plumbing funds.

➔Section 1692. KRS 318.190 is amended to read as follows:

- (1) The Circuit Court where the violation occurs shall have jurisdiction and venue in all civil and injunctive actions instituted by the *department*~~{office}~~ for the enforcement of the provisions of KRS Chapter 318 and the State Plumbing Code and the orders issued thereunder.
- (2) The Franklin Circuit Court shall hold concurrent jurisdiction and venue in all civil and injunctive actions instituted by the *department*~~{office}~~, or upon the secretary's request by the Attorney General, for the enforcement of the provisions of KRS Chapter 318, the State Plumbing Code and the orders issued thereunder and other rules and regulations of the *department*~~{office}~~.
- (3) The District Court where the violation occurs shall have jurisdiction and venue in all criminal actions for the enforcement of the provisions of KRS Chapter 318 and the State Plumbing Code and the orders issued thereunder. The Franklin Circuit Court shall hold concurrent jurisdiction and venue on all appeals of criminal actions for the enforcement of the provisions of KRS Chapter 318 and the State Plumbing Code and the orders issued thereunder.

➔Section 1693. KRS 318.200 is amended to read as follows:

- (1) No water heating device shall be sold or offered for sale in the Commonwealth of Kentucky unless it contains a serial number on it. As used in this section, "water heating device" means any pressure vessel which heats, stores, and supplies potable water for domestic or commercial purposes other than for space heating.
- (2) All retailers, wholesalers, and installers selling or offering for sale a water heating device shall, within thirty (30) days of the date of sale, forward a list of names and addresses of purchasers along with the serial numbers of the devices purchased to the *department*~~{office}~~ or to the appropriate agency of county or city government having jurisdiction.

➔Section 1694. KRS 329A.025 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of KRS 329A.010 to 329A.090 and shall evaluate the qualifications of applicants for licensure and issue licenses.
- (2) The board shall:
 - (a) Implement the provisions of KRS 329A.010 to 329A.090 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A;
 - (b) Promulgate administrative regulations to establish fees which shall not exceed the amounts necessary to generate sufficient funds to effectively carry out and enforce the provisions of KRS 329A.010 to 329A.090;
 - (c) Promulgate by administrative regulation an examination to be administered at least twice annually to license applicants. The examination shall be designed to measure knowledge and competence in private investigating, including but not limited to the following subject areas:
 1. Federal and state constitutional principles;
 2. Court decisions related to activities which could result in liability for the invasion of privacy or other activities;
 3. Eavesdropping and related offenses, assault and related offenses, search and seizure laws, and laws regarding unlawful access to a computer;
 4. General weapons use and concealed weapons laws;
 5. Additional state criminal laws and related procedures that are relevant to the practice of private investigating; and
 6. Additional subject areas as determined by the board; and
 - (d) Promulgate by administrative regulation a code of professional practice and conduct that shall be based upon generally recognized principles of professional ethical conduct and be binding upon all licensees.
- (3) The board may:
 - (a) Contract with the *Office*~~{Division}~~ of Occupations and Professions within the ~~{Environmental and}~~ Public Protection Cabinet for the provision of administrative services;

- (b) Employ any persons it deems necessary to carry on the work of the board. The board may define their duties and fix their compensation;
- (c) Develop or sponsor at least six (6) hours of continuing professional education annually;
- (d) Approve and certify a forty (40) hour training class covering the subject areas of the licensing examination;
- (e) Renew licenses and require continuing professional education as a condition for renewal;
- (f) Waive the examination requirement for any applicant licensed in a reciprocal state as prescribed in subsection (3)(m) of this section, who is licensed in good standing in that state and meets all of the other requirements of KRS 329A.035;
- (g) Suspend or revoke licenses, impose supervisory or probationary conditions upon licensees, impose administrative disciplinary fines, or issue written admonishments or reprimands, or any combination thereof;
- (h) Issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of KRS 329A.010 to 329A.090;
- (i) Conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the board's functions;
- (j) Organize itself into two (2) panels to separate the functions of inquiry and hearings. Each panel shall have the power to act as either an inquiry or hearing panel. No member serving on the inquiry panel shall serve on the hearing panel for any one (1) particular case. Any final decision of the hearing panel shall be considered as the final decision of the board and the hearing panel may exercise all powers granted to the board pursuant to KRS Chapter 13B;
- (k) Utilize mediation as a technique to resolve disciplinary matters;
- (l) Seek injunctive relief in the Circuit Court of the county where the alleged unlawful practice occurred to stop the unlawful practice of private investigating by unlicensed persons or companies; and
- (m) Negotiate and enter into reciprocal agreements with appropriate officials in other states to permit licensed investigation companies and private investigators who meet or exceed the qualifications established in KRS 329A.010 to 329A.090 to operate across state lines under mutually acceptable terms.

➔Section 1695. KRS 334.170 is amended to read as follows:

The ~~Office~~~~Division~~ of Occupations and Professions in the ~~Environmental and~~ Public Protection Cabinet shall provide administrative aid to the board to assist it in the discharge of its duties.

➔Section 1696. KRS 335.050 is amended to read as follows:

- (1) There is hereby created the Kentucky Board of Social Work, consisting of seven (7) members appointed by the Governor. One (1) member shall be a certified social worker under the provisions of KRS 335.010 to 335.160 and 335.990. One (1) member shall be a licensed social worker under the provisions of KRS 335.010 to 335.160 and 335.990. One (1) member shall be a licensed clinical social worker licensed under the provisions of KRS 335.010 to 335.160 and 335.990. Three (3) members shall be persons licensed by the board at any level, at the discretion of the Governor. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. With the exception of the citizen at large, each member shall be appointed from a list of names of qualified persons submitted by any interested parties. The Governor may request the submission of additional names.
- (2) Members of the board shall be appointed for terms of four (4) years except appointments to fill vacancies caused by a reason other than the expiration of a member's term. Upon recommendation of the board, made after notice and hearing, the Governor may remove any member of the board for incompetence, neglect of duty, or malfeasance in office.
- (3) All vacancies shall be filled by the Governor.
- (4) The board shall organize upon appointment and qualification of its members, and shall elect annually from its membership a chairman, vice chairman, and a secretary. The board shall meet as frequently as it deems necessary, but not less than two (2) times each year, at such times and places as the board designates.

Additional meetings may be held upon call of the chairman or upon the written request of three (3) members of the board. Four (4) members of the board shall constitute a quorum.

~~{(5) The board may be attached, for administrative purposes, to the Division of Occupations and Professions in the Environmental and Public Protection Cabinet.}~~

➔Section 1697. KRS 335.325 is amended to read as follows:

The board may:

- (1) Employ needed personnel~~[and contract with the Division of Occupations and Professions within the Environmental and Public Protection Cabinet for the provision of administrative services];~~
- (2) Issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of this chapter;
- (3) Seek injunctive relief in Franklin Circuit Court to stop the unlawful practice of marriage and family therapy by unlicensed persons;
- (4) Conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the functions of this chapter;
- (5) Suspend or revoke licenses or permits or impose supervisory or probationary conditions upon licensees or permit holders, or impose administrative disciplinary fines, issue written reprimands or admonishments, or any combination thereof;
- (6) Grant retired or inactive licensure status under conditions set forth by the board by the promulgation of administrative regulations;
- (7) Enter into reciprocal agreements with boards of marriage and family therapy in other states having licensure qualifications and requirements that meet or exceed those provided in this chapter;
- (8) Organize itself into two (2) panels to separate the functions of inquiry and hearings. Each panel shall have the power to act as either an inquiry or hearing panel. No member serving on the inquiry panel shall serve on the hearing panel for any one particular case. Any final decision of the hearing panel shall be considered as the final decision of the board and the hearing panel may exercise all powers granted to the board pursuant to KRS Chapter 13B; and
- (9) Utilize mediation as a technique to resolve disciplinary matters.

➔Section 1698. KRS 335.615 is amended to read as follows:

The board shall meet at least twice a year, in the spring and the fall. The board shall elect a chair at the fall meeting who shall serve a one (1) year term. The board shall:

- (1) Approve or deny applications for certification submitted according to the provisions of KRS 335.600 to 335.699;
- (2) Approve the examination required of applicants for certification, provide for the administration and grading of the examination, and provide for other matters relating to certification in the profession of fee-based pastoral counseling as promulgated in administrative regulations;
- (3) Review the credentials of certificate holders to determine eligibility for certification renewal, including payment of fees authorized in KRS 335.625;
- (4) Certify those fee-based pastoral counseling applicants who satisfy the requirements of KRS 335.600 to 335.699, including payment of fees authorized in KRS 335.620;
- (5) Adopt a code of ethics for certified fee-based pastoral counselors by promulgation of administrative regulations;
- (6) Promulgate administrative regulations, in accordance with KRS Chapter 13A, to implement the purposes of KRS 335.600 to 335.699;
- ~~(7) Contract with the Division of Occupations and Professions within the Environmental and Public Protection Cabinet for the provision of administrative services;~~

- ~~(8)~~ Investigate suspected violations of KRS 335.600 to 335.699;
- ~~(8)~~~~(9)~~ Institute and maintain actions to restrain or enjoin persons who violate the certification provisions of KRS 335.600 to 335.699; and
- ~~(9)~~~~(10)~~ Submit an annual report to the Governor and to the Legislative Research Commission by January 1 of each year, listing all hearings conducted by the board, any decisions rendered, and a current roster of all certified fee-based pastoral counselors.

➔Section 1699. KRS 336.010 is amended to read as follows:

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

- (1) "~~Secretary~~~~Commissioner~~" means *secretary*~~commissioner~~ of the ~~Department of }Labor {under the direction and supervision of the secretary of the Environmental and Public Protection }Cabinet; and~~
- (2) "~~Cabinet~~~~Department~~" means ~~Department of }Labor~~ *Cabinet*~~; and~~
- ~~(3) "Secretary" means the secretary of the Environmental and Public Protection Cabinet.~~

➔Section 1700. KRS 336.015 is amended to read as follows:

- (1) The *secretary*~~commissioner~~ of the ~~Department of }Labor~~ *Cabinet* shall have the duties, responsibilities, power, and authority relating to labor, wages and hours, occupational safety and health of employees, child labor, apprenticeship, workers' compensation, and all other matters previously under the jurisdiction of the *Department of Labor*~~Cabinet~~.
- (2) The ~~Department of }Labor~~ *Cabinet* shall consist of the Office of *the Secretary*~~Occupational Safety and Health~~, the *Department*~~Office~~ of *Workers' Claims*~~Labor Management Relations and Mediation~~, and the *Department*~~Office~~ of Workplace Standards~~; and the Division of Administrative Services. Each of the offices shall be headed by an executive director and each division shall be headed by a division director. Executive directors and division directors shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050.~~
- (3) The following agencies are attached to the *cabinet*~~department~~ for administrative purposes only:
- (a) Kentucky Labor-Management Advisory Council;
 - (b) Kentucky *Occupational Safety and Health Review Commission*~~Employees' Insurance Association~~;
 - (c) State Labor Relations Board;
 - (d) Workers' Compensation Funding Commission;
 - (e) ~~Workers' Compensation Advisory Council~~;
 - ~~(f)~~ Occupational Safety and Health Standards Board;
 - ~~(f)~~~~(g)~~ Prevailing Wage Review Board;
 - ~~(g)~~~~(h)~~ Apprenticeship and Training Council;
 - ~~(h)~~~~(i)~~ Employers' Mutual Insurance Authority;
 - ~~(i)~~~~(j)~~ *Office of General Administration and Program Support for Shared Services, which shall be headed by an executive director appointed by the Governor in accordance with KRS 12.040 upon recommendation from the secretaries of the Energy and Environment Cabinet, the Labor Cabinet, and the Public Protection Cabinet. The office is composed of the following divisions:*
 1. *Division of Human Resource Management*;
 2. *Division of Fiscal Management*;
 3. *Division of Budgets*; and
 4. *Division of Information Services*~~Workers' Compensation Nominating Commission~~; and
 - ~~(j)~~~~(k)~~ Office of *Inspector General for Shared Services, which shall be headed by an executive director appointed by the Governor in accordance with KRS 12.040 upon recommendation from the*

secretaries of the Energy and Environment Cabinet, the Labor Cabinet, and the Public Protection Cabinet~~[Workers' Claims].~~

➔Section 1701. KRS 336.020 is amended to read as follows:

- (1) The *Department*~~[Office]~~ of Workplace Standards shall be headed by **a commissioner appointed by the Governor in accordance with KRS 12.040**~~[an executive director]~~ and shall be divided for administrative purposes into the Division of Employment Standards, Apprenticeship and **Mediation, the Division of Occupational Safety and Health Compliance, the Division of Occupational Safety and Health Education and Training**~~[,]~~ and the Division of Workers' Compensation Funds. **Each of these divisions shall be headed by a director appointed by the secretary and approved by the Governor in accordance with KRS 12.050.**
- (2) The *Department*~~[Office]~~ of Workers' Claims shall be **headed**~~[administered]~~ by **a commissioner who is nominated by the Workers' Compensation Nominating Commission, appointed by the Governor, and confirmed by the Senate in accordance with KRS 342.213 and 342.228. The department**~~[an executive director and]~~ shall be divided for administrative purposes into the **Office of Administrative Law Judges, the Office of General Counsel for Workers' Claims, the Division**~~[Divisions]~~ of Claims Processing~~[and Appeals]~~, **the Division of Information and Research, the Division of Security and Compliance, and the Division of Ombudsman and Workers' Compensation Specialist Services. The Office of Administrative Law Judges shall be headed by a chief administrative law judge appointed in accordance with KRS 342.230. Each division in the department shall be headed by a director appointed by the commissioner and approved by the Governor in accordance with KRS 12.050 and 342.230. The following agencies are attached to the Department of Workers' Claims for administrative purposes only:**
 - (a) **Workers' Compensation Board;**
 - (b) **Workers' Compensation Advisory Council; and**
 - (c) **Workers' Compensation Nominating Commission.**
- (3) The Office of **General Counsel for the Labor Cabinet**~~[Occupational Safety]~~ and ~~[Health shall be administered by an executive director and shall be divided for administrative purposes into]~~the Division of **Management Services are attached to the Office of the Secretary of the Labor Cabinet**~~[Compliance and the Division of Education and Training].~~

➔Section 1702. KRS 336.030 is amended to read as follows:

The *secretary*~~[commissioner]~~, with the approval of the ~~[secretary of the Environmental and Public Protection Cabinet and the]~~Governor, shall appoint necessary deputies, attorneys, statisticians, inspectors and other employees and fix their salaries according to law. These employees shall receive their actual necessary expenses.

➔Section 1703. KRS 336.040 is amended to read as follows:

- (1) The ~~[Department of]~~Labor **Cabinet** shall exercise all administrative functions of the state concerned with employer-employee relationships, including the safety of workers and workers' compensation.
- (2) The *cabinet*~~[department]~~ shall:
 - (a) Promote friendly and cooperative relations between employers and employees;
 - (b) Accumulate and publish industrial statistics and aid and encourage the development of new industries and the expansion of existing industries in Kentucky;
 - (c) Encourage, promote, and develop fair practices both by employers and employees; discourage and eliminate as far as practicable all unfair practices by either; and enforce laws relating to unfair practices;
 - (d) Foster, promote, and develop the welfare of both wage earners and industries in Kentucky;
 - (e) Improve working and living conditions of employees, and advance their opportunities for profitable employment; and
 - (f) Inquire into the causes of accidental injuries and occupational diseases arising out of and in the course of employment, and advance measures for the prevention of accidents and occupational diseases and for the improvement of sanitary conditions in places of employment.

➔Section 1704. KRS 336.050 is amended to read as follows:

The ~~secretary~~~~commissioner~~ in person or by representative shall:

- (1) Investigate and ascertain the wages of all employees employed in this state.
- (2) Enter the place of business or employment of any employer of employees to examine and inspect all books, registers, payrolls, and other records that have a bearing upon the question of wages of employees and to ascertain whether the orders of the ~~secretary~~~~commissioner~~ are complied with; and
- (3) Require from the employer a full and correct statement in writing when the ~~secretary~~~~commissioner~~ or *the secretary's*~~his~~ representative considers it necessary, of the wages paid to all employees in his *or her* employment.
- (4) Upon complaint, prosecute any violation of any of the provisions of any law which it is his *or her* duty to administer or enforce. The ~~secretary~~~~commissioner~~ may enter into reciprocal agreements with the corresponding labor agency or official of any other state to collect in the other state claims assigned to the ~~secretary~~~~commissioner~~. To the extent allowed by a reciprocal agreement, the ~~secretary~~~~commissioner~~ may maintain actions in the courts of another state to collect claims and judgments for wages and assign claims and judgments to the agency or official of another state for collection. If a reciprocal agreement extends a like comity to cases arising in the Commonwealth, the ~~secretary~~~~commissioner~~ may maintain actions in the courts of the Commonwealth to collect claims and judgments for wages arising in the other state in the same manner and to the same extent that actions are authorized when arising in the Commonwealth.

➔Section 1705. KRS 336.060 is amended to read as follows:

- (1) In the conduct of an investigation or hearing, the ~~secretary~~~~commissioner~~ or any authorized deputy may issue subpoenas to compel the attendance of witnesses and parties and the production of books, papers, and records competent and relevant to the matter under investigation; administer oaths; examine witnesses under oath; take the verification or proof of written instruments; and take testimony, depositions, and affidavits to carry out any law over which the ~~cabinet~~~~department~~ has jurisdiction.
- (2) When a person fails to comply with a ~~cabinet~~~~departmental~~ subpoena, the Circuit Court of the county in which the person is found, resides, or has his principal place of business may, upon application of the ~~secretary~~~~commissioner~~, his *or her* authorized representatives, or the party requesting the subpoena, issue an order requiring compliance. In any proceeding brought under this section, the Circuit Court having issued said order of compliance may modify or set aside the subpoena.
- (3) Subpoenas issued under this section may be served by an inspector or other authorized representative of the ~~cabinet~~~~department~~, at any place in the state.

➔Section 1706. KRS 336.070 is amended to read as follows:

The ~~cabinet~~~~department~~ shall make investigations, collect and compile statistics and report on the conditions of industries, labor and unemployment, and upon all matters relating to employer-employee relations and working conditions. Complete permanent records shall be made of all investigations, showing date of examination, condition in which the establishment was found, and changes ordered.

➔Section 1707. KRS 336.080 is amended to read as follows:

The ~~secretary~~~~commissioner~~ may have inspected any place of employment affected by or subject to any law of this state relating to the employment of labor, except places of employment within the jurisdiction of the Department for Natural Resources. In the discharge of his *or her* duties, the ~~secretary~~~~commissioner~~ or *the secretary's*~~his~~ authorized deputy~~]~~ may enter places of employment at any reasonable time. Upon request, the ~~cabinet~~~~department~~ shall furnish to any employer a detailed report of any inspection in his *or her* place of business.

➔Section 1708. KRS 336.090 is amended to read as follows:

- (1) The ~~cabinet~~~~department~~ shall be furnished with a copy of all the laws and rulings of the secretary for health and family services affecting sanitary conditions in places of employment, not covered by the labor laws of the state, and shall report in writing to the state, county, or city health authorities any violations coming under the observation of its inspectors while visiting places of employment in the regular performance of their duty.
- (2) The inspectors shall be furnished with a copy of all the laws and rulings of the ~~Department~~~~Office~~ of Housing, Buildings and Construction relating to fire hazards in places of employment, and shall report in writing to the state, county, or city authorities any violations coming under their observation while visiting places of employment in the regular performance of their duty.

➔Section 1709. KRS 336.100 is amended to read as follows:

Within one (1) month after any employer begins to occupy a factory, workshop, mill or other place of employment he *or she* shall notify the ~~cabinet~~~~department~~, in writing, of such occupancy. If the employer is a corporation, the notice shall state the legal title of the corporation and name of an agent upon whom service of summons can be made; and if a firm, the individual names of members of the firm and its legal title.

➔Section 1710. KRS 336.110 is amended to read as follows:

No person shall refuse or attempt to prevent the admission of any inspector of the ~~cabinet~~~~department~~ to any place which he *or she* is required by law to inspect, at any reasonable hour, or during the working hours of the persons employed there, or interfere with the performance of the official duties of any inspector.

➔Section 1711. KRS 336.120 is amended to read as follows:

The ~~secretary~~~~commissioner~~, with the approval of the Governor, may enter into cooperative agreements with appropriate agencies of the federal government, whereby Acts of Congress and regulations issued in pursuance thereof affecting the employment of labor within this state may be administered, supervised, inspected, and enforced by the ~~cabinet~~~~department~~. Similar agreements may be entered into by the ~~secretary~~~~commissioner~~ with the approval of the Governor, for the cooperation of federal agencies in the enforcement of state laws whose enforcement is vested in the ~~secretary~~~~commissioner~~.

➔Section 1712. KRS 336.140 is amended to read as follows:

The ~~secretary~~~~commissioner~~ may inquire into the causes of strikes, lockouts, and other disputes between employers and employees, and endeavor to effect an amicable settlement. He *or she* may create boards to which disputes between employers and employees may be submitted on request of both the employer and the employees for mediation. Where a joint wage agreement, existing between an employer and any labor organization, provides for the settlement of disputes, any disputes that arise shall be settled by the terms of the contract, and when so settled shall be binding and final upon the ~~secretary~~~~commissioner~~.

➔Section 1713. KRS 336.151 is amended to read as follows:

- (1) It shall be the duty of the ~~secretary~~~~commissioner~~, in order to prevent or minimize interruptions growing out of labor disputes, to assist parties to labor disputes to settle such disputes through conciliation and mediation.
- (2) The ~~secretary~~~~commissioner~~ may proffer his *or her* services in any labor dispute either upon his *or her* own motion or upon the request of one or more of the parties to the dispute. Whenever the ~~secretary~~~~commissioner~~ proffers his *or her* services in any dispute and the services of the ~~secretary~~~~commissioner~~ have been accepted, it shall be the duty of the ~~secretary~~~~commissioner~~ to put himself *or herself* in communication with the parties and to use his *or her* best efforts, by mediation and conciliation, to bring them to agreement.
- (3) If the ~~secretary~~~~commissioner~~ is not able to bring the parties to agreement by mediation within a reasonable time, he *or she* shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lockout, or other coercion. The failure or refusal of either party to agree to any procedure suggested by the ~~secretary~~~~commissioner~~ shall not be deemed a violation of any duty or obligation imposed by KRS 336.151 and 336.152.

➔Section 1714. KRS 336.152 is amended to read as follows:

In order to prevent or minimize interruptions growing out of labor disputes, employees and employers and their representatives~~]~~ shall:

- (1) Exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;
- (2) Whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously;
- (3) In case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the ~~secretary~~~~commissioner~~ under KRS 336.151 and 336.152 for the purpose of aiding in a settlement of the dispute.

➔Section 1715. KRS 336.156 is amended to read as follows:

- (1) Any individual, partnership, association or corporation who represents, advises or acts as consultant or spokesman for any party to labor/management negotiations or arbitration conducted in Kentucky shall be, for the purposes of this section, known as third parties.
- (2) Prior to representing or agreeing to represent any party to any labor/management negotiations or arbitration, all third parties shall notify the ~~secretary~~~~commissioner~~ of such intent.
- (3) The ~~secretary~~~~commissioner~~ shall require third parties to labor/management negotiations or arbitration to report such information as may assist the ~~cabinet~~~~department~~ in determining whether such third party is to be certified to engage in or render advice on negotiations or any matter under arbitration.
- (4) The ~~secretary~~~~commissioner~~ shall offer mediation and arbitration services elsewhere provided by law to all parties to negotiations or arbitration where third party intervention is contemplated.
- (5) The ~~secretary~~~~commissioner~~ shall promulgate regulations to implement the requirements of this section; regulations are to include but not be limited to: definitions, filing requirements, notification procedures and reasonable penalties for failure to comply.
- (6) The provisions of this section shall not apply to full-time employees of any party to negotiations or arbitration nor to any third party licensed to do business in Kentucky under any other section of Kentucky Revised Statutes.
- (7) No third party shall participate in or offer advice on negotiations or arbitration in the Commonwealth of Kentucky until the provisions of this section have been met.

➔Section 1716. KRS 336.160 is amended to read as follows:

The ~~secretary~~~~commissioner~~ shall present biennial reports to the General Assembly giving statistical data relating to employment and unemployment in the state such as the hours and wages of employees, cost of living, the amount of labor required, the estimated number and classification of persons unemployed, the estimated number of persons depending on daily labor for support, the probable chances of increased employment, the number of unemployed depending on public relief, facts relating to industrial accidents, the workers' compensation for industrial injuries, labor disputes, and facts relating to acts of the ~~cabinet~~~~department~~ in the enforcement of the law and its work generally.

➔Section 1717. KRS 336.162 is amended to read as follows:

- (1) There is hereby created the Commonwealth of Kentucky Labor-Management Advisory Council which shall consist of eighteen (18) members. One (1) member of the council shall be the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Labor *Cabinet*, and one (1) member shall be the secretary of economic development, who shall be ex officio nonvoting members of the council. The other members of the council shall be appointed by the Governor for terms of four (4) years and until their successors have been appointed and have qualified.
- (2) Vacancies shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty (60) days of the occurrence of the vacancy.
- (3) In making appointments to the council, the Governor shall appoint eight (8) members representing management and eight (8) members representing labor. The ~~secretary~~~~commissioner~~ of the ~~Department of~~ Labor *Cabinet* shall serve as chairman of the council.
- (4) Upon the expiration of the terms of members appointed in 1978 the next appointments shall be made as follows: Two (2) labor and two (2) management members shall be appointed for a term of one (1) year; two (2) labor and two (2) management members shall be appointed for a term of two (2) years; two (2) labor and two (2) management members shall be appointed for a term of three (3) years; and two (2) labor and two (2) management members shall be appointed for a term of four (4) years. Thereafter all appointments shall be for a term of four (4) years. Such appointments shall be made by the Governor within thirty (30) days after the expiration of the term of any member.
- (5) The council shall meet at least two (2) times each year and at other times on call of the chairman or a majority of the members. Nine (9) members of the council shall constitute a quorum for the transaction of business.
- (6) The council shall be attached to the ~~Department of~~ Labor *Cabinet* for administrative purposes.

➔Section 1718. KRS 336.164 is amended to read as follows:

- (1) The council shall function as an advisory agent of state government and provide leadership and assistance for labor and management in this state, and shall serve to effect improved labor-management relations within the state, and to thereby attract and encourage new and existing industry in this state.
- (2) The council shall not infringe upon or assume the responsibilities, duties or functions of the ~~{Department of}~~ Labor **Cabinet** or Cabinet for Economic Development. The council may make recommendations to the Governor and the Legislature on matters relating to labor-management problems in this state and any other matter it deems necessary.
- (3) Meetings of the council may be held at any location in this state; however the principal office of the council will be located in Frankfort, Kentucky.
- (4) The ~~secretary~~~~{commissioner}~~ of the ~~{Department of}~~ Labor **Cabinet** shall supply necessary staff and supplies to the council as well as funds for reimbursing each member for reasonable and necessary expenses incurred as a result of attending council meetings, and he or she shall act as the executive secretary of the council. The ~~{executive}~~ director of the ~~Division~~~~{Office}~~ of **Employment Standards, Apprenticeship**~~{Labor Management Relations}~~ and Mediation shall be responsible for the coordination of such staff and supplies.

➔Section 1719. KRS 336.165 is amended to read as follows:

The ~~Division~~~~{Office}~~ of **Employment Standards, Apprenticeship**~~{Labor Management Relations}~~ and Mediation shall, subject to appropriation from the General Assembly or funds made available to the ~~division~~~~{office}~~ from any other public or private source, provide grants-in-aid to labor-management relations organizations that include both labor and management representatives. An organization shall use a grant-in-aid for the purpose of improving labor-management relations or improving communications with respect to subjects of mutual interest or concern to labor and management. The ~~division~~~~{office}~~ shall not provide a grant-in-aid to any organization which interferes with collective bargaining in any plant or industry. The ~~Division~~~~{Office}~~ of **Employment Standards, Apprenticeship**~~{Labor Management Relations}~~ and Mediation shall promulgate administrative regulations necessary to carry out this section.

➔Section 1720. KRS 336.1661 is amended to read as follows:

As used in KRS 336.1662 to 336.1664 unless the context clearly requires otherwise:

- (1) "Arbitrator" means a neutral individual to whom the parties involved in a labor dispute submit their differences for a final and binding decision in accordance with the provisions of KRS 336.1662 to 336.1664; and
- (2) "Roster" means the list of labor arbitrators prepared and maintained by the ~~secretary~~~~{commissioner}~~ consisting of persons who meet the criteria set forth in administrative regulations promulgated by the ~~secretary~~~~{commissioner}~~ in accordance with the provisions of KRS Chapter 13A.

➔Section 1721. KRS 336.1662 is amended to read as follows:

- (1) The ~~secretary~~~~{commissioner}~~ shall:
 - (a) Maintain a roster of qualified arbitrators from which arbitrators provided pursuant to this section shall be selected;
 - (b) Refer or provide without charge, upon request of the party or parties to an agreement to arbitrate, a qualified arbitrator or a panel of qualified arbitrators;
 - (c) Assure that the needs of the parties requesting his *or her* services are served. To accomplish this purpose he *or she* may establish through administrative regulations procedures for the preparation of panels or the appointment of arbitrators, including consideration of such factors as background, experience, qualifications, availability, geographical location and the expressed preference of the parties; and
 - (d) Prescribe through administrative regulations a fee schedule and reporting requirements to which arbitrators listed on the roster shall subscribe.
- (2) The ~~secretary~~~~{commissioner}~~ shall not have the power or authority to:
 - (a) Compel parties to arbitrate or agree to arbitration;
 - (b) Enforce an agreement to arbitrate;

- (c) Compel parties to agree to a particular arbitrator;
- (d) Influence, alter or set aside decisions of arbitrators provided pursuant to this section, KRS 336.1663 and 336.1664; or
- (e) Compel, deny or modify payment of compensation to an arbitrator.

➔Section 1722. KRS 336.1663 is amended to read as follows:

- (1) Persons listed on the roster:
 - (a) Shall comply with the rules and regulations promulgated by the ~~secretary~~~~commissioner~~ pertaining to arbitration and ethical standards and procedures; and
 - (b) Who are selected or appointed to hear arbitration matters do not become employees of the ~~Department of Labor~~ **Cabinet** by virtue of their listing, selection or appointment.
- (2) Following selection or appointment, the arbitrator's relationship is solely with the parties, except that arbitrators are subject to the fee schedule and reporting requirements set forth in subsection (1)(d) of KRS 336.1662. Provided that, the ~~secretary~~~~commissioner~~ may appoint in accordance with the provisions of KRS Chapter 18A such persons as he *or she* deems necessary to provide the services described in KRS 336.1662 to 336.1664.

➔Section 1723. KRS 336.1664 is amended to read as follows:

The ~~secretary~~~~commissioner~~ shall in accordance with KRS Chapter 13A promulgate such rules and regulations as he *or she* deems necessary to effectuate the purposes of KRS 336.1662 and 336.1663.

➔Section 1724. KRS 336.210 is amended to read as follows:

- (1) If a plan or custom exists in any industry under which the employees contribute to the payment of any physician or surgeon for furnishing treatment, by deductions from their wages through the office of the employer, a meeting of such employees may be called by any ten (10) of them, as they consider best to bring to the notice of all employees affected that the meeting is to be held. Those at the meeting, by a majority determination, shall authorize two (2) of their number to represent all employees in that plant so affected, and when the management of the plant is notified by the employees of their action, it shall forthwith select two (2) persons to represent it.
- (2) The persons selected shall meet and select a physician or surgeon for the plant. If no selection is made within three (3) days, all questions before them shall be referred to the ~~secretary~~~~commissioner~~ who shall act as umpire. His *or her* decision shall be final. No physician or surgeon shall be employed and paid by deductions from the wages of employees except as provided in this section.
- (3) Any physician or surgeon selected under this section shall be employed for a definite term, not to exceed four (4) years, and may be removed at any time for gross inefficiency or misconduct in the same manner in which he *or she* was selected.

➔Section 1725. KRS 336.985 is amended to read as follows:

- (1) The ~~secretary~~~~commissioner~~, or any person authorized to act in his *or her* behalf, shall initiate enforcement of civil penalties imposed in KRS Chapters 336, 337, and 339.
- (2) Any civil penalty imposed pursuant to KRS Chapter 336, 337, or 339 may be compromised by the ~~secretary~~~~commissioner~~ or *the secretary's*~~his~~ designated representative. In determining the amount of the penalty or the amount agreed upon in compromise, the ~~secretary~~~~commissioner~~, or *the secretary's*~~his~~ designated representative, shall consider the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, the number of times the person charged has been cited, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation.
- (3) If a civil penalty is imposed pursuant to this section, a citation shall be issued which describes the violation which has occurred and states the penalty for the violation. If, within fifteen (15) working days from the receipt of the citation, the affected party fails to pay the penalty imposed, the ~~secretary~~~~commissioner~~, or any person authorized to act in his *or her* behalf, shall initiate a civil action to collect the penalty. The civil action shall be taken in the court which has jurisdiction over the location in which the violation occurred.

➔Section 1726. KRS 336.990 is amended to read as follows:

- (1) Upon proof that any person employed by the ~~{Department of}~~ Labor *Cabinet* as a labor inspector has taken any part in any strike, lockout or similar labor dispute, *the person*~~{he}~~ shall forfeit his *or her* office.
- (2) The following civil penalties shall be imposed, in accordance with the provisions in KRS 336.985, for violations of the provisions of this chapter:
 - (a) Any person who violates KRS 336.110 shall for each offense be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
 - (b) Any corporation, association, organization, or person that violates KRS 336.190 and 336.200 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate offense.
 - (c) Any employer who violates the provisions of KRS 336.220 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation.

➔Section 1727. KRS 337.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
 - (a) "*Commissioner*~~{Executive—director}~~" means the *commissioner*~~{executive—director}~~ of the *Department*~~{Office}~~ of Workplace Standards under the direction and supervision of the *secretary*~~{commissioner}~~ of the ~~{Department of}~~ Labor *Cabinet*;
 - (b) "*Department*~~{Office}~~" means the *Department*~~{Office}~~ of Workplace Standards in the ~~{Department of}~~ Labor *Cabinet*;
 - (c)
 1. "Wages" includes any compensation due to an employee by reason of his *or her* employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;
 2. For the purposes of calculating hourly wage rates for scheduled overtime for professional firefighters, as defined in KRS 95A.210(5), "wages" shall not include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund. For the purposes of calculating hourly wage rates for unscheduled overtime for professional firefighters, as defined in KRS 95A.210(6), "wages" shall include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund;
 - (d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and
 - (e) "Employee" is any person employed by or suffered or permitted to work for an employer.
- (2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:
 - (a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:
 1. Any individual employed in agriculture;
 2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the *commissioner*~~{executive director}~~;
 3. Any individual employed by the United States;

4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;
 5. Any individual classified and given a certificate by the *commissioner*~~[executive director]~~ showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the *commissioner*~~[executive director]~~. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the *commissioner*~~[executive director]~~ and stated in the certificate issued to the person;
 6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars (\$95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his *or her* employer's immediate family;
 7. Any individual employed as a baby-sitter in an employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;
 8. Any individual engaged in the delivery of newspapers to the consumer;
 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the secretary of the Personnel Cabinet shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;
 10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than seven (7) months in any calendar year;
 11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670; or
 12. Any individual whose function is to provide twenty-four (24) hour residential care in his or her own home as a family caregiver and who is approved to provide family caregiver services to an adult with a disability through a contractual relationship with a community mental health-mental retardation board established under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet for Health and Family Services to provide adult foster care.
- (b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;
 - (c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;
 - (d) "Tipped employee" means any employee engaged in an occupation in which he *or she* customarily and regularly receives more than thirty dollars (\$30) per month in tips; and
 - (e) "U.S.C." means the United States Code.
- (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:
 - (a) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars (\$250,000). No public works project, if procured under a single contract and subject to the

requirements of this section, may be divided into multiple contracts of lesser value to avoid compliance with the provisions of this section;

- (b) "Contractor" and "subcontractor" include any superintendent, foreman, or other authorized agent of any contractor or subcontractor who is in charge of the construction of the public works or who is in charge of the employment or payment of the employees of the contractor or subcontractor who are employed in performing the work to be done or being done by the contractor or subcontractor under the particular contract with any public authority;
 - (c) 1. "Locality" shall be determined by the ~~commissioner~~~~executive director~~. The ~~commissioner~~~~executive director~~ may designate more than one (1) county as a single locality, but if more than one (1) county is designated, the multicounty locality shall not extend beyond the boundaries of a state Senatorial district. The ~~commissioner~~~~executive director~~ shall not designate less than an entire county as a locality. If there is not available in the locality a sufficient number of competent, skilled laborers, workmen, and mechanics to efficiently and properly construct the public works, "locality" shall include any other locality nearest the one in which the work of construction is to be performed and from which such available skilled laborers, workmen, and mechanics may be obtained in sufficient number to perform the work; and
 - 2. "Locality" with respect to contracts advertised or awarded by the Transportation Cabinet of this state shall be determined by the secretary of the Transportation Cabinet. The secretary may designate any number of counties as constituting a single locality. The secretary may also designate all counties of the Commonwealth as a single locality, but he *or she* shall not designate less than an entire county as a locality;
 - (d) "Public authority" means any officer, board, or commission of this state, or any political subdivision or department thereof in the state, or any institution supported in whole or in part by public funds, including publicly owned or controlled corporations, authorized by law to enter into any contract for the construction of public works and any nonprofit corporation funded to act as an agency and instrumentality of the government agency in connection with the construction of public works, and any "private provider", as defined in KRS 197.500, which enters into any contract for the construction of an "adult correctional facility", as defined in KRS 197.500; and
 - (e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work, including "adult correctional facilities", as defined in KRS 197.500, constructed under contract with any public authority.
- (4) If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen, and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

➔Section 1728. KRS 337.075 is amended to read as follows:

- (1) A lien may be placed on all property, both real and personal, of an employer who has been assessed civil penalties by the ~~commissioner~~~~executive director~~ for violations of the wages and hours provisions of this chapter, but not before all administrative and judicial appeals have been exhausted. The lien shall be in favor of the ~~Department of~~ Labor *Cabinet* and shall be an amount totaling the unpaid wages and penalties due, together with interest at a rate of twelve percent (12%) per annum from the date the notice of the violation is final, but not before all administrative and judicial appeals have been exhausted. The lien shall be attached to all property and rights to property owned or subsequently acquired by the employer. The ~~commissioner~~~~executive director~~ or *the commissioner's*~~his~~ designee shall record the lien as provided in subsection (2) of this section. The lien shall show the date on which the notice of violation was issued, the date of the violation, the name and last known address of the employer against whom the assessment was made, and the amount of unpaid wages, penalties, and interest. The lien shall be superior to the lien of any mortgage or encumbrance thereafter created and shall continue for ten (10) years from the time of the recording, unless sooner released or otherwise discharged.

- (2) The lien shall be filed in any of the following offices in which the employer owns property or rights to property and any filing fees associated with filing the lien shall be pursuant to KRS 64.012:
- (a) The office of the county clerk of the county in which the defendant employer resides.
 - (b) The office of the county clerk of the county in which the defendant employer has its principal place of business.
 - (c) The office of the county clerk of any county in which the defendant employer has property or an interest in property.

→Section 1729. KRS 337.200 is amended to read as follows:

Except for employers who have been doing business in the state for five (5) consecutive years, every employer engaged in construction work, or the severance, preparation, or transportation of minerals, shall furnish on a form prescribed by the **commissioner**~~[executive director]~~ a performance bond to assure the payment of all wages due from the employer. Surety for the bond shall be an amount of money equal to the employer's gross payroll operating at full capacity for four (4) weeks. Any employee whose wages are secured by a bond may obtain payment of those wages, liquidated damages, and attorney's fees as provided by law on presentation to the **commissioner**~~[executive director]~~ of a final judgment entered by a court of competent jurisdiction. The bond may be terminated, with the approval of the **commissioner**~~[executive director]~~, on submission of the employer's statement, lawfully administered under oath, that the employer has ceased doing business in the state and that all due wages have been paid.

→Section 1730. KRS 337.295 is amended to read as follows:

Regulations issued by the **commissioner**~~[executive director]~~ under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405 may include, but are not limited to, regulations defining and governing bona fide executive, administrative, or professional employees; regulations governing learners, apprentices, workers with disabilities, sheltered workshop employees, and students, regulations governing outside salesmen; bonuses; part-time rates; special pay for special or extra work; allowances as part of the wage rates applicable under KRS 337.275 for board, lodging, and gratuities; other facilities or services furnished by employers and used by employees; and other special items usual in a particular employer-employee relationship.

→Section 1731. KRS 337.310 is amended to read as follows:

All orders or decisions of the **commissioner**~~[executive director]~~ issued or made under KRS 337.020 to 337.405 may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

→Section 1732. KRS 337.320 is amended to read as follows:

- (1) Every employer shall keep a record of:
 - (a) The amount paid each pay period to each employee;
 - (b) The hours worked each day and each week by each employee; and
 - (c) Such other information as the **commissioner**~~[executive director]~~ requires.
- (2) Such records shall be kept on file for at least one (1) year after entry. They shall be open to the inspection and transcript of the **commissioner**~~[executive director]~~ or **the commissioner's**~~[his]~~ authorized representative at any reasonable time, and every employer shall furnish to the **commissioner**~~[executive director]~~ or **the commissioner's**~~[his]~~ authorized representative on demand a sworn statement of them. The **commissioner**~~[executive director]~~ may require the statement to be upon forms prescribed or approved by him **or her**.

→Section 1733. KRS 337.340 is amended to read as follows:

Every employer shall permit the **commissioner**~~[executive director]~~ or **the commissioner's**~~[his]~~ authorized agent to question any of his **or her** employees in the place of employment and during work hours in respect to the wages paid to and the hours worked by such employee or other employees.

→Section 1734. KRS 337.345 is amended to read as follows:

Except as otherwise provided in this section, the **department**~~[office]~~ shall not disclose the identity of any individual filing a complaint or request for inspection under any section of this chapter, except as necessary to enforce, and then only with the specific written permission of the complainant.

Except as otherwise provided in this section, information secured from inspection of the records, or from the transcriptions thereof, or from inspection of the employer's premises by the *commissioner*~~{executive director}~~ or *the commissioner's*~~{his}~~ authorized representatives, shall be held confidential and shall not be disclosed or be open to any person except such information may be made available to:

- (1) Officials concerned with, and for the purposes of administration of the laws relating to matters under the jurisdiction of the *commissioner*~~{executive director}~~;
- (2) Any agency of this or any other state, or any federal agency for the purpose of enforcing KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405;
- (3) To the Wage and Hour and Public Contracts Division of the United States, Department of Labor.

➔Section 1735. KRS 337.385 is amended to read as follows:

- (1) Any employer who pays any employee less than wages and overtime compensation to which such employee is entitled under or by virtue of KRS 337.020 to 337.285 shall be liable to such employee affected for the full amount of such wages and overtime compensation, less any amount actually paid to such employee by the employer, for an additional equal amount as liquidated damages, and for costs and such reasonable attorney's fees as may be allowed by the court. Provided, that if, in any action commenced to recover such unpaid wages or liquidated damages, the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he *or she* had reasonable grounds for believing that his *or her* act or omission was not a violation of KRS 337.020 to 337.285, the court may, in its sound discretion, award no liquidated damages, or award any amount thereof not to exceed the amount specified in this section. Any agreement between such employee and the employer to work for less than the applicable wage rate shall be no defense to such action. Such action may be maintained in any court of competent jurisdiction by any one (1) or more employees for and in behalf of himself, *herself*, or themselves.
- (2) At the written request of any employee paid less than the amount to which he *or she* is entitled under the provisions of KRS 337.020 to 337.285, the *commissioner*~~{executive director}~~ may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. The *commissioner*~~{executive director}~~ in case of suit shall have power to join various claimants against the same employer in one (1) action.

➔Section 1736. KRS 337.420 is amended to read as follows:

- (1) "Employee" means any individual employed by any employer, including but not limited to individuals employed by the state or any of its political subdivisions, instrumentalities, or instrumentalities of political subdivisions.
- (2) "Employer" means a person who has two (2) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and an agent of such a person.
- (3) "Wage rate" means all compensation for employment, including payment in kind and amounts paid by employers for employee benefits, as defined by the *commissioner*~~{executive director}~~ in regulations issued under KRS 337.420 to 337.433 and 337.990(14).
- (4) "Employ" includes to suffer or permit to work.
- (5) "Occupation" includes any industry, trade, business, or branch thereof, or any employment or class of employment.
- (6) "*Commissioner*~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Workplace Standards under the direction and supervision of the *secretary*~~{commissioner}~~ of the ~~{Department of}~~Labor *Cabinet*.
- (7) "Person" includes one (1) or more individuals, partnerships, corporations, legal representatives, trustees, trustees in bankruptcy, or voluntary associations.

➔Section 1737. KRS 337.423 is amended to read as follows:

- (1) No employer shall discriminate between employees in the same establishment on the basis of sex, by paying wages to any employee in any occupation in this state at a rate less than the rate at which he *or she* pays any

employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort and responsibility. Differentials which are paid pursuant to established seniority systems or merit increase systems, which do not discriminate on the basis of sex, shall not be included within this prohibition. Nothing in KRS 337.420 to 337.433 and 337.990(14) shall apply to any employer who is subject to the federal Fair Labor Standards Act of 1938, as amended, when that act imposes comparable or greater requirements than contained in KRS 337.420 to 337.433 and 337.990(14) and when the employer files with the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workplace Standards a statement that the employer is covered by the federal Fair Labor Standards Act of 1938, as amended.

- (2) An employer who is paying a wage differential in violation of KRS 337.420 to 337.433 and 337.990(14) shall not, in order to comply with it, reduce the wage rates of any employee.
- (3) No person shall cause or attempt to cause an employer to discriminate against any employee in violation of KRS 337.420 to 337.433 and 337.990(14).
- (4) No employer may discharge or discriminate against any employee by reason of any action taken by such employee to invoke or assist in any manner the enforcement of KRS 337.420 to 337.433 and 337.990(14).

➔Section 1738. KRS 337.425 is amended to read as follows:

- (1) For this purpose, the ~~commissioner~~~~executive director~~, or *the commissioner's*~~his~~ authorized representative, may enter the place of employment of any employer to inspect and copy payrolls and other employment records, to compare character of work and operations on which persons employed by him *or her* are engaged, to question such persons, and to obtain other information necessary to the administration and enforcement of KRS 337.420 to 337.433 and 337.990(14).
- (2) The ~~commissioner~~~~executive director~~ or *the commissioner's*~~his~~ authorized representative may examine witnesses under oath, and require by subpoena the attendance and testimony of witnesses and the production of any documentary evidence relating to the subject matter of any investigation undertaken pursuant to KRS 337.420 to 337.433 and 337.990(14). If a person fails to attend, testify or produce documents under or in response to a subpoena, the Circuit Court in the judicial circuit where the hearing is being held, on application of the ~~commissioner~~~~executive director~~ or *the commissioner's*~~his~~ representative, may issue an order requiring the person to appear before the ~~commissioner~~~~executive director~~ or *the commissioner's*~~his~~ authorized representative, or to produce documentary evidence, and any failure to obey the order of the court may be punished by the court as contempt.
- (3) The ~~commissioner~~~~executive director~~ may endeavor to eliminate pay practices unlawful under KRS 337.420 to 337.433 and 337.990(14) by informal methods of conference, conciliation and persuasion, and supervise the payment of wages owing to any employee under KRS 337.420 to 337.433 and 337.990(14).
- (4) The ~~commissioner~~~~executive director~~ may issue regulations not inconsistent with the purpose of KRS 337.420 to 337.433 and 337.990(14), necessary or appropriate to carry out its provisions.

➔Section 1739. KRS 337.427 is amended to read as follows:

- (1) Any employer who violates the provisions of KRS 337.423 shall be liable to the employee or employees affected in the amount of their unpaid wages, and in instances of willful violation in employee suits under subsection (2) of this section, up to an additional equal amount as liquidated damages.
- (2) Action to recover the liability may be maintained in any court of competent jurisdiction by any one (1) or more employees for and in behalf of himself, *herself*, or themselves and other employees similarly situated. The court in the action shall, in cases of violation in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.
- (3) An agreement by any employee to work for less than the wage to which the employee is entitled under KRS 337.420 to 337.433 and 337.990(14) shall not be a bar to any such action, or to a voluntary wage restitution of the full amount due under KRS 337.420 to 337.433 and 337.990(14).
- (4) At the written request of any employee claiming to have been paid less than the wage to which he may be entitled under KRS 337.420 to 337.433 and 337.990(14), the ~~commissioner~~~~executive director~~ may bring any legal action necessary in behalf of the employee to collect the claim for unpaid wages. The ~~commissioner~~~~executive director~~ shall not be required to pay the filing fee, or other costs, in connection with the action. The ~~commissioner~~~~executive director~~ shall have power to join various claims against the employer in one (1) cause of action.

- (5) In proceedings under this section, the court may order other affirmative action as appropriate, including reinstatement of employees discharged in violation of KRS 337.420 to 337.433 and 337.990(14).
- (6) The **commissioner**~~executive director~~ may on his *or her* own motion petition any court of competent jurisdiction to restrain violations of KRS 337.423, and petition for such affirmative relief as the court may deem appropriate, including restoration of unpaid wages and reinstatement of employees, consistent with the purpose of KRS 337.420 to 337.433 and 337.990(14).

➔Section 1740. KRS 337.505 is amended to read as follows:

For the purpose of KRS 337.505 to 337.550, the term "prevailing wage" for each classification of laborers, workmen, and mechanics engaged in the construction of public works within the Commonwealth of Kentucky, means the sum of:

- (1) The basic hourly rate paid or being paid subsequent to the **commissioner's**~~executive director's~~ most recent wage determination to the majority of laborers, workmen, and mechanics employed in each classification of construction upon reasonably comparable construction in the locality where the work is to be performed; such rate shall be determined by the **commissioner**~~executive director~~ in accordance with paragraphs (a), (b), and (c) of subsection (3) of KRS 337.520; in the event that there is not a majority paid at the same rate, then the basic hourly rate of pay shall be the average basic hourly rate which shall be determined by adding the basic hourly rates paid to all workers in the classification and dividing by the total number of such workers;~~;~~ and
- (2) An additional amount per hour equal to the hourly rate of contribution irrevocably made or to be made by an employer on behalf of employees within each classification of construction to a trustee or to a third person pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the employees affected, for the following fringe benefits: medical or hospital care, pensions on retirement, death compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, defraying costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the employer is not required by other federal, state or local law to provide any of such benefits: provided, said additional amount may, at the discretion of the employer, be paid either in cash to the employee or by contributions for fringe benefits, or partly in cash and partly by such contributions, it being the intention of this subsection to recognize fringe benefits as a part of the prevailing wage rate where made in accordance with this subsection.

➔Section 1741. KRS 337.510 is amended to read as follows:

- (1) Before advertising for bids or entering into any contract for construction of public works, every public authority shall notify the **department**~~office~~ in writing of the specific public work to be constructed, and shall ascertain from the **department**~~office~~ the prevailing rates of wages for each classification of laborers, workmen, and mechanics for the class of work called for in the construction of such public works in the locality where the work is to be performed. This schedule of the prevailing rate of wages shall include a statement that it has been determined in accordance with the provisions of KRS 337.505 to 337.550 and shall be attached to and made part of the specifications for the work and shall be printed on the bidding blanks and made a part of every contract for the construction of public works.
- (2) The public authority advertising and awarding the contract shall cause to be inserted in the proposal and contract a stipulation to the effect that not less than the prevailing hourly rate of wages as determined by the **commissioner**~~executive director~~ shall be paid to all laborers, workmen, and mechanics performing work under the contract. It shall also require in all the contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by contract. It shall be the duty of the public authority awarding the contract, and its agents and officers, to take cognizance of all complaints of all violations of the provisions of KRS 337.505 to 337.550 committed in the course of the execution of the contract, and when making payments to the contractor becoming due under the contract, to withhold, and retain therefrom all sums and amounts due and owing as a result of any violation thereof. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding authority, on account of the subcontractor's failure to comply with the terms thereof and if payment has already been made to him *or her*, the contractor may recover from him *or her* the amount of the penalty in a suit at law.

➔Section 1742. KRS 337.512 is amended to read as follows:

- (1) No public official, authorized to contract for or construct public works shall fail, before advertising for bids or undertaking such construction, to ascertain from the **commissioner**~~{executive director}~~ the prevailing rates of wages as provided in KRS 337.505 to 337.550.
- (2) No member of a public authority authorized to contract for or construct public works shall vote for the award of any contract for the construction of such public works, or vote for the disbursement of any funds on account of the construction of such public works, unless such public authority has first ascertained from the **commissioner**~~{executive director}~~ the prevailing rates of wages of laborers, workmen, and mechanics for the classes of work called for by such public works in the locality where the work is to be performed and the determination of prevailing wages has been made a part of the proposal specifications and contract for such public works.

➔Section 1743. KRS 337.520 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall make initial determinations and current revisions of schedules of rates of prevailing wages, of the amount of fringe benefits included as defined in KRS 337.505, and the number of hours applicable. The **commissioner**~~{executive director}~~ may promulgate administrative regulations to carry out the provisions and purposes of KRS 337.505 to 337.550 and to prevent their circumvention or evasion. The administrative regulations shall not include a provision that each contractor and subcontractor furnish a sworn affidavit with respect to the wages paid each employee. No administrative regulation shall be issued by the **commissioner**~~{executive director}~~ except upon reasonable notice to, and opportunity to be heard by, any interested person.
- (2) The **commissioner**~~{executive director}~~ shall require the filing of all wage contracts of all laborers, workmen, and mechanics in this state which have been agreed to between bona fide organizations of labor and an employer or associations of employers. The contracts shall be filed within ten (10) days after they are signed.
- (3) The **commissioner**~~{executive director}~~ shall have the authority to determine schedules and current revisions of the rates of prevailing wages as defined in KRS 337.505, but in no case shall the **commissioner**~~{executive director}~~ determine wages to be paid for a legal day's work to laborers, workmen, and mechanics engaged in the construction of public works at less than the prevailing wages paid in the localities. The **commissioner**~~{executive director}~~, in determining what rates of wages prevail, shall consider the following criteria:
 - (a) Wage rates paid on previous public works constructed in the localities. In considering the rates, the **commissioner**~~{executive director}~~ shall ascertain, insofar as practicable, the names and addresses of the contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed on each project, and the respective wage rates paid each worker who was engaged in the construction of these projects.
 - (b) Wage rates previously paid on reasonably comparable private construction projects constructed in the localities. In considering the rates the **commissioner**~~{executive director}~~ shall ascertain, insofar as practicable, the names and addresses of the contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed on each project, and the respective wage rates paid each worker who was engaged in the construction of these projects.
 - (c) Collective bargaining agreements or understandings between bona fide organizations of labor and their employers located in the Commonwealth of Kentucky which agreements apply or pertain to the localities in which the public works are to be constructed.
- (4) The wage rates to be used by the public authority in a contract for the construction of public works shall be the prevailing wage as of the date the public works project is advertised and offered for bid. If contracts are not awarded within ninety (90) days after the date of offering for bid, the public authority shall ascertain the prevailing rate of wages from the **department**~~{office}~~ before the contract is awarded. The schedule or scale of prevailing wages shall be incorporated in and made a part of each contract.
- (5) The **commissioner**~~{executive director}~~ may promulgate administrative regulations authorizing the employment of apprentices and trainees in skilled trades at wages lower than the applicable prevailing wage.

➔Section 1744. KRS 337.522 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ or **the commissioner's**~~{his}~~ authorized representative shall conduct a public hearing for the purpose of making initial determinations or current revisions of a prevailing wage

schedule for the construction of public works pertaining to a locality. The **commissioner**~~{executive director}~~ shall, within sixty (60) days of the hearing, publish his *or her* wage determination. The hearing shall be conducted in the locality after notice has been given as provided in subsection (3) of this section. The **commissioner**~~{executive director}~~ shall not be required to utilize this section in any locality where the United States Department of Labor has issued a prevailing wage under the Davis-Bacon or related acts, in which case, the **commissioner**~~{executive director}~~ may adopt the wage schedule and any modifications issued by the United States Department of Labor and published in the Federal Register.

- (2) A public authority or any interested person may request and shall be granted an additional hearing solely for the purpose of having considered a review of the **commissioner's**~~{executive director's}~~ determination of the prevailing wage schedule for the construction of public works in the locality; after notice has been given as provided in subsection (3) of this section, the hearing shall be conducted in the locality by a prevailing wage review board consisting of one (1) member representing employers in the construction industry, one (1) member representing labor in the construction industry, and one (1) member appointed by the public authority requesting the hearing. The member appointed by the public authority shall reside in the locality in which the public works are to be constructed. The members of the board representing employers in the construction industry and labor in the construction industry shall be appointed for periods of not more than four (4) years by the Governor from a list of prospective members recommended by bona fide associations representing the construction industry and bona fide labor organizations representing workers employed in the construction industry, and the members shall serve on the board for all hearings during their tenure. Prevailing wage review boards shall have the authority to revise prevailing wage schedules for the construction of public works; however, the revisions shall be governed by the same criteria and regulations governing wage determinations of the **commissioner**~~{executive director}~~. A revision of a prevailing wage schedule for the construction of public works shall require a vote of a majority of the members. The members of a prevailing wage review board shall receive their actual necessary expenses incurred in carrying out their duties and the expenses shall be paid out of the general fund of the Commonwealth of Kentucky.
- (3) Notice of hearings as required in subsections (1) and (2) of this section shall be given by advertising one (1) time in the newspaper having the largest circulation in the locality, and the advertisement shall be run not less than ten (10) nor more than twenty (20) days prior to the date of the hearing. The advertisement shall set forth all pertinent information of the hearing regarding the time, place, and purpose of the hearing.
- (4) The prevailing wage review boards shall be attached to the ~~{Department of}~~ Labor **Cabinet** for administrative purposes.

➔Section 1745. KRS 337.524 is amended to read as follows:

If a review of the **commissioner's**~~{executive director's}~~ determination is requested pursuant to subsection (2) of KRS 337.522, the wage rates to be used by the public authority in a contract for the construction of public works advertised during the pendency of the proceedings provided in subsection (2) of KRS 337.522, or on appeal pursuant to KRS 337.525, shall be the latest rate determined by the **commissioner**~~{executive director}~~ and which is being reviewed. The public authority shall place in its advertisement, bid documents and contracts, a statement to the effect that the prevailing wage rates contained therein are presently being reviewed and subject to change by appropriate reviewing authorities, and if said rates are modified or altered, the contractors shall be responsible for the payment of the wage rates finally determined. Should any rates be increased from that determined by the **commissioner**~~{executive director}~~, the contractor may recover from the public authority any additional sums of money which he *or she* may be required to pay as a result of said wage modification or alteration. Should any rates be decreased from that determined by the **commissioner**~~{executive director}~~, the public authority shall be barred from any recovery of the difference previously earned by or paid to employees.

➔Section 1746. KRS 337.525 is amended to read as follows:

- (1) Any person or party claiming to be aggrieved by any final determination of prevailing wages by the prevailing wage review board may appeal to the Franklin Circuit Court. The appeal shall state fully the grounds upon which an appeal is sought and assign all errors relied upon. A copy of the appeal and summons shall be served upon the **Department**~~{Office}~~ of Workplace Standards and the members of the prevailing wage review board and within thirty (30) days after such service, or within such further time as the court may allow, the **department**~~{office}~~ on behalf of the prevailing wage review board shall submit to the court a certified copy of all matters considered by the prevailing wage review board from which it made its final wage determination.

- (2) No new or additional evidence may be introduced in the Franklin Circuit Court except as to the fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, ruling or award. The court shall otherwise hear the appeal upon the record as certified by the **Department**~~{Office}~~ of Workplace Standards and shall dispose of same in summary manner. The court shall not substitute its judgment for that of the prevailing wage review board, the court's review being limited to determining whether or not:
- (a) The prevailing wage review board acted without or in excess of its powers;
 - (b) The prevailing wage review board's final wage determination was procured by fraud;
 - (c) The determination is not in conformity with the provisions of this chapter;
 - (d) The determination is clearly erroneous on the basis of the information contained in the record; or
 - (e) The final wage determination is arbitrary or capricious.
- (3) The Franklin Circuit Court thereafter shall enter an order affirming or setting aside the prevailing wage review board's wage determination. The court may also remand the case to the prevailing wage review board for further proceedings.
- (4) An appeal may be taken to the Court of Appeals from any decision of the Franklin Circuit Court under this section.

➔Section 1747. KRS 337.530 is amended to read as follows:

- (1) Where a prevailing rate of wages has been determined and prescribed, the contract executed between a public authority and the successful bidder or contractor shall contain a provision requiring the successful bidder and all of his **or her** subcontractors to pay not less than the rate of wages so established. The successful bidder or contractor and all subcontractors shall strictly comply with these provisions of the contract.
- (2) All contractors and subcontractors required by KRS 337.505 to 337.550 and by contracts with any public authority to pay not less than the prevailing rate of wages, shall pay such wages in legal tender without any deductions. These provisions shall not apply where the employer and employee enter into an agreement in writing at the beginning of or during any term of employment covering deductions for food, sleeping accommodations or any similar item if this agreement is submitted by the employer to the **department**~~{office}~~ and is approved by the **department**~~{office}~~ as fair and reasonable. All contractors and subcontractors affected by the terms of KRS 337.505 to 337.550 shall keep full and accurate payroll records covering all disbursements of wages to their employees to whom they are required to pay not less than the prevailing rate of wages. Such records shall indicate the hours worked each day by each employee in each classification of work and the amount paid each employee for his **or her** work in each classification. They shall be open to the inspection and transcript of the **commissioner**~~{executive director}~~ or **the commissioner's**~~{his}~~ authorized representative at any reasonable time, and shall be in compliance with all regulations issued by the **commissioner**~~{executive director}~~. These payroll records shall not be destroyed or removed from this state for one (1) year following the completion of the improvement in connection with which they are made.
- (3) Each contractor and subcontractor subject to the provisions of KRS 337.505 to 337.550 shall post and keep posted in a conspicuous place or places at the site of the construction work a copy or copies of prevailing rates of wages and working hours as prescribed in the contract with the public authority, showing the rates of wages prescribed and the working hours for each class of laborers, workmen, and mechanics employed by him **or her** in the work of constructing the public works provided for in the contract with the public authority.
- (4) Every employer shall permit the **commissioner**~~{executive director}~~ or **the commissioner's**~~{his}~~ authorized agents to question any of his **or her** employees at the site of the public work and during work hours in respect to the wages paid, hours worked and duties of such employee or other employees.

➔Section 1748. KRS 337.548 is amended to read as follows:

If it is found that a public authority has not complied with KRS 337.505 to 337.550, the **commissioner**~~{executive director}~~ shall give notice thereof in writing to such public authority. Sufficient time may be allowed for compliance therewith as the **commissioner**~~{executive director}~~ deems necessary. After the expiration of the time prescribed in the notice, the **department**~~{office}~~ shall at the earliest possible time bring suit in the Circuit Court of the county in which such public body is located to enjoin the award of such contract for a public works or any further work or payments thereunder if the contract has been awarded until the requirements of such notice are complied with. The court may issue a temporary restraining order without notice to the defendant in such action. Upon final hearing thereof, if the court is satisfied that the requirements of the notice by the **department**~~{office}~~ to the defendant were not unreasonable

or arbitrary, it shall issue an order enjoining the defendant from awarding such contract for a public works or any further work or payments thereunder if the contract has been awarded until the notice is complied with. Such injunction shall continue operative until the court is satisfied that the requirements of the notice have been complied with and the court shall have and exercise with respect to the enforcement of such injunctions all the power invested in it in other similar cases. Both the plaintiff and the defendant in such action have the same rights of appeal as are provided by law in other injunction actions.

➔Section 1749. KRS 337.550 is amended to read as follows:

- (1) Any laborer, workman, or mechanic employed on public works may file a complaint of any violation of any provision of KRS 337.505 to 337.550 with the ~~department~~~~office~~. The ~~department~~~~office~~ shall assist him *or her* in the collection of claims of wages due him *or her* and shall also assist to the fullest extent in the administration and enforcement of KRS 337.505 to 337.550. The ~~commissioner~~~~executive director~~ shall investigate and enforce the provisions of KRS 337.505 to 337.550 to the fullest and shall bring all actions to collect wages due any laborer, workman, or mechanic and shall take action against any contractor or subcontractor to restrain violations of KRS 337.505 to 337.550. If any contractor or subcontractor is found to be in violation of any provisions of KRS 337.505 to 337.550, then the ~~commissioner~~~~executive director~~ shall inform the secretary for finance and administration of the Commonwealth of Kentucky, and the secretary for finance and administration shall hold such contractor or subcontractor ineligible to bid on public works until such time as that contractor or subcontractor is in substantial compliance as determined by the ~~commissioner~~~~executive director~~.
- (2) A laborer, workman, or mechanic may by civil action recover any sum due him *or her* as the result of the failure of his *or her* employer to comply with the terms of KRS 337.505 to 337.550. The ~~commissioner~~~~executive director~~ may also bring any legal action necessary to collect claims on behalf of any or all laborers, workmen, or mechanics. No employer shall take any punitive measure or action against an employee because such employee has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under KRS 337.505 to 337.550. The ~~commissioner~~~~executive director~~ shall not be required to pay the filing fee, or other costs, in connection with such action.

➔Section 1750. KRS 337.990 is amended to read as follows:

The following civil penalties shall be imposed, in accordance with the provisions in KRS 336.985, for violations of the provisions of this chapter:

- (1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. Each failure to pay an employee the wages when due him under KRS 337.020 shall constitute a separate offense.
- (2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense and shall make full payment to the employee by reason of the violation. Each failure to pay an employee the wages as required by KRS 337.055 shall constitute a separate offense.
- (4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) and shall also be liable to the affected employee for the amount withheld, plus interest at the rate of ten percent (10%) per annum.
- (5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense and shall make full payment to the employee by reason of the violation.
- (6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense and each day that the failure continues shall be deemed a separate offense.
- (7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the ~~commissioner~~~~executive director~~ or *the commissioner's*~~his~~ authorized representative in the performance of his *or her* duties under KRS 337.295, or fails to keep and

preserve any records as required under KRS 337.320 and 337.325, or falsifies any record, or refuses to make any record or transcription thereof accessible to the **commissioner**~~[executive director]~~ or **the commissioner's**~~[his]~~ authorized representative shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). A civil penalty of not less than one thousand dollars (\$1,000) shall be assessed for any subsequent violation of KRS 337.285(4) to (9) and each day the employer violates KRS 337.285(4) to (9) shall constitute a separate offense and penalty.

- (8) Any employer who pays or agrees to pay wages at a rate less than the rate applicable under KRS 337.275 and 337.285, or any wage order issued pursuant thereto shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (9) Any employer who discharges or in any other manner discriminates against any employee because the employee has made any complaint to his **or her** employer, to the **commissioner**~~[executive director]~~, or to **the commissioner's**~~[his]~~ authorized representative that he **or she** has not been paid wages in accordance with KRS 337.275 and 337.285 or regulations issued thereunder, or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to KRS 337.385, or because the employee has testified or is about to testify in any such proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (11) Any person who violates KRS 337.530 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (12) Any contractor or subcontractor who violates any wage or work hours provision in any contract under KRS 337.505 to 337.550 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense, and the contractor or subcontractor shall make full restitution to all employees to whom he **or she** is legally indebted by reason of said violation. The prime contractor shall be jointly and severally liable with a subcontractor for wages due an employee of the subcontractor. For a flagrant or repeated violation the offending contractor or subcontractor shall be barred from bidding on, or working on, any and all public works contracts, either in his **or her** name or in the name of any other company, firm, or other entity in which he **or she** might be interested for a period of two (2) years from the date of the last offense. Each day of violation shall constitute a separate offense, and the violation as affects each individual worker shall constitute a separate offense.
- (13) Any public authority, public official, or member of a public authority who willfully fails to comply or to require compliance with KRS 337.505 to 337.550 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. Each day of violation shall constitute a separate offense. If a public authority, public official or member of a public authority willfully or negligently fails to comply with KRS 337.505 to 337.550 and the failure results in damages, injury or loss to any person, the public authority, public official, or member of a public authority may be held liable in a civil action.
- (14) A person shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) when that person discharges or in any other manner discriminates against an employee because the employee has:
 - (a) Made any complaint to his **or her** employer, the **commissioner**~~[executive director]~~, or any other person; or
 - (b) Instituted, or caused to be instituted, any proceeding under or related to KRS 337.420 to 337.433; or
 - (c) Testified, or is about to testify, in any such proceedings.

➔Section 1751. KRS 338.015 is amended to read as follows:

As used in this chapter:

- (1) "Employer" shall mean any entity for whom a person is employed except those employers excluded in KRS 338.021.
- (2) "Employee" shall mean any person employed except those employees excluded in KRS 338.021.

- (3) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."
- (4) "Occupational safety and health hazard" means any practice or condition in a place of employment which may be deemed detrimental to the safety and health of employees.
- (5) "Occupational injury or illness" means any abnormal condition or disorder of an employee caused by exposure to factors associated with his *or her* employment.
- (6) "Board" means the Kentucky Occupational Safety and Health Standards Board established under this chapter.
- (7) "~~Commissioner~~~~[Executive director]~~" means the *commissioner*~~[executive director]~~ of the *Department*~~[Office]~~ of *Workplace Standards*~~[Occupational Safety and Health]~~ under the direction and supervision of the *secretary*~~[commissioner]~~ of the ~~[Department of]~~Labor *Cabinet*.
- (8) "Review commission" means the Kentucky Occupational Safety and Health Review Commission established under this chapter.
- (9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.
- (10) The term "established federal standard" means any operative occupational safety and health standard established by any agency of the United States government.
- (11) "~~Department~~~~[Office]~~" means the *Department*~~[Office]~~ of *Workplace Standards*~~[Occupational Safety and Health]~~.
- (12) "~~Secretary~~~~[Commissioner]~~" means the *secretary*~~[commissioner]~~ of the ~~[Department of]~~Labor *Cabinet*.

➔Section 1752. KRS 338.041 is amended to read as follows:

- (1) ~~[There is hereby created in]~~The Department of *Workplace Standards in the Labor Cabinet*~~[an Office of Occupational Safety and Health. This office shall consist of a Division of Compliance and a Division of Education and Training. This office]~~ shall administer all matters pertaining to occupational safety and occupational health~~[and shall be under the supervision of an executive director appointed by the secretary of the Environmental and Public Protection Cabinet with the approval of the Governor].~~
- (2) The *department*~~[office]~~ may require the assistance of other state agencies and may enter into agreements with other state agencies and political subdivisions of the Commonwealth for the administration of this chapter.
- (3) The *department*~~[office]~~ may enter into an agreement with the Cabinet for Health and Family Services and other appropriate departments or agencies to conduct research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems in the administration of this chapter.

➔Section 1753. KRS 338.042 is amended to read as follows:

Effective July 1, 1994, the *Department*~~[Kentucky Office]~~ of *Workplace Standards*~~[Occupational Safety and Health]~~ shall be expanded by sixteen (16) employees. These additional staff shall assist employers in their efforts to improve safety and health practices in their workplaces; to assure compliance with industrial health and safety regulations; and to expedite the processing of contested citations and appeals. These additional expenditures shall be financed by funds collected for the special fund pursuant to KRS 342.122.

➔Section 1754. KRS 338.051 is amended to read as follows:

- (1) There is hereby established the Kentucky Occupational Safety and Health Standards Board consisting of the *secretary*~~[commissioner]~~ and twelve (12) members equally representing industry, labor, agriculture, and the safety and health profession. The members shall be appointed by the Governor for terms of three (3) years and until their successors are appointed and qualified, from lists of nominees submitted by bona fide associations representative of industry, labor, agriculture, and the safety and health profession. Members shall receive twenty-five dollars (\$25) per day for attending each meeting and shall be reimbursed for actual expenses

incurred in carrying out their duties. The ~~secretary~~~~commissioner~~ shall act as chairman of the board. No member of the board may have a concurrent term on the review commission.

- (2) The board shall hold annual meetings and additional meetings as needed. A majority of the board constitutes a quorum for the transaction of business.
- (3) The board shall adopt and promulgate occupational safety and health rules, regulations, and standards, except that the chairman of the board may adopt established federal standards without board approval if necessary to meet federal time requirements. The board shall secure all expertise, testimony, and evidence necessary to accomplish the purposes of this chapter.
- (4) The board shall be attached to the ~~Department of~~ Labor *Cabinet* for administrative purposes.

➔Section 1755. KRS 338.071 is amended to read as follows:

- (1) There is hereby established the Kentucky Occupational Safety and Health Review Commission consisting of three (3) members appointed by the Governor on the basis of their experience and competence in the fields of occupational safety and health. The members selected shall be qualified to represent the interest of employers, employees, and the occupational safety and health profession with a minimum of five (5) years experience in their respective fields.
- (2) Members of the review commission shall serve terms of four (4) years and until their successors are appointed.
- (3) The review commission shall hold monthly meetings and additional meetings as deemed necessary. A majority of the review commission constitutes a quorum for the transaction of business. Special meetings of the review commission may be called upon reasonable notice by the commissioner or by any two (2) members of the commission.
- (4) The review commission shall hear and rule on appeals from citations, notifications, and variances issued under the provisions of this chapter and adopt and promulgate rules and regulations with respect to the procedural aspect of its hearings.
- (5) The review commission shall have the authority to employ a secretary, hearing officers, and other employees as may become necessary.
- (6) The chairman of the commission and each of the other two (2) members shall be paid a salary fixed under KRS 64.640.
- (7) The secretary of the commission shall be paid a salary to be fixed by the commission, with the approval of the Governor. The commission shall fix the compensation of all its other employees.
- (8) The commissioners and the secretary and employees of the commission are entitled to all necessary expenses incurred in traveling on business of the commission.
- (9) The commission shall be attached to the *Labor*~~Environmental and Public Protection~~ Cabinet~~Office of the Secretary~~ for administrative purposes only.

➔Section 1756. KRS 338.101 is amended to read as follows:

- (1) In order to carry out the purposes of this chapter, the ~~commissioner~~~~executive director~~ or *the commissioner's*~~his~~ authorized representative shall have the authority:
 - (a) To enter without delay and advance notice any place of employment during regular working hours and at other reasonable times in order to inspect such places, question privately any such employer, owner, operator, agent, employee, or employee's representative, and investigate such facts, conditions, practices, or matters deemed appropriate to determine the cause of, or to prevent the occurrence of, any occupational injury or illness.
 - (b) To administer oaths, take depositions, conduct hearings, take photographs, review any and all accident and illness records, and secure any other evidence deemed necessary to evaluate any occupational safety and health hazard in order to ascertain whether any person has violated any provision of this chapter or regulations issued pursuant thereto.
- (2) If an employer refuses such entry, then the ~~commissioner~~~~executive director~~ may apply to the Franklin Circuit Court for an order to enforce the right of entry.

➔Section 1757. KRS 338.111 is amended to read as follows:

A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the representative of the **commissioner**~~{executive director}~~ during the physical inspection of any place of employment as authorized by KRS 338.101. If there is no authorized employee representative available at the time of inspection, the **commissioner's**~~{executive director's}~~ representative shall consult with a reasonable number of employees concerning matters of occupational safety and health in the place of employment. The representative of the **commissioner**~~{executive director}~~ shall be in full charge of the inspection, including the right to limit the number of representatives on the inspection team.

➔Section 1758. KRS 338.121 is amended to read as follows:

- (1) Any employee, or representative of employees, who believes that a violation of an occupational safety and health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the **commissioner**~~{executive director}~~ of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or **the employer's**~~{his}~~ agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his **or her** name and the names of individual employees referred to therein shall not appear in such copy.
- (2) If upon receipt of notification, reasonable grounds are believed to exist for such violation or danger, then a special inspection shall be made in accordance with the provisions of KRS 338.101 and 338.111. If no reasonable grounds are believed to exist for such violation of danger, then the **commissioner**~~{executive director}~~ shall notify the employee or the representative of the employees in writing of such determination.
- (3)
 - (a) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself **or herself** or others of any right afforded by this chapter; and
 - (b) Any employee who believes that he **or she** has been discharged or otherwise discriminated against by any person in violation of this subsection may, within a reasonable time after such violation occurs, file a complaint with the **commissioner**~~{executive director}~~ alleging such discrimination. Upon receipt of such complaint, the **commissioner**~~{executive director}~~ shall cause such investigation to be made as deemed appropriate. If upon such investigation, the **commissioner**~~{executive director}~~ determines that the provisions of this subsection have been violated, he **or she** shall issue a citation to the employer which may be challenged or contested in accordance with the provisions of this chapter and the review commission may order all appropriate relief including rehiring and reinstatement of the employee to his **or her** former position with back pay. Upon an initial determination by the **commissioner**~~{executive director}~~ that an employee has been discharged by an employer in violation of subsection (3)(a) of this section, the **secretary**~~{commissioner}~~ of the ~~{Department of}~~Labor **Cabinet** may order reinstatement of the employee pending a final determination and order of the review commission.

➔Section 1759. KRS 338.131 is amended to read as follows:

- (1) Whenever an authorized representative of the **commissioner**~~{executive director}~~ determines that conditions in any place of employment are of an imminent danger which reasonably could be expected to cause death or serious physical harm, then he **or she** shall order the danger to be immediately abated. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.
- (2) In the event the danger is not abated immediately, the **commissioner**~~{executive director}~~ shall apply to the Franklin Circuit Court for an order to restrain such condition or practice.

➔Section 1760. KRS 338.133 is amended to read as follows:

- (1) If in the discretion of the **commissioner**~~{executive director}~~ it is believed that a place of employment, equipment, or practice is substantially dangerous to employees, or other persons, then the

commissioner~~{executive director}~~ may apply to the Circuit Court in the county wherein the condition is located for a temporary injunction restraining the operation or segment of operation.

- (2) The Circuit Court shall hear the application for the temporary injunction as soon as possible, irrespective of the regular court calendar.
- (3) The **commissioner**~~{executive director}~~ shall not be required to post any bond or pay any court costs or fees with the filing of the application.

➔Section 1761. KRS 338.141 is amended to read as follows:

- (1) If upon inspection an authorized representative of the **commissioner**~~{executive director}~~ finds that an employer has violated any requirement of this chapter, a citation shall be issued to the employer. Each citation shall describe the alleged violation, establish the time period permitted for correction by fixing a reasonable date by which the alleged violation shall be eliminated, and propose the civil penalty to be paid. If within fifteen (15) working days from the receipt of the citation an employer, employee, or representative of the employees fails to notify the **commissioner**~~{executive director}~~ that he *or she* intends to contest the citation, then the citation shall be deemed a final order of the review commission and not be subject to review by any court or agency.
- (2) The **commissioner**~~{executive director}~~, upon determination that an employer is acting in good faith to correct the cited violation, may grant additional time for compliance upon application by the employer.
- (3) If an employer, employee, or representative of the employees notifies the **commissioner**~~{executive director}~~ that he *or she* intends to challenge a citation issued under this section or under KRS 338.131, the **commissioner**~~{executive director}~~ shall notify the review commission of such notification and the review commission shall afford an opportunity for a hearing.
- (4) In the case of any review proceedings initiated by an employer, employee, or representative of the employees under this chapter, the time period permitted for correction of cited violations may be extended by the review commission.

➔Section 1762. KRS 338.153 is amended to read as follows:

- (1) Any affected employer may apply to the **commissioner**~~{executive director}~~ for a rule or order for a variance from a standard promulgated under this chapter. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The **commissioner**~~{executive director}~~ shall issue such rule or order if he *or she* determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his *or her* employees which are as safe and healthful as those which would prevail if he *or she* complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he *or she* must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the **commissioner**~~{executive director}~~ of his *or her* own motion, in the manner prescribed for its issuance under this subsection at any time after six (6) months from its issuance.
- (2) (a) Any employer may apply to the **commissioner**~~{executive director}~~ for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of paragraph (b) of this subsection and establishes that:
 1. He *or she* is unable to comply with the standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;
 2. He *or she* is taking all available steps to safeguard his *or her* employees against the hazards covered by the standard; and
 3. He *or she* has an effective program for coming into compliance with the standard as quickly as practicable.

Any temporary order issued under this subsection shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his *or her* program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing; provided, that the **commissioner**~~{executive director}~~ may issue one (1) interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one (1) year, whichever is shorter, except that such an order may be renewed not more than twice:

1. So long as the requirements of this subsection are met; and
 2. If an application for renewal is filed at least ninety (90) days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred eighty (180) days.
- (b) An application for a temporary order under this subsection shall contain:
1. A specification of the standard or portion thereof from which the employer seeks a variance;~~{,}~~
 2. A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he *or she* is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor;~~{,}~~
 3. A statement of the steps he *or she* has taken and will take (with specific dates) to protect employees against the hazard covered by the standard;~~{,}~~
 4. A statement of when he *or she* expects to be able to comply with the standard and what steps *or she* he has taken and what steps he *or she* will take (with dates specified) to come into compliance with the standard;~~{,}~~ and
 5. A certification that he *or she* has informed his *or her* employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the **commissioner**~~{executive director}~~ for a hearing.
- (c) The **commissioner**~~{executive director}~~ is authorized to grant a variance from any standard or portion thereof whenever he *or she* determines that such variance is necessary to permit an employer to participate in an experiment approved by him *or her* designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

➔Section 1763. KRS 338.161 is amended to read as follows:

- (1) The **Department**~~{Office}~~ of **Workplace Standards**~~{Occupational Safety and Health}~~ shall develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. Each employer shall make, keep and preserve, and make available to the **commissioner**~~{executive director}~~ and the Secretary of the United States Department of Labor or the Secretary of the United States Department of Health and Human Resources, such records regarding his *or her* activities relating to this chapter as may be prescribed by regulation.
- (2) The **Department**~~{Office}~~ of **Workplace Standards**~~{Occupational Safety and Health}~~ shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protection and obligations under this chapter.

➔Section 1764. KRS 338.171 is amended to read as follows:

All information obtained by the **commissioner**~~{executive director}~~ in connection with any inspection or proceeding under this chapter which might reveal a trade secret shall be considered confidential except that such information may be disclosed to those persons concerned with carrying out this chapter or when relevant in any proceedings under this chapter. In any such proceedings, the **commissioner**~~{executive director}~~, review commission or courts shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

➔Section 1765. KRS 338.181 is amended to read as follows:

The ~~*Department*~~~~{Office}~~ of ~~*Workplace Standards*~~~~{Occupational Safety and Health}~~ is empowered to administer the provisions of this chapter to employers, employees, and places of employment under the jurisdiction of the United States government pursuant to any agreement between the Commonwealth and the United States government. Pursuant to such agreement, the ~~*Department*~~~~{Office}~~ of ~~*Workplace Standards*~~~~{Occupational Safety and Health}~~ is empowered to make employer reports and data available to the United States government.

➔Section 1766. KRS 338.191 is amended to read as follows:

It shall be the duty of the Attorney General, upon request of the ~~*commissioner*~~~~{executive director}~~, to bring all necessary civil or criminal actions for violations of the provisions of this chapter and to obtain injunctions against any person violating or threatening to violate any provisions of this chapter. The Attorney General may appoint special counsel to prosecute these claims. In the event special counsel is secured, all costs will be borne by the ~~{Department of Labor}~~ *Cabinet*.

➔Section 1767. KRS 338.201 is amended to read as follows:

- (1) A lien may be placed on all property, both real and personal, of an employer who has violated any requirement of this chapter, if the citation issued by the ~~*commissioner*~~~~{executive director}~~ has been upheld by a final order of the review commission, but not before all administrative and judicial appeals have been exhausted. The lien shall be in favor of the ~~{Department of Labor}~~ *Cabinet* and shall be an amount totaling the penalties due, together with interest at a rate of twelve percent (12%) per annum from the date the order of the review commission is final, but not before all administrative and judicial appeals have been exhausted. The lien shall be attached to all property and rights to property owned or subsequently acquired by the employer. The ~~*commissioner*~~~~{executive director}~~ or *the commissioner's*~~{his}~~ designee shall record the lien as provided in subsection (2) of this section. The lien shall show the date on which the citation was issued, the date of the violation, the name and last known address of the employer against whom the assessment was made, and the amount of penalties and interest. The lien shall be superior to the lien of any mortgage or encumbrance thereafter created and shall continue for ten (10) years from the time of the recording, unless sooner released or otherwise discharged.
- (2) The lien shall be filed in any of the following offices in which the employer owns property or rights to property and any filing fees associated with filing the lien shall be pursuant to KRS 64.012:
 - (a) The office of the county clerk of the county in which the defendant employer resides.
 - (b) The office of the county clerk of the county in which the defendant employer has its principal place of business.
 - (c) The office of the county clerk of any county in which the defendant employer has property or an interest in property.

➔Section 1768. KRS 338.991 is amended to read as follows:

- (1) Any employer who willfully or repeatedly violates the requirement of any section of this chapter, including any standard, regulation, or order promulgated pursuant to this chapter, may be assessed a civil penalty of up to seventy thousand dollars (\$70,000) for each violation, but not less than five thousand dollars (\$5,000) for each willful violation.
- (2) Any employer who has received a citation for a serious violation of the requirements of any section of this chapter, including any standard, regulation, or order promulgated pursuant to this chapter, shall be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each violation.
- (3) Any employer who has received a citation for a violation of the requirements of any section of this chapter, including any standard, regulation, or order promulgated pursuant to this chapter, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each violation.
- (4) Any employer who fails to correct a violation for which a citation has been issued within the period permitted for its correction may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each day during which such failure or violation continues.
- (5) Any employer found to be in violation of subsection (3) of KRS 338.121 shall be assessed a civil penalty of up to ten thousand dollars (\$10,000) for each violation.

- (6) The review commission shall have the authority to modify all civil penalties and fines provided for in this chapter. The review commission may, at its discretion, suspend the time period allotted for correction of a violation during the review of an appeal from the violation in question.
- (7) All civil penalties and fines collected under the provision of this chapter shall be paid into the general fund.
- (8) Any employer or individual who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than six (6) months, or by both.
- (9) Any person who gives advance notice of any investigation or inspection to be conducted under this chapter, without authority from the **commissioner**~~{executive director}~~, shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than six (6) months, or by both.
- (10) Any employer or individual who willfully causes bodily harm to any authorized representative of the **commissioner**~~{executive director}~~ while attempting to conduct an investigation or inspection under the provisions of this chapter, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than one (1) year, or by both.
- (11) As used in this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one (1) or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

→Section 1769. KRS 339.205 is amended to read as follows:

As used in this chapter, "**commissioner**~~{executive director}~~" shall mean the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workplace Standards, under the direction and supervision of the **secretary**~~{commissioner}~~ of the ~~{Department of}~~Labor **Cabinet**.

→Section 1770. KRS 339.210 is amended to read as follows:

As used in KRS 339.220 to 339.450 "gainful occupation" does not include employment in farm work or in domestic service in a private home, nor occasional employment by a householder in connection with the household and not in connection with the householder's business or occupation, such as grass cutting or carrying ashes or similar casual domestic tasks, nor the delivery of newspapers on regularly scheduled routes, nor to employment as an actor or performer in motion pictures or theatrical productions, or in radio or television productions, nor to employment of minors by their own parents or persons standing in the place of a parent in occupations other than manufacturing, mining, or those found by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workplace Standards to be particularly hazardous.

→Section 1771. KRS 339.220 is amended to read as follows:

No minor under fourteen (14) years of age shall be employed, permitted or suffered to work in, about or in connection with any gainful occupation at any time, except for employment in connection with an employment program supervised and sponsored by the school or school district such child attends, which program has been approved by the Department of Education and subject to the regulations of the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workplace Standards.

→Section 1772. KRS 339.225 is amended to read as follows:

- (1) The provisions of KRS 339.220 to the contrary notwithstanding, minors age eleven (11) years and over may be employed as caddies at golf courses subject to the following provisions:
 - (a) A "caddy" is an individual who offers his **or her** services to golfers at golf clubs both private and public. His **or her** duties during course of play include the carrying of golf clubs, direction to the golfer, assistance to the player in the general maintenance and upkeep of golf courses, including replacement of divots, repair of ball marks, raking of sand traps, location of golf balls and control of the pin. Duties normally referred to as "fore-caddying" or "shagging" of golf balls are not within the scope of this definition.
 - (b) No minor under eleven (11) years of age shall be employed, or suffered to work as a caddy for hire.

- (c) Caddies under fourteen (14) years of age are restricted to caddying one (1) round of eighteen (18) holes in any one (1) day.
- (d) Minors eleven (11) and twelve (12) years of age may not carry golf bags and are restricted to caddying with a "pull cart" only.
- (e) Minors thirteen (13), fourteen (14), and fifteen (15) years of age may be employed to carry golf bags provided the bags do not exceed thirty-five (35) pounds in weight.
- (f) No minor under sixteen (16) years of age shall be employed, permitted, or suffered to operate power-driven golf carts in the course of their employment, or any power-driven maintenance equipment.
- (g) All persons employing minors as caddies are subject to all provisions of this chapter and the regulations issued hereunder.

- (2) The ~~Department~~~~Office~~ of Workplace Standards shall promulgate administrative regulations necessary to carry out the provisions of this section.

➔Section 1773. KRS 339.230 is amended to read as follows:

A minor who has passed his *or her* fourteenth birthday but is under eighteen (18) years of age may be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except:

- (1) If he *or she* is under sixteen (16) years of age, he *or she* may not be employed during regular school hours, unless:
 - (a) The school authorities have made arrangements for him *or her* to attend school at other than the regular hours, in which event he *or she* may be employed subject to regulations of the ~~commissioner~~~~executive director~~ of workplace standards during such of the regular school hours as he *or she* is not required to be in attendance under the arrangement; or~~;~~
 - (b) He *or she* has graduated from high school.
- (2) A minor who has passed his *or her* fourteenth birthday but is under eighteen (18) years of age, may not be employed, permitted, or suffered to work:
 - (a) In any place of employment or at any occupation, that the ~~commissioner~~~~executive director~~ of workplace standards shall determine to be hazardous or injurious to the life, health, safety, or welfare of such minor;
 - (b) More than the number of days per week, nor more than the number of hours per day that the ~~commissioner~~~~executive director~~ of workplace standards shall determine to be injurious to the life, health, safety, or welfare of such minor. The ~~commissioner~~~~executive director~~ of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments, but in no event may he *or she* make them less restrictive;
 - (c) During the hours of the day that the ~~commissioner~~~~executive director~~ of workplace standards shall determine to be injurious to the life, health, safety, or welfare of such minor. The ~~commissioner~~~~executive director~~ of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he *or she* make them less restrictive; and
 - (d) In, about, or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold for consumption, or dispensed unless permitted by the rules and regulations of the Alcoholic Beverage Control Board (except *that* he *or she* may be employed in places where the sale of alcoholic beverages by the package is merely incidental to the main business actually conducted); or in a pool or billiard room.
- (3) The ~~commissioner~~~~executive director~~ of workplace standards shall promulgate regulations to properly protect the life, health, safety, or welfare of minors. He *or she* may consider sex, age, premises of employment, substances to be worked with, machinery to be operated, number of hours, hours of the day, nature of the employment, and other pertinent factors. The ~~commissioner~~~~executive director~~ of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States

Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he *or she* make them less restrictive, provided, however, these regulations shall have no effect on the definition of "gainful occupation" under KRS 339.210. To advise the ~~commissioner~~~~executive director~~ with respect to the regulations, the Governor shall appoint a committee of four (4) persons which shall consist of a representative from the Cabinet for Health and Family Services, the Department of Education, the Kentucky Commission on Human Rights and the Personnel Cabinet. The regulations promulgated in accordance with this section shall be reviewed by such committee whenever deemed necessary by the ~~commissioner~~~~executive director~~ of workplace standards.

➔Section 1774. KRS 339.400 is amended to read as follows:

Every person employing minors under eighteen (18) years of age shall keep a separate register containing the names, ages, and addresses of such employees, and the time of commencing and stopping of work for each day, and the time of the beginning and ending of the daily meal period, and shall post and keep conspicuously posted in the establishment wherein any such minor is employed, permitted, or suffered to work, a printed abstract of KRS 339.210 to 339.450, and a list of the occupations prohibited to such minors, together with a notice stating the working hours per day for each day in the week required of them. These records and files shall be open at all times to the inspection of the school directors of pupil personnel and probation officers, and representatives of the ~~Department of~~ Labor *Cabinet* and Department of Education.

➔Section 1775. KRS 339.450 is amended to read as follows:

- (1) It shall be the duty of the ~~Department~~~~Office~~ of Workplace Standards and of the inspectors and agents of said ~~department~~~~office~~, with the assistance of the school directors of pupil personnel, police officers and juvenile session of District Court probation officers, to enforce the provisions of KRS 339.210 to 339.450, to make complaints against persons violating the provisions of those sections, and to prosecute violations thereof. The ~~Department~~~~Office~~ of Workplace Standards, its inspectors and agents shall have authority to enter and inspect at any time any place or establishment covered by KRS 339.210 to 339.450, and to have access to age certificates kept on file by the employer and such other records as may aid in the enforcement of KRS 339.210 to 339.450. School directors of pupil personnel are likewise empowered to visit and inspect places where minors may be employed, and shall report any cases of employment that they find in violation of KRS 339.210 to 339.450 to the ~~Department~~~~Office~~ of Workplace Standards.
- (2) Any person authorized to enforce KRS 339.210 to 339.450 may require an employer of a minor for whom an age certificate is not on file either to furnish him *or her* within ten (10) days the evidence showing that the minor is at least eighteen (18) years of age or to cease to employ or permit or suffer such minor to work. Proof of the making of such demand and of failure to deliver such proof of age shall be prima facie evidence, in any prosecution brought for violation of KRS 339.210 to 339.450, that such minor is under eighteen (18) years of age and is unlawfully employed.

➔Section 1776. KRS 339.990 is amended to read as follows:

Anyone who employs or permits or suffers any minor to be employed or to work in violation of KRS 339.210 to 339.450, or of any order or ruling issued under the provisions thereof, or obstructs the ~~Department~~~~Office~~ of Workplace Standards, its officers, or agents, or any other person authorized to inspect places of employment under KRS 339.210 to 339.450, or anyone who, having under his *or her* control or custody any minor, permits or suffers him *or her* to be employed or to work in violation of KRS 339.210 to 339.450, or who sells to a minor any article with the knowledge that the minor intends to sell the article in violation of KRS 339.210 to 339.450, shall be assessed a civil penalty, in accordance with the provisions of KRS 336.985, of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). Every employer who continues to employ a minor in violation of KRS 339.210 to 339.450 after he has been notified by the ~~Department~~~~Office~~ of Workplace Standards, its officers or agents, shall be assessed a civil penalty, in accordance with the provisions of KRS 336.985, of one hundred dollars (\$100) for each day the violation continues and the employment of any minor in violation of KRS 339.210 to 339.450 shall with respect to each minor so employed constitute a separate and distinct offense.

➔Section 1777. KRS 342.0011 is amended to read as follows:

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

- (1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the

human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury;

- (2) "Occupational disease" means a disease arising out of and in the course of the employment;
- (3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence;
- (4) "Injurious exposure" shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made;
- (5) "Death" means death resulting from an injury or occupational disease;
- (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer;
- (7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter;
- (8) "~~Department~~~~{Office}~~" means the *Department*~~{Office}~~ of Workers' Claims in the ~~{Department of}~~Labor *Cabinet*;
- (9) "~~Commissioner~~~~{Executive director}~~" means the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Workers' Claims;
- (10) "Board" means the Workers' Compensation Board;
- (11)
 - (a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment;
 - (b) "Permanent partial disability" means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work; and
 - (c) "Permanent total disability" means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury, except that total disability shall be irrebuttably presumed to exist for an injury that results in:
 1. Total and permanent loss of sight in both eyes;
 2. Loss of both feet at or above the ankle;
 3. Loss of both hands at or above the wrist;
 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;
 5. Permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;
 6. Incurable insanity or imbecility; or
 7. Total loss of hearing;
- (12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits;
- (13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits;

- (14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits;
- (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- (16) "Person" means any individual, partnership, limited partnership, limited liability company, firm, association, trust, joint venture, corporation, or legal representative thereof;
- (17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from persons other than the employer as evidenced by the employee's federal and state tax returns;
- (18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations, including the sale of produce at on-site markets and the processing of produce for sale at on-site markets. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market;
- (19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter;
- (20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States;
- (21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien;
- (22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Kentucky Employers Mutual Insurance Authority and every self-insured group operating under the provisions of this chapter;
- (23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipples or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption;
- (b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, limited partnerships, limited liability companies, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including but not limited to administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time;
- (24) "Premium" for every self-insured group means any and all assessments levied on its members by such group or contributed to it by the members thereof. For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group;

- (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the ~~Department~~^{Office} of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. For policies covering leased employees as defined in KRS 342.615, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in KRS 342.615 for each leased employee for that portion of the payroll pertaining to the leased employee.
- (b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.
- (c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.
- (d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors;
- (26) "Insurance policy" for an insurance company or self-insured group means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year;
- (27) "Self-insurance year" for a self-insured group means the annual period of certification of the group created pursuant to KRS 342.350(4) and 304.50-010;

- (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the ~~commissioner~~~~executive director~~ using generally-accepted actuarial methods as follows:
- (a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The ~~commissioner~~~~executive director~~ shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the ~~commissioner~~~~executive director~~. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period;
 - (b) The ~~commissioner~~~~executive director~~ shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the ~~department~~~~office~~ and from the records of the Office of Employment and Training, Education and Workforce Development Cabinet. The ~~commissioner~~~~executive director~~ shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period;
 - (c) The ~~commissioner~~~~executive director~~ shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by 1.25 and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the ~~department~~~~office~~ and the Office of Employment and Training data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122;
 - (d) For November 1, 1987, through December 31, 1988, premium for each employer carrying ~~its~~~~his~~ own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying ~~its~~~~his~~ own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews ~~its~~~~his~~ application for certification to carry ~~its~~~~his~~ own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the ~~commissioner~~~~executive director~~, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification;
 - (e) If an employer having fewer than five (5) years of doing business in this state applies to carry ~~its~~~~his~~ own risk and is so certified, ~~its~~~~his~~ premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then ~~its~~~~his~~ premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the ~~commissioner~~~~executive director~~ pursuant to KRS 342.340(1);
 - (f) If an employer is certified to carry ~~its~~~~his~~ own risk after having previously insured the risk, ~~its~~~~his~~ premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is

certified to carry ~~its~~^{his} own risk and has paid all amounts due for assessments upon premiums paid while insured, ~~the employer~~^{he} shall be assessed only upon the premium calculated under this subsection;

- (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection; and
 - (h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents (\$0.30) per one hundred dollars (\$100) of the employer's most recent annualized payroll for employees covered by this chapter;
- (29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget;
 - (30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System;
 - (31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits;
 - (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth;
 - (33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods;
 - (34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy;
 - (35) "Permanent impairment rating" means percentage of whole body impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest available edition; and
 - (36) "Permanent disability rating" means the permanent impairment rating selected by an administrative law judge times the factor set forth in the table that appears at KRS 342.730(1)(b).

➔Section 1778. KRS 342.0012 is amended to read as follows:

- (1) There is hereby created the Kentucky Workers' Compensation Advisory Council which shall consist of sixteen (16) members appointed by the Governor. Each member shall serve for a term of four (4) years and until his *or her* successor has been appointed and has qualified.
- (2) Vacancies shall be filled by appointment of the Governor for the unexpired term of the member whose office is vacant and shall be made within sixty (60) days of the occurrence of the vacancy.
- (3) Annually, the members of the council shall elect co-chairmen. One co-chairman shall be elected by the members of the council representing labor and the other co-chairman shall be elected by the members representing management. A majority of the members of the council shall constitute a quorum for the transaction of business.
- (4) The council shall meet at least quarterly and on other occasions as may be necessary, on the call of the co-chairmen or a majority of the members.
- (5) The council shall be attached to the Department of *Workers' Claims in the Labor Cabinet* for administrative purposes, and the commissioner of ~~the Department of Workers' Claims~~^{Labor} shall supply necessary staff and supplies to the council.
- (6) The principal office of the council shall be located in Frankfort, Kentucky, but meetings of the council may be held at any location in the Commonwealth of Kentucky.
- (7) In making appointments to the council, the Governor shall appoint eight (8) members representing labor and eight (8) members representing management.

- (8) The council shall not infringe upon or assume the duties of the ~~{Department of}~~ Labor **Cabinet**, Cabinet for Economic Development or the **Department**~~{Office}~~ of Insurance. The council shall serve in an advisory capacity and shall make recommendations to the Governor and the legislature on all matters relating to workers' compensation including, but not limited to: efficient administration; coverage of employers and employees; adequacy and delivery of the benefit structure; insurance and self-insurance; medical cost containment and medical services; rehabilitation; liability and financing of the special fund; attorney fees; and lump-sum compensation and settlement procedures. In addition, the council may recommend legislation and administrative regulations as it deems necessary.

➔Section 1779. KRS 342.012 is amended to read as follows:

- (1) For the purposes of this chapter, an owner or owners of a business, including qualified partners of a partnership owning a business, or qualified members of a limited liability company, whether or not employing any other person to perform a service for hire, shall be included within the meaning of the term employee if the owner, owners, qualified partners, or qualified members of a limited liability company elect to come under the provisions of this chapter and provide the insurance required thereunder. Nothing in this section shall be construed to limit the responsibilities of the owners, partners, or members of a limited liability company to provide coverage for their employees, nonqualified partners, or nonqualified members, if any, required under this chapter.
- (2) When an owner, owners, qualified partners, or qualified members of a limited liability company have elected to be included as employees, this inclusion shall be accomplished by the issuance of an appropriate endorsement to a workers' compensation insurance policy.
- (3) For the purpose of this section, "qualified partner" or "qualified member or members" means, respectively, a partner who has entered into a meaningful partnership agreement or a member who has entered into meaningful articles of organization or a meaningful operating agreement of a limited liability company, which document shows on its face that the partner will substantially participate in the profit or loss of the business engaged in by the partnership or limited liability company and that the partner or member has made some contribution to the partnership or limited liability company which entitles him *or her* to participate in the profits of the business as well as to participate in the decision-making process of the partnership or limited liability company.
- (4) For the purposes of this section, "nonqualified partner" or "nonqualified member" means, respectively, a person who has entered into a partnership agreement, or articles of organization or operating agreement of a limited liability company, which document shows on its face that this person will receive regular payments in exchange for work for the business engaged in by the partnership or limited liability company; that the person will not participate in the decision-making of the partnership or limited liability company and will not participate in the profits and losses of the business engaged in by the partnership or limited liability company.
- (5) Every partnership filing a partnership agreement and every limited liability company filing articles of organization or an operating agreement for the purpose of exemption pursuant to the provisions of KRS 342.340 shall, on or before April 15 of each year, file with the **commissioner**~~{executive director}~~ the employer identification number assigned to the partnership or limited liability company by the Internal Revenue Service. On or before April 15 of each year, each partnership and each limited liability company having a partnership agreement, operating agreement, or articles of organization on file with the **commissioner**~~{executive director}~~ shall file a copy of the tax return of the partnership or limited liability company with the **commissioner**~~{executive director}~~. Failure to comply with the provisions of this subsection shall be prima facie evidence that the partnership agreement or limited liability company articles of organization filed with the **commissioner**~~{executive director}~~ is composed, respectively, of "nonqualified partners" or "nonqualified members", respectively, as defined in this section, and the **commissioner**~~{executive director}~~ shall promptly notify interested government agencies of the failure of the filed partnership agreement or limited liability company articles of organization or operating agreement to indicate compliance with KRS 342.340. With particular reference to employers engaged in coal mining, the **commissioner**~~{executive director}~~ shall promptly report the failure to comply with the provisions of this subsection to the **Energy**~~{Environmental}~~ and **Environment**~~{Public Protection}~~ Cabinet, Department ~~for~~ Natural Resources, Office of Mine Safety and Licensing, so that appropriate action may be undertaken pursuant to KRS 351.175.
- (6) For purposes of this section, a "limited liability company" means an entity defined in KRS 275.015 and organized under the provisions of KRS Chapter 275.

➔Section 1780. KRS 342.020 is amended to read as follows:

- (1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. The **commissioner**~~{executive director}~~ shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered. Except as provided in subsection (4) of this section, in no event shall a medical fee exceed the limitations of an adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The **commissioner**~~{executive director}~~ may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.
- (2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.
- (3) Employers may provide medical services through a managed health care system. The managed health care system shall file with the **Department**~~{Office}~~ of Workers' Claims a plan for the rendition of health care services for work-related injuries and occupational diseases to be approved by the **commissioner**~~{executive director}~~ pursuant to administrative regulations promulgated by the **commissioner**~~{executive director}~~.
- (4) All managed health care systems rendering medical services under this chapter shall include the following features in plans for workers' compensation medical care:
 - (a) Copayments or deductibles shall not be required for medical services rendered in connection with a work-related injury or occupational disease;
 - (b) The employee shall be allowed choice of provider within the plan;
 - (c) The managed health care system shall provide an informal procedure for the expeditious resolution of disputes concerning rendition of medical services;
 - (d) The employee shall be allowed to obtain a second opinion, at the employer's expense, from an outside physician if a managed health care system physician recommends surgery;
 - (e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;
 - (f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee; and
 - (g) Statements for services shall be audited regularly to assure that charges are not duplicated and do not exceed those authorized in the applicable fee schedules.
 - (h) A schedule of fees for all medical services to be provided under this chapter which shall not be subject to the limitations on medical fees contained in this chapter.
 - (i) Restrictions on provider selection imposed by a managed health care system authorized by this chapter shall not apply to emergency medical care.
- (5) Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as

reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.

- (6) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces as may reasonably be required at the time of the injury and thereafter during disability.
- (7) Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge by affidavits or testimony that, because of the physician selected by the employee to treat the injury or disease, or because of the hospital selected by the employee in which treatment is being rendered, that the employee is not receiving proper medical treatment and the recovery is being substantially affected or delayed; or that the funds for medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for the injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.
- (8) An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury or disease for which the employee claims compensation.
- (9) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the **commissioner**~~executive director~~, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

➔Section 1781. KRS 342.033 is amended to read as follows:

In a claim for benefits, no party may introduce direct testimony from more than two (2) physicians without prior consent from the administrative law judge. The motion requesting additional testimony shall clearly demonstrate the need for such additional testimony. A party may introduce direct testimony from a physician through a written medical report. The report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of the report and to cross-examine the reporting physician. The **commissioner**~~executive director~~ shall promulgate administrative regulations prescribing the format and content of written medical reports.

➔Section 1782. KRS 342.035 is amended to read as follows:

- (1) Periodically, the **commissioner**~~executive director~~ shall promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 and this section shall be fair, current, and reasonable and shall be limited to such charges as are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. In determining what fees are reasonable, the **commissioner**~~executive director~~ may also consider the increased security of payment afforded by this chapter. On or before November 1, 1994, and on July 1 every two (2) years thereafter, the schedule of fees contained in administrative regulations promulgated pursuant to this section shall be reviewed and updated, if appropriate. Within ten (10) days of April 4, 1994, the **commissioner**~~executive director~~ shall execute a contract with an appropriately qualified consultant pursuant to which each of the following elements within the workers' compensation system are evaluated; the methods of health care delivery; quality assurance and utilization mechanisms; type, frequency, and intensity of services; risk management programs; and the schedule of fees contained in administrative regulation. The consultant shall present recommendations based on its review to the

commissioner~~{executive director}~~ not later than sixty (60) days following execution of the contract. The **commissioner**~~{executive director}~~ shall consider these recommendations and, not later than thirty (30) days after their receipt, promulgate a regulation which shall be effective on an emergency basis, to effect a twenty-five percent (25%) reduction in the total medical costs within the program.

- (2) No provider of medical services or treatment required by this chapter, its agent, servant, employee, assignee, employer, or independent contractor acting on behalf of any medical provider, shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment of any charge, for services covered by a workers' compensation insurance plan for the treatment of a work-related injury or occupational disease, in excess of that provided by a schedule of fees, or cause the credit of any employee to be impaired by reason of the employee's failure or refusal to pay the excess charge. In addition to the penalty imposed in KRS 342.990 for violations of this subsection, any individual who sustains damages by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations and to recover the actual damages sustained by the individual, together with the costs of the lawsuit, including a reasonable attorney's fee.
- (3) Where these requirements are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting it. No compensation shall be payable for the death or disability of an employee if his *or her* death is caused, or if and insofar as his disability is aggravated, caused, or continued, by an unreasonable failure to submit to or follow any competent surgical treatment or medical aid or advice.
- (4) The **commissioner**~~{executive director}~~ shall, by December 1, 1994, promulgate administrative regulations to adopt a schedule of fees for the purpose of regulating charges by medical providers and other health care professionals for testimony presented and medical reports furnished in the litigation of a claim by an injured employee against the employer. The workers' compensation medical fee schedule for physicians, 803 KAR 25:089, having an effective date of February 9, 1995, shall remain in effect until July 1, 1996, or until the effective date of any amendments promulgated by the **commissioner**~~{executive director}~~, whichever occurs first, it being determined that this administrative regulation is within the statutory grant of authority, meets legislative intent, and is not in conflict with the provisions of this chapter. The medical fee schedule and amendments shall be fair, current, and reasonable and otherwise comply with this section.
- (5)
 - (a) To ensure compliance with subsections (1) and (4) of this section, the **commissioner**~~{executive director}~~ shall promulgate administrative regulations by December 31, 1994, which require each insurance carrier, self-insured group, and self-insured employer to certify to the **commissioner**~~{executive director}~~ the program or plan it has adopted to ensure compliance.
 - (b) In addition, the **commissioner**~~{executive director}~~ shall periodically have an independent audit conducted by a qualified independent person, firm, company, or other entity hired by the **commissioner**~~{executive director}~~, in accordance with the personal service contract provisions contained in KRS 45A.690 to 45A.725, to ensure that the requirements of subsection (1) of this section are being met. The independent person, firm, company, or other entity selected by the **commissioner**~~{executive director}~~ to conduct the audit shall protect the confidentiality of any information it receives during the audit, shall divulge information received during the audit only to the **commissioner**~~{executive director}~~, and shall use the information for no other purpose than the audit required by this paragraph.
 - (c) The **commissioner**~~{executive director}~~ shall promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to this chapter.
 - (d) Periodically, or upon request, the **commissioner**~~{executive director}~~ shall report to the Interim Joint Committee on Labor and Industry of the Legislative Research Commission or to the corresponding standing committees of the General Assembly, as appropriate, the degree of compliance or lack of compliance with the provisions of this section and make recommendations thereon.
 - (e) The cost of implementing and carrying out the requirements of this subsection shall be paid from funds collected pursuant to KRS 342.122.
- (6) The **commissioner**~~{executive director}~~ may promulgate administrative regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.

- (7) For purposes of this chapter, any medical provider shall charge only its customary fee for photocopying requested documents. However, in no event shall a photocopying fee of a medical provider or photocopying service exceed fifty cents (\$.50) per page. In addition, there shall be no charge for reviewing any records of a medical provider, during regular business hours, by any party who is authorized to review the records and who requests a review pursuant to this chapter.
- (8) (a) The ~~commissioner~~~~executive director~~ shall develop or adopt practice parameters or guidelines for clinical practice for use by medical providers under this chapter. The ~~commissioner~~~~executive director~~ may adopt any parameters for clinical practice as developed and updated by the federal Agency for Health Care Policy Research, or the ~~commissioner~~~~executive director~~ may adopt other parameters for clinical practice which are developed by qualified bodies, as determined by the ~~commissioner~~~~executive director~~, with periodic updating based on data collected during the application of the parameters.
- (b) Any provider of medical services under this chapter who has followed the practice parameters or guidelines developed or adopted pursuant to this subsection shall be presumed to have met the appropriate legal standard of care in medical malpractice cases regardless of any unanticipated complication that may thereafter develop or be discovered.
- (9) (a) Notwithstanding any other provision of law to the contrary, the medical fee schedule adopted under subsection (4) of this section shall require all worker's compensation insurance carriers, worker's compensation self-insured groups, and worker's compensation self-insured employers to provide coverage and payment for surgical first assisting services to registered nurse first assistants as defined in KRS 216B.015.
- (b) The provisions of this subsection apply only if reimbursement for an assisting physician would be covered and a registered nurse first assistant who performed the services is used as a substitute for the assisting physician. The reimbursement shall be made directly to the registered nurse first assistant if the claim is submitted by a registered nurse first assistant who is not an employee of the hospital or the surgeon performing the services.

➔Section 1783. KRS 342.038 is amended to read as follows:

- (1) Every employer subject to this chapter shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within one (1) week after the occurrence and knowledge, as provided in KRS 342.185 to 342.200, of an injury to an employee causing his absence from work for more than one (1) day, a report thereof shall be made to the ~~department~~~~office~~ in the manner directed by the ~~commissioner~~~~executive director~~ through administrative regulations. An employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be responsible for making the report to the ~~Department~~~~Office~~ of Workers' Claims within one week of receiving the notification referred to in subsection (3) of this section.
- (2) The report shall contain the name, nature, and location of the business of the employer and name, age, sex, wages, and occupation of the injured employee, and shall state the date and hour of the accident causing the injury, the nature and cause of the injury, and any other information required by the ~~commissioner~~~~executive director~~.
- (3) Every employer subject to this chapter shall report to ~~its~~~~his~~ workers' compensation insurance carrier or the party responsible for the payment of workers' compensation benefits any work-related injury or disease or alleged work-related injury or disease within three (3) working days of receiving notification of the incident or alleged incident.
- (4) Every employer or insurer subject to this chapter shall file additional reports covering specifically voluntary payments and settlements, and any other reports required by the ~~commissioner~~~~executive director~~ by administrative regulation for the determination of the promptness of voluntary payment and validity and fairness of agreements. In addition, the ~~commissioner~~~~executive director~~ may require additional information as may be necessary to comply with a federal statute or regulation or any state statute.
- (5) Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of sixty (60) days, then also at the expiration of that period, the employer shall make a supplementary report to the ~~commissioner~~~~executive director~~ on blanks procured from the ~~department~~~~office~~ for the purpose.

➔Section 1784. KRS 342.039 is amended to read as follows:

Beginning on January 1, 1995, and pursuant to administrative regulations promulgated under KRS Chapter 13A by the ~~commissioner~~~~executive director~~, each insurance company writing workers' compensation insurance policies in the Commonwealth, every self-insured group, and each employer carrying its own risk shall file in the manner directed by the ~~commissioner~~~~executive director~~, detailed claim information contained in the model regulation developed by the National Association of Insurance Commissioners (NAIC) in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC).

➔Section 1785. KRS 342.040 is amended to read as follows:

- (1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid, except that if the administrative law judge determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, the rate of interest shall be eighteen percent (18%) per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate or fail to make payments when due, that party shall notify the ~~commissioner~~~~executive director~~ of the termination or failure to make payments and the ~~commissioner~~~~executive director~~ shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter.
- (2) If overdue temporary total disability income benefits are recovered in a proceeding brought under this chapter by an attorney for an employee, or paid by the employer after receipt of notice of the attorney's representation, a reasonable attorney's fee for these services may be awarded. The award of attorney's fees shall be paid by the employer if the administrative law judge determines that the denial or delay was without reasonable foundation. No part of the fee for representing the employee in connection with the recovery of overdue temporary total disability benefits withheld without reasonable foundation shall be charged against or deducted from benefits otherwise due the employee.
- (3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable on the regular payday of the employer, commencing with the second regular payday after the award of the retraining incentive benefit by the administrative law judge becomes final. Retraining incentive benefits shall be due and payable not less often than semimonthly.
- (4) Upon written request of the employee, all payments of compensation shall be mailed to the employee at his *or her* last known address.

➔Section 1786. KRS 342.120 is amended to read as follows:

- (1) There is created the Division of Workers' Compensation Funds in the ~~Department~~~~Office~~ of Workplace Standards which shall be responsible for the administration ~~and legal representation~~ of the special fund and the coal workers' pneumoconiosis fund and the maintenance of records regarding the payment of claims by these funds. The Division of Workers' Compensation Funds shall be headed by a director appointed by the secretary of the ~~Labor~~~~Environmental and Public Protection~~ Cabinet, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration ~~and legal representation~~ of the funds and the maintenance of records regarding the payment of claims by the funds.
- (2) The special fund shall have no liability upon any claim in which the injury occurred, or for cumulative trauma, the disability became manifest, or, for occupational disease, if the date of injury or last exposure occurred, after December 12, 1996.
- (3) Where the employer has settled its liability for income benefits and thereafter a determination has been made of the special fund's liability, the special fund portion of the benefit rate shall be paid over the maximum period provided for by statute for that disability, with the period of payment beginning on the date settlement was approved by an administrative law judge. This provision is remedial and shall apply to all pending and future claims.

➔Section 1787. KRS 342.122 is amended to read as follows:

- (1) (a) For calendar year 1997 and for each calendar year thereafter, for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the ~~Department of Labor~~ *Cabinet*, except the Division of Employment Standards, Apprenticeship and ~~Training and the Office of Labor-Management Relations and~~ *Mediation in the Department of Workplace Standards*, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk.
 - (b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of June 30 preceding January 1 of each year, for the period remaining until December 31, 2018. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying ~~its~~~~his~~ own risk. On or before October 1 of each year, the commission shall notify each insurance carrier writing workers' compensation insurance in the Commonwealth, every group of self-insured employers, and each employer carrying ~~its~~~~his or her~~ own risk, of the rates which shall become effective on January 1 of each year, unless modified by the General Assembly.
 - (c) In addition to the assessment imposed in paragraph (a) or (b) of this subsection, and notwithstanding and prior to the transfer of funds to the Local Government Economic Assistance Program under KRS 42.450 to 42.495, the Kentucky Department of Revenue shall credit nineteen million dollars (\$19,000,000) in coal severance tax revenues levied under KRS 143.020 to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission each year beginning with fiscal year 1998 and all fiscal years thereafter. The annual transfer of nineteen million dollars (\$19,000,000) shall occur in four (4) equal quarterly payments. These transfers shall occur not later than the last day of each quarter of each calendar year and shall consist of four (4) equal payments of four million, seven hundred fifty thousand dollars (\$4,750,000).
 - (d) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.
 - (e) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.
- (2) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.
 - (3) The assessments imposed by this section may be collected by the insurance carrier from ~~its~~~~his~~ insured. However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages imposed by this chapter. The assessment for an insurance policy or other evidence

of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.

- (4) A self-insured group may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years, except that the board of directors of the funding commission may, at its discretion, waive the ten (10) year ban on a case-by-case basis after formal petition has been made to the funding commission by a self-insured group.
- (5) The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each self-insured group to provide a list of employers which it has insured or which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or self-insured group may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or self-insured group from the obligation to furnish same to the funding commission. The Office of Employment and Training, Education and Workforce Development Cabinet, is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.
- (6) Each self-insured employer, self-insured group, or insurance carrier shall provide any information and submit any reports the Department of Revenue or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.
- (7) The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.
- (8) The fund heretofore designated as the subsequent claim fund is abolished, and there is substituted therefor the special fund as set out by this section, and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.
- (9) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.
- (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received on policies with effective dates prior to January 1, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provision of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying ~~its~~~~his~~ own risk.

➔Section 1788. KRS 342.1223 is amended to read as follows:

- (1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.
- (2) The commission shall:
 - (a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;
 - (b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the ~~Department~~~~Office~~ of Financial Institutions, in investments described in KRS Chapter 386, except that the funding commission may, at its discretion, invest in nondividend-paying equity securities;

- (c) Report to the General Assembly at each even-numbered-year regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;
 - (d) Recommend to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, changes deemed necessary in the level of the assessments imposed in this chapter;
 - (e) In conjunction with the ~~Department of~~ Labor **Cabinet**, submit to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, a proposed budget for the biennium beginning July 1 following the even-numbered-year regular session of the General Assembly;
 - (f) In conjunction with the ~~Department of~~ Labor **Cabinet**, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;
 - (g) Conduct periodic audits, independently or in cooperation with the ~~Department of~~ Labor **Cabinet** or the Department of Revenue, of all entities subject to the assessments imposed in this chapter; and
 - (h) Report monthly to the Committees on Appropriations and Revenue and on Labor and Industry its monthly expenditures of restricted agency funds and the nature of the expenditures.
- (3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:
- (a) To sue and be sued, complain, or defend, in its name;
 - (b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly;
 - (c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;
 - (d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;
 - (e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and
 - (f) To make and promulgate administrative regulations.
- (4) Notwithstanding the provisions of this chapter to the contrary, the Kentucky Workers' Compensation Funding Commission shall utilize the investment expertise and advice of the Office of Financial Management in the Office of the Controller within the Finance and Administration Cabinet rather than entering into a consulting contract for investment counseling. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.
- (5) The commission shall be attached to the ~~Department of~~ Labor **Cabinet** for administrative purposes only.
- ➔Section 1789. KRS 342.1224 is amended to read as follows:
- (1) The commission shall be governed by a board of directors consisting of seven (7) members. The seven (7) members shall include the secretary of the ~~Labor~~**Environmental and Public Protection** Cabinet or a designee, the secretary of the Cabinet for Economic Development or a designee, the secretary of the Finance and Administration Cabinet or a designee, and four (4) members who shall be appointed by the Governor.
 - (2) The four (4) appointed members shall include:
 - (a) One (1) member, selected from a list of three (3) submitted by the secretary of the ~~Labor~~**Environmental and Public Protection** Cabinet, who shall represent labor;
 - (b) One (1) member, selected from a list of three (3) submitted by the secretary for economic development, who shall represent employers; provided, however, that these three (3) members shall represent employers who purchase workers' compensation coverage for their employees from insurance companies writing workers' compensation insurance in the Commonwealth;

- (c) One (1) member, selected from a list of three (3) submitted by the insurance advisory organization having jurisdiction over Kentucky, who shall represent insurance companies writing workers' compensation insurance in the Commonwealth; and
 - (d) One (1) member, selected from a list of three (3) submitted by the associations representing self-insured employers in the Commonwealth.
- (3) The members of the board of directors shall serve a term of four (4) years, except that the initial terms of the members shall be staggered as follows:
 - (a) The initial member appointed by the Governor to represent labor shall serve a term of one (1) year. Thereafter, such member shall serve a term of four (4) years;
 - (b) The initial member appointed by the Governor to represent employers shall serve a term of two (2) years. Thereafter, such member shall serve a term of four (4) years;
 - (c) The initial member appointed by the Governor to represent insurance companies shall serve a term of four (4) years. Thereafter, such member shall serve a term of four (4) years; and
 - (d) The initial member appointed by the Governor to represent self-insured employers shall serve a term of three (3) years. Thereafter, such member shall serve a term of four (4) years.
 - (4) The board of directors shall annually elect from among its members a chairman, a vice chairman, and a secretary-treasurer. The board of directors may also elect or appoint, and prescribe the duties of, other officers as the board of directors deems necessary or advisable.
 - (5) The board of directors shall appoint an executive director to administer, manage, and direct the affairs and business of the commission, and other staff persons to carry out the affairs and business of the commission, subject in each instance to the policies, control, and directions of the board of directors. The board of directors shall fix the compensation of all such persons and shall pay such compensation out of the funds of the commission.
 - (6) Notwithstanding any other law, the Governor, pursuant to an executive order, may cause the employees of the commission to be eligible to participate in the Kentucky Retirement System and the Kentucky Public Employees Deferred Compensation System.
 - (7) A majority of the board of directors of the commission shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. The majority shall be determined by excluding any existing vacancies from the total number of directors.
 - (8) The board of directors of the Kentucky Workers' Compensation Funding Commission are hereby determined to be officers and agents of the Commonwealth of Kentucky and, as such, shall enjoy the same immunities from suit for the performance of their official acts as do other officers of the Commonwealth of Kentucky.

➔Section 1790. KRS 342.1228 is amended to read as follows:

The Kentucky Workers' Compensation Funding Commission shall not be subject to the Governor's power of reorganization under KRS Chapter 12, including attachment or transfer to another organizational unit or administrative body other than the ~~Department of Labor~~ **Cabinet**. The Governor may, however, recommend changes in the organization of the commission to the General Assembly at any regular or special session of the General Assembly.

➔Section 1791. KRS 342.1242 is amended to read as follows:

- (1) There is created the Kentucky coal workers' pneumoconiosis fund which shall have one-half (1/2) of the liability for income benefits, including retraining benefits, payable for claims brought under KRS 342.732 for last exposure incurred on or after December 12, 1996. Income benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made contemporaneous with the payments made by the employer, except that the employer shall make all payments due under a final award or approved settlement until the liability of the Kentucky coal workers' pneumoconiosis fund is established under subsection (2) of this section and the coal workers' pneumoconiosis fund shall reimburse the employer for such payments to the extent of its liability.
- (2) The employer shall defend any claim brought under KRS 342.732 and upon conclusion shall seek participation in payment of the final award or settlement by the Kentucky coal workers' pneumoconiosis fund by making written request upon the director in the manner prescribed by administrative regulation to be promulgated by the ~~commissioner~~ ~~executive director~~ of the ~~Department~~ ~~Office~~ of Workers' Claims.

- (3) (a) For the purpose of funding and prefunding the liabilities of the Kentucky coal workers' pneumoconiosis fund and financing the administration and operation of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the Commonwealth enacted by the General Assembly, a Kentucky coal workers' pneumoconiosis fund assessment at the rate of three percent (3%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1997, through December 31, 1997, an assessment at the rate of three percent (3%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.
- (b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional Kentucky coal workers' pneumoconiosis fund assessment at the rate of two and one-half cents (\$0.025) per ton is hereby imposed upon the total annual amount of tons of coal severed on or after January 1, 1997, through December 31, 1997, by every entity engaged in the severance of coal as required pursuant to KRS Chapter 143.
- (c) As of June 30, 2006, and each year thereafter, the funding commission shall determine the assets of the fund and the claim and administrative expense liability incurred by the fund for all previous years and shall establish the rates under the provisions of paragraphs (a) and (b) of this subsection necessary as of January 1 of the next year to fully fund and prefund all claim liabilities and administrative expenses through December 31 of the next year of operations. The assessment rate authorized by this section for premiums received and tons of coal severed shall be set so as to receive fifty percent (50%) of the needed revenue from each assessment. Notice of any rate changes shall be provided no later than October 1 of the year preceding the rate change.
- (4) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to a separate account within the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission. In addition, the powers and responsibilities of the Kentucky Workers' Compensation Funding Commission including its fiduciary duties and responsibilities relating to assessments collected for the special fund pursuant to KRS 342.122, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply to assessments collected for the Kentucky coal workers' pneumoconiosis fund created pursuant to this section. Each entity subject to assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any and all information requested by the Kentucky Workers' Compensation Funding Commission necessary to carry out its powers and responsibilities relating thereto.
- (5) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received or the coal is processed or severed. Receipt shall be considered timely through actual physical receipt or by postmark by the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments. Penalty and interest penalties imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers' Compensation Funding Commission to waive part or all of the penalty shall apply to assessments for the Kentucky coal workers' pneumoconiosis fund in the same manner and amount as they are imposed on assessments for the special fund under KRS 342.122.
- (6) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.
- (7) Claims for benefits by reason of the development of coal workers' pneumoconiosis shall be maintained pursuant to KRS 342.732, and the Kentucky coal workers' pneumoconiosis fund shall be liable for payment of a part of the liability only for employees of employers engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a) and (b).

➔Section 1792. KRS 342.140 is amended to read as follows:

The average weekly wage of the injured employee at the time of the injury or last injurious exposure shall be determined as follows:

- (1) If at the time of the injury which resulted in death or disability or the last date of injurious exposure preceding death or disability from an occupational disease:
 - (a) The wages were fixed by the week, the amount so fixed shall be the average weekly wage;
 - (b) The wages were fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve (12) and divided by fifty-two (52);
 - (c) The wages were fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two (52);
 - (d) The wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen (13) the wages (not including overtime or premium pay) of said employee earned in the employ of the employer in the first, second, third, or fourth period of thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks immediately preceding the injury.
 - (e) The employee had been in the employ of the employer less than thirteen (13) calendar weeks immediately preceding the injury, his *or her* average weekly wage shall be computed under paragraph (d), taking the wages (not including overtime or premium pay) for that purpose to be the amount he *or she* would have earned had he *or she* been so employed by the employer the full thirteen (13) calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation.
 - (f) The hourly wage has not been fixed or cannot be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where the services are rendered by paid employees.
- (2) In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth (1/50) of the total wages which the employee has earned from all occupations during the twelve (12) calendar months immediately preceding the injury.
- (3) In the case of volunteer firemen, police, and emergency management agency members or trainees, the income benefits shall be based on the average weekly wage in their regular employment.
- (4) If the employee was a minor, apprentice, or trainee when injured, and it is established that under normal conditions his *or her* wages should be expected to increase during the period of disability, that fact may be considered in computing his *or her* average weekly wage.
- (5) When the employee is working under concurrent contracts with two (2) or more employers and the defendant employer has knowledge of the employment prior to the injury, his *or her* wages from all the employers shall be considered as if earned from the employer liable for compensation.
- (6) The term "wages" as used in this section and KRS 342.143 means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, and fuel or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer to the extent the gratuities are reported for income tax purposes.
- (7) The ~~commissioner~~~~executive director~~ shall, from time to time, based upon the best available information, determine by administrative regulation industries which ordinarily do not have a full working day for five (5) days in every week. In those industries, compensation shall be computed at the average weekly wage earned by the employee at the time of injury reckoning wages as earned while working full time. "At full time" as used in this subsection means a full working day for five (5) working days in every week regardless of whether the injured employee actually worked all or part of the time.

➔Section 1793. KRS 342.143 is amended to read as follows:

For the purposes of this chapter, the average weekly wage of the state shall be determined by the ~~commissioner~~~~executive director~~ as follows: On or before September 1 of each year, the total wages reported by subject employers under the Kentucky Unemployment Insurance Law for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total number of insured workers reported for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by fifty-two (52) and the average weekly wage thus determined rounded to the nearest cent. The average weekly wage shall be certified to the ~~commissioner~~~~executive director~~ by the Education and Workforce Development Cabinet in a manner prescribed by the ~~commissioner~~~~executive director~~ by administrative regulation. The average weekly wage as so

determined shall be applicable for the full period during which income or death benefits are payable, when the date of occurrence of injury or of disability in the case of disease, or of death, falls within the calendar year commencing January 1 following the September 1 determination. Whenever a change in the average weekly wage of the state is of such amount that the minimum weekly income benefits for total disability or for death are increased or decreased by one dollar (\$1) or more, or the maximum weekly income benefits for total disability or for death are increased or decreased by two dollars (\$2) or more, computed in each case and rounded to the nearest dollar, an adjustment in those minimums or maximums which are affected in the requisite amount by the change in the average weekly wage of the state shall be made which will reflect this increase or decrease, but no change in such limitations shall otherwise be made. Notwithstanding the provisions of this section, KRS 342.140 and 342.740, or any other provisions of this chapter to the contrary, the average weekly wage for calendar years 1995 and 1996 shall be determined to be no higher than the average weekly wage determined by the *commissioner*~~{executive director}~~ to be in effect in the calendar year of 1994. If the average weekly wage calculated by the *commissioner*~~{executive director}~~ is determined to be lower than the 1994 calendar year wage, the average weekly wage may be lowered as provided by this section. Beginning in calendar year 1997 and annually thereafter, the average weekly wage shall be calculated based upon the state average weekly wage in effect two (2) years prior to that calculation.

➔Section 1794. KRS 342.165 is amended to read as follows:

- (1) If an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful administrative regulation made thereunder, communicated to the employer and relative to installation or maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable under this chapter shall be increased thirty percent (30%) in the amount of each payment. If an accident is caused in any degree by the intentional failure of the employee to use any safety appliance furnished by the employer or to obey any lawful and reasonable order or administrative regulation of the *commissioner*~~{executive director}~~ or the employer for the safety of employees or the public, the compensation for which the employer would otherwise have been liable under this chapter~~{,}~~ shall be decreased fifteen percent (15%) in the amount of each payment.
- (2) No compensation shall be payable for work-related injuries if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable falsely represents, in writing, his *or her* physical condition or medical history, if all of the following factors are present:
 - (a) The employee has knowingly and willfully made a false representation as to his *or her* physical condition or medical history;
 - (b) The employer has relied upon the false representation, and this reliance was a substantial factor in the hiring; and
 - (c) There is a causal connection between the false representation and the injury for which compensation has been claimed.

➔Section 1795. KRS 342.185 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, no proceeding under this chapter for compensation for an injury or death shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable after the happening thereof and unless an application for adjustment of claim for compensation with respect to the injury shall have been made with the *department*~~{office}~~ within two (2) years after the date of the accident, or in case of death, within two (2) years after the death, whether or not a claim has been made by the employee himself *or herself* for compensation. The notice and the claim may be given or made by any person claiming to be entitled to compensation or by someone in his *or her* behalf. If payments of income benefits have been made, the filing of an application for adjustment of claim with the *department*~~{office}~~ within the period shall not be required, but shall become requisite within two (2) years following the suspension of payments or within two (2) years of the date of the accident, whichever is later.
- (2) The right to compensation under this chapter resulting from work-related exposure to the human immunodeficiency virus shall be barred unless notice of the injurious exposure is given in accordance with subsection (1) of this section and unless an application for adjustment of claim for compensation shall have been made with the *commissioner*~~{executive director}~~ within five (5) years after the injurious exposure to the virus.

➔Section 1796. KRS 342.205 is amended to read as follows:

- (1) After an injury and so long as compensation is claimed, the employee, if requested by a party or by the administrative law judge, shall submit himself *or herself* to examination, at a reasonable time and place, to a duly-qualified physician or surgeon designated and paid by the requesting party. The employee shall have the right to have a duly-qualified physician or surgeon designated and paid by himself *or herself* present at the examination, but this right shall not deny the requesting party's physician or surgeon the right to examine the injured employee at all reasonable times and under all reasonable conditions.
- (2) The party requesting an examination pursuant to subsection (1) of this section shall make arrangements to provide all the cost of the examination. The requesting party shall also prepay the cost of transportation of the employee to and from the examination if public transportation is utilized. If the employee uses his *or her* own vehicle to travel to and from the examination, the requesting party shall prepay the employee at the state mileage rate. The requesting party shall also reimburse the employee for the cost of meals, lodging, parking, and toll charges upon proof of same by written voucher. The amounts prepaid or reimbursed by the requesting party, as required by this subsection, shall be the same as, and in accordance with, state travel administrative regulations and standards promulgated and established pursuant to KRS Chapter 45.
- (3) If an employee refuses to submit himself *or herself* to or in any way obstructs the examination, his *or her* right to take or prosecute any proceedings under this chapter shall be suspended until the refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.
- (4) Any employee receiving benefits under this chapter may be required, upon request of any party, to furnish a sworn affirmed statement of earnings and other supporting information the administrative law judge may require.
- (5) The ~~cabinet~~~~department~~ shall supply forms for the report.

➔Section 1797. KRS 342.213 is amended to read as follows:

- (1) The Governor shall make all appointments to the board, and appoint the administrative law judges and the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims, subject to the consent of the Senate in accordance with KRS 11.160, and in accordance with this section, KRS 342.215, 342.228, and 342.230 by choosing from names presented to him *or her* by the Workers' Compensation Nominating Commission.
- (2) The Workers' Compensation Nominating Commission shall consist of seven (7) members appointed by the Governor as follows:
 - (a) Two (2) members shall be attorneys experienced in the practice of workers' compensation, one (1) of whom customarily represents claimants, and one (1) of whom customarily represents employers. Both shall serve terms of two (2) years, but their successors shall be appointed to terms of four (4) years.
 - (b)
 1. One (1) member of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of three (3) years; and
 2. Two (2) members of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of four (4) years.
 3. Thereafter, as each term expires, the vacancy so created shall be filled by an appointee from the same political party for a term of four (4) years.
 - (c) Appointments to fill the unexpired term of a member shall be for the remainder of the term.
 - (d) The members shall annually select a chairman of the nominating commission.
- (3) Notwithstanding the provisions of subsection (2) of this section, at least three (3) members of the Workers' Compensation Nominating Commission shall be individuals who directly derive no earned income from the workers' compensation program. In order to satisfy the requirement of this subsection, the Governor may remove any existing member of the Workers' Compensation Nominating Commission and replace that member with an individual who does not derive earned income from the workers' compensation program. On or before March 1, 1997, the Governor shall submit to the Senate a list of the members of the commission identifying the positions they fill and the terms they shall serve in accordance with the provisions of this section.

- (4) The ~~commissioner~~~~executive director~~ shall monitor the workload of the administrative law judges and, whenever a vacancy occurs, determine whether filling the position is necessary to expeditious resolution of claims brought under this chapter. One hundred twenty (120) days prior to the expiration of the terms of the administrative law judges, and when a vacancy occurs under other circumstances, the ~~commissioner~~~~executive director~~ shall certify to the Workers' Compensation Nominating Commission that filling the position is necessary and the Workers' Compensation Nominating Commission shall act to fill only such positions as have been certified as necessary by the ~~commissioner~~~~executive director~~.
- (5) (a) The Workers' Compensation Nominating Commission shall consult with the ~~commissioner~~~~executive director~~, chief administrative law judge, and a member of the Workers' Compensation Board as to the performance in office of the administrative law judges. The Workers' Compensation Nominating Commission may recommend retention of any sitting administrative law judge, or present to the Governor the names of three (3) qualified individuals nominated for the position. The Workers' Compensation Nominating Commission shall report its recommendation for retention to the Governor no later than thirty (30) days after receipt from the ~~commissioner~~~~executive director~~ of certification of the necessity to fill the position and shall render to the Governor its list of nominees to fill vacancies within sixty (60) days of receipt of the ~~commissioner's~~~~executive director's~~ certification. The name of an individual who has been rejected by the Governor when recommended for retention shall not be presented thereafter as a nominee for the same position. No sitting administrative law judge shall be nominated to fill more than one (1) vacancy except for separate vacancies as an administrative law judge.
- (b) Within thirty (30) days of receipt of the recommendation, the Governor may reject recommendations of retention, in which event the Workers' Compensation Nominating Commission shall, within thirty (30) days, reconvene and present a list of the names of three (3) nominees for each position for which a recommendation for retention has been rejected by the Governor.
- (6) The Governor shall appoint the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims from a list of three (3) names submitted by the nominating commission. The list submitted to the Governor shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.228. The ~~commissioner~~~~executive director~~ shall be subject to Senate confirmation in accordance with KRS 11.160.
- (7) (a) The Governor shall appoint the members of the Workers' Compensation Board. The nominating commission shall present to the Governor a list of three (3) candidates for appointment to the board no later than thirty (30) days prior to the expiration of a board member's term. For the purpose of filling vacancies on the board which occur for reasons other than an expiration of term, the nominating commission shall present a list of three (3) names to the Governor no later than sixty (60) days after a vacancy occurs.
- (b) If the Governor fails to appoint a member of the board within thirty (30) days following receipt of a list of names from the nominating commission, the previous appointee may remain in the position until the ninetieth day following the date the nominating commission provided the Governor with its list of names, at which time he *or she* shall vacate the position.
- (8) The nominating commission shall meet as often as necessary to perform its responsibilities, and the members shall be reimbursed from funds collected pursuant to KRS 342.122 for necessary expenses in the manner and amounts prescribed for state employees by KRS 45.101 and the administrative regulations promulgated under the authority of that statute. In addition, each member of the nominating commission shall be paid at a rate of one hundred dollars (\$100) per day for each meeting attended, and these expenses shall be financed from funds collected pursuant to KRS 342.122.

➔Section 1798. KRS 342.215 is amended to read as follows:

- (1) The Workers' Compensation Board is hereby created and established. The board shall rule on appeals of decisions rendered by administrative law judges under this chapter. The board shall rule on an appeal of a decision of an administrative law judge no later than sixty (60) days following the date on which the last appeal brief was filed.
- (2) The Workers' Compensation Board shall consist of three (3) members appointed by the Governor. Each member shall hold no other public office and shall devote his *or her* full time to the duties of his *or her* office.

- (3) Of the members of the board appointed under this section, one (1) shall serve a term that shall expire on January 4, 2002; one (1) shall serve a term that shall expire on January 4, 2003; and one (1) shall serve a term that shall expire on January 4, 2004, as designated by the Governor at the time of appointment. Thereafter, each term of a board member shall run for four (4) years from the date of expiration of the term for which the member's predecessor was appointed, except that a person appointed to fill a vacancy prior to the expiration of a term shall be appointed for the remainder of the term. The Governor shall not appoint a member of the board to fill the unexpired term of another board member, nor shall the Governor reappoint a member of the board who has been removed from his *or her* position prior to the expiration of his *or her* term. The members of the board shall have the qualifications required of appeals court judges, except for residence in a district, and shall receive the same salary and shall be subject to the same standards of conduct. The Governor shall designate a member of the board to serve as chairman. Any vacancy in the chairmanship shall be filled by the Governor. The Governor may at any time remove any member for cause after furnishing *the member* ~~him~~ with a written copy of the charges against him *or her* and giving *the member* ~~him~~ a public hearing if he *or she* requests it.
- (4) A decision concurred in by any two (2) of the three (3) members shall constitute a decision of the board.
- (5) Members of the Workers' Compensation Board and the administrative law judges shall be members of the Kentucky Employees Retirement System.
- (6) The Workers' Compensation Board shall be attached to the *Department* ~~Office~~ of *Workers' Claims* ~~the Secretary~~ in the *Labor* ~~Environmental and Public Protection~~ Cabinet.

➔Section 1799. KRS 342.228 is amended to read as follows:

- (1) The *Department* ~~Office~~ of Workers' Claims shall be responsible for administering claims and ensuring compliance with the insurance, self-insurance, and rehabilitation provisions in this chapter. The *department* ~~office~~ shall be administered by *a commissioner* ~~an executive director~~ appointed by the Governor. The Governor shall select the *commissioner* ~~executive director~~ from a list of three (3) names submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213. The *commissioner* ~~executive director~~ appointed by the Governor shall be subject to the consent of the Senate in accordance with KRS 11.160.
- (2) The *commissioner* ~~executive director~~ shall have demonstrated knowledge and experience in the area of workers' compensation, public administration, and administrative law.

➔Section 1800. KRS 342.229 is amended to read as follows:

- (1) The records of the *Department* ~~Office~~ of Workers' Claims, to the extent that they provide information personally identifying an individual alleging a work-related injury or occupational disease, shall not be open to the public but only to parties satisfying the *commissioner* ~~executive director~~ of their interest in the records and their right to inspect them.
- (2) This section shall not prohibit or limit the exchange of public records or the sharing of information between the *Department* ~~Office~~ of Workers' Claims and another public agency when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function, including the investigation of workers' compensation fraud.

➔Section 1801. KRS 342.230 is amended to read as follows:

- (1) The *commissioner* ~~executive director~~, within the limits of appropriations therefor and except as otherwise specifically provided in this chapter, shall establish and fill any positions, including medical services and advice, necessary to carry on the *department's* ~~office's~~ work. The employees of the *Department* ~~Office~~ of Workers' Claims, except the *commissioner* ~~executive director~~, administrative law judges, and board members, shall be members of the classified service.
- (2) The *commissioner* ~~executive director~~ of the *Department* ~~Office~~ of Workers' Claims shall have immediate supervision of the employees of the *department* ~~office~~, perform duties assigned him *or her*, and have complete authority to carry out all the administrative functions relating to the *Department* ~~Office~~ of Workers' Claims. The *commissioner* ~~executive director~~ with the assistance of the board shall train and instruct the administrative law judges on an ongoing basis; assign cases; and monitor the caseloads of the administrative law judges and the Workers' Compensation Board to ensure timely disposition of cases; keep and be the custodian of the records of the board and the administrative law judges; annually report the activities of the board and the administrative law judges to the Governor; and devote his *or her* full time to the duties of his *or*

her office. The **commissioner**~~{executive director}~~ shall be paid a salary not less than the salary of a member of the board.

- (3) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years, not more than nineteen (19) administrative law judges, each of whom shall be an attorney and shall have five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, and extensive knowledge of workers' compensation law, and shall be paid the same salary as a Circuit Judge. Each administrative law judge may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an administrative law judge, shall provide the name of the individual whom he intends to appoint to the position to the chairman of the Senate Labor and Industry Committee. These administrative law judges shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. Administrative law judges may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.
- (4) To ensure that the administrative law judges perform their responsibilities competently and issue decisions consistent with this chapter, the **commissioner**~~{executive director}~~ shall, at least twice annually, conduct training and education seminars in workers' compensation law; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.
- (5) The Governor may at any time remove the **commissioner**~~{executive director}~~ or any member of the board. The **commissioner**~~{executive director}~~ may remove any administrative law judge. A member of the board or an administrative law judge may be removed for good cause, including~~{-}~~ violation of the code of judicial ethics or the code of ethics applicable to the executive branch of the Commonwealth. In addition, an administrative law judge or a member of the board may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, and failure to attend training and continuing education programs required by this section.
- (6) Any vacancy in the term of an administrative law judge, which occurs prior to the expiration of the term, shall be filled if necessary by appointment of the Governor in accordance with subsection (3) of this section within sixty (60) days from the date the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160, for the remainder of the term.
- (7)
 - (a) Effective at 12 midnight, December 31, 1997, the terms of administrative law judges who were appointed to fill the five (5) administrative law judge positions which were created in 1990 shall end, and the term of the chief administrative law judge who was appointed under subsection (8) of this section shall end. On January 1, 1998, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.
 - (b) Effective at 12 midnight, December 31, 1999, the terms of administrative law judges who were appointed to fill the ten (10) administrative law judge positions which were created in 1987 shall end. On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.
- (8) One (1) of the administrative law judges appointed pursuant to this section shall be appointed as a chief administrative law judge, to have the same qualifications, powers, duties, and requirements as those of other administrative law judges. The chief administrative law judge shall not be assigned regular dockets but shall instead assist the **commissioner**~~{executive director}~~ by doing all scheduling of the administrative law judges, handling dockets assigned to the administrative law judges in case of an emergency, providing supervision of the administrative law judges, and providing educational opportunities for the administrative law judges. The chief administrative law judge shall be paid at the same rate as the administrative law judges plus an additional three thousand dollars (\$3,000) per year. At any time the **commissioner**~~{executive director}~~ may replace the chief administrative law judge with one (1) of the other administrative law judges at which time the former chief administrative law judge shall resume the duties assigned to the other administrative law judges pursuant to this chapter. The term of the chief administrative law judge employed in 1994 shall expire on December 31,

1997. On January 1, 1998, the *commissioner*~~{executive director}~~ shall employ a person in this position for a four (4) year term.

➔Section 1802. KRS 342.231 is amended to read as follows:

The ~~{Department of}~~Labor *Cabinet* shall report monthly to the Committee on Appropriations and Revenue its monthly expenditures of restricted agency funds and the nature of such expenditures. Separate reporting shall be done by each office within the ~~{Department of}~~Labor *Cabinet* and for general administration and support.

➔Section 1803. KRS 342.232 is amended to read as follows:

- (1) The boards of directors of the following funds shall make quarterly reports according to generally accepted accounting principles of all money received and disbursed by the listed funds during each quarter to the Legislative Research Commission. The funds which shall be reported are:
 - (a) Kentucky individual self-insurance guaranty fund;
 - (b) Kentucky group self-insurance fund; and
 - (c) Kentucky coal employers self-insurance fund.
- (2) The director of the Division of Workers' Compensation Funds shall make quarterly reports according to generally accepted accounting principles of all money received and disbursed by the coal workers' pneumoconiosis fund to the Legislative Research Commission.
- (3) The *Department*~~{Office}~~ of Workers' Claims shall make quarterly reports to the Legislative Research Commission on the status of the provisions of this chapter.

➔Section 1804. KRS 342.235 is amended to read as follows:

The *commissioner*~~{executive director}~~ and employees or authorized representatives of the department shall, for traveling necessitated by the discharge of official duties, be reimbursed for transportation actually paid for, not exceeding the regular fare over the most direct route, and meals and lodging actually paid for.

➔Section 1805. KRS 342.240 is amended to read as follows:

The *department*~~{office}~~ shall maintain its main office in Frankfort, Kentucky, using suitable rooms and offices belonging to this state, and shall be provided necessary office furniture to be paid for by the state. The *commissioner*~~{executive director}~~ shall provide necessary supplies, books, periodicals, and maps and shall provide a seal for the authentication of orders, awards, or proceedings of the administrative law judges, on which shall be inserted the words "*Department*~~{Office}~~ of Workers' Claims, State of Kentucky, official seal." The board and the administrative law judges may hold sessions at any place within the state where necessary and shall have power to sue or institute legal proceedings in any court of this state, under existing laws as to jurisdiction of actions. Unless consented to by the *commissioner*~~{executive director}~~, all actions or proceedings against the board or a member in his *or her* official capacity, or against an administrative law judge or the *commissioner*~~{executive director}~~ in his *or her* official capacity, shall be brought in the courts of Franklin County.

➔Section 1806. KRS 342.245 is amended to read as follows:

All proceedings of the board and the administrative law judges shall be recorded in books kept for that purpose by the *commissioner*~~{executive director}~~, which shall constitute a public record and shall contain an entry of each case, claim, or proceeding considered, heard or passed upon by each administrative law judge and the board, with the award, finding or decisions made thereon.

➔Section 1807. KRS 342.260 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ shall prepare administrative regulations as he *or she* considers necessary to carry on the work of the *department*~~{office}~~ and the work of the administrative law judges and may promulgate administrative regulations not inconsistent with this chapter and KRS Chapter 13A for carrying out the provisions of this chapter.
- (2) The *commissioner*~~{executive director}~~ shall develop or adopt life expectancy tables for use in making computations for the apportionment of benefits under KRS 342.120, computation of attorneys' fees under KRS 342.320, and for use in all other situations arising under this chapter in which the calculation of a life expectancy is necessary or desirable, including the computation of assessments or reserves for self-insurers. The *commissioner*~~{executive director}~~ may adopt life tables published by the United States Department of

Health and Human Services or other life tables developed by a qualified entity, as determined by the **commissioner**~~[executive director]~~. The life tables designated by the **commissioner**~~[executive director]~~ through administrative regulation in effect as of the date of an opinion, award, or settlement approved by an administrative law judge shall apply to computations concerning that opinion, award, or settlement.

- (3) Processes and procedure under this chapter shall be as summary and simple as reasonably possible. The board or any member thereof or any administrative law judge for the purpose of this chapter, may subpoena witnesses, administer or cause to have administered oaths, and examine or cause to have examined those parts of the books and records of the parties to a proceeding as relate to questions in dispute.
- (4) The sheriff shall serve all subpoenas of the board and administrative law judges and shall receive the same fee as provided by law for like service in civil actions. Each witness who appears in obedience to the subpoena of the board or any administrative law judge shall receive for attendance the fees and mileage for witnesses in civil cases in the Circuit Courts.
- (5) The Circuit Court shall, on application of the board, any member thereof, or any administrative law judge, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

➔Section 1808. KRS 342.265 is amended to read as follows:

- (1) If the employee and employer and special fund or any of them reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement signed by the parties or their representatives shall be filed with the **commissioner**~~[executive director]~~, and, if approved by an administrative law judge, shall be enforceable pursuant to KRS 342.305. Where all parties have not joined in the settlement agreement, it shall not be approved unless it is certified that the party not participating in the settlement has been served with a copy of the agreement not less than ten (10) days prior to submission of the agreement for approval. This provision shall not be construed to prevent the voluntary payment of compensation for the periods and in the amounts prescribed by this chapter, but nothing shall operate as a final settlement except a memorandum of agreement filed with the **commissioner**~~[executive director]~~ and approved by the administrative law judge. Upon claims settled after December 12, 1996, the special fund shall have the option of settling its liability for income benefits on the same terms as those reached between the employee and employer. Notice of the special fund exercise of the option granted in this subsection shall be made by letter of the director of the Division of Workers' Compensation Funds mailed to the parties within ten (10) days of receipt by the director of a copy of the agreement.
- (2) Settlement agreements concluded after July 14, 2000, providing for commuted lump-sum payment of future income benefits which would otherwise be payable in amounts greater than one hundred dollars (\$100) per week shall not be approved unless there is reasonable assurance that the worker will have an adequate source of income during disability. This subsection is remedial and applies to all pending and future claims.
- (3) Upon lump-sum settlement of future periodic payments, the discount rate used in the calculation of the settlement amount shall not exceed a reasonable amount fixed by the **commissioner**~~[executive director]~~. For settlements approved after December 12, 1996, until December 31, 1997, the true discount rate shall be six percent (6%) compounded annually on each payment. Before January 1 of each year commencing in 2001, the **commissioner**~~[executive director]~~ shall fix the discount rate to be utilized in the succeeding year based at one-half of one percent (0.5%) below the interest rate paid upon ten (10) year United States Treasury Notes as of August 1 of the preceding year.
- (4) If the parties have previously filed an agreement which has been approved by the administrative law judge, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive.
- (5) An application for resolution of claim shall be held in abeyance during any period voluntary payments of income benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay.

➔Section 1809. KRS 342.267 is amended to read as follows:

If an insurance carrier, self-insured group, or self-insured employer providing workers' compensation coverage engages in claims settlement practices in violation of this chapter, or the provisions of KRS 304.12-230, the

commissioner~~{executive director}~~ of the **Department**~~{Office}~~ of Workers' Claims shall fine the insurance company, self-insured group, or self-insured employer the sum of one thousand dollars (\$1,000) to five thousand dollars (\$5,000) for each violation and if they have a pattern of violations, the **commissioner**~~{executive director}~~ may revoke the certificate of self-insurance or request the **commissioner**~~{executive director}~~ of insurance to revoke the certificate of authority of the insurance carrier or the self-insured group.

➔Section 1810. KRS 342.270 is amended to read as follows:

- (1) If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application for resolution of claim. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after the death, or within two (2) years after the cessation of voluntary payments, if any have been made. When the application is filed by the employee or during the pendency of that claim, he *or she* shall join all causes of action against the named employer which have accrued and which are known, or should reasonably be known, to him *or her*. Failure to join all accrued causes of action will result in such claims being barred under this chapter as waived by the employee.
- (2) Except with respect to claims for benefits by reason of coal workers' pneumoconiosis, the **commissioner**~~{executive director}~~ shall issue notice of the filing to all parties and shall promptly assign the claim to an administrative law judge. The administrative law judge shall facilitate the exchange of information pertinent to the claim pursuant to administrative regulations promulgated by the **commissioner**~~{executive director}~~. Within forty-five (45) days of the date of issuance of the notice required by this section, the employer or carrier shall file notice of claim denial or acceptance, setting forth specifically those material matters which are admitted, those which are denied, and the basis of any denial of the claim.
- (3) Within one hundred twenty (120) days of July 14, 2000, the **commissioner**~~{executive director}~~ shall promulgate administrative regulations establishing procedures for the resolution of claims. The administrative regulations promulgated pursuant to the provisions of this subsection shall be effective on an emergency basis and be applied to all pending claims.

➔Section 1811. KRS 342.275 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall promptly issue notice of the assignment of the claim to an administrative law judge, time for presentation of proof and of the time and place of a benefit review conference. The administrative law judge may confer informally with the parties for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposition of the case.
- (2) The administrative law judge may grant continuances or grant or deny any benefits afforded under this chapter, including interlocutory relief, according to criteria established in administrative regulations promulgated by the **commissioner**~~{executive director}~~. The administrative law judge shall render the award, order, or decision within sixty (60) days following the final hearing unless extension is mutually agreed to by all parties. The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order, or decision shall immediately be sent to the parties in dispute.

➔Section 1812. KRS 342.276 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall establish a program to provide an opportunity for mediation of disputes as to the entitlement to benefits under this chapter.
- (2) The **commissioner**~~{executive director}~~ shall promulgate administrative regulations necessary to establish and implement the mediation program, which shall prescribe the qualifications and duties of mediators; a process for the designation of mediators; procedures for the conduct of mediation proceedings; and the issues which shall be subject to mediation.
- (3) Recommendations by mediators are without administrative or judicial authority and are not binding on the parties unless the parties enter into a settlement agreement incorporating the recommendations. Administrative law judges may participate in the mediation process but shall not issue findings or orders as a result of the process unless agreed to by the parties.

➔Section 1813. KRS 342.277 is amended to read as follows:

- (1) In accordance with administrative regulations promulgated by the *commissioner*~~{executive director}~~, a collective bargaining agreement between an employer and a recognized or certified exclusive bargaining representative that contains the following provisions may be recognized as valid and binding:
- (a) An alternative dispute resolution system to supplement, modify, or replace the provisions of this chapter that relate to the resolution of disputes, and which may include but is not limited to mediation and arbitration, the results of which may be binding upon the parties;
 - (b) The use of an agreed list of providers of medical treatment, which may be the exclusive source of all medical and related treatment provided under this chapter;
 - (c) The use of a limited list of physicians to conduct independent medical examinations;
 - (d) A light duty, modified job, or return-to-work program;
 - (e) A vocational rehabilitation or retraining program; and
 - (f) A twenty-four (24) hour health care coverage plan for medical benefits.
- (2) A system of arbitration may provide that the decision of the arbiter is subject to review by an administrative law judge.
- (3) Notwithstanding the provisions in subsection (1) of this section, no agreement shall be recognized as valid and binding that diminishes the rights of any of the parties under this chapter. Also, no agreement shall be valid and binding unless it is agreed to by the employer's insurance carrier.

➔Section 1814. KRS 342.285 is amended to read as follows:

- (1) An award or order of the administrative law judge as provided in KRS 342.275, if petition for reconsideration is not filed as provided for in KRS 342.281, shall be conclusive and binding as to all questions of fact, but either party may in accordance with administrative regulations promulgated by the *commissioner*~~{executive director}~~ appeal to the Workers' Compensation Board for the review of the order or award.
- (2) No new or additional evidence may be introduced before the board except as to the fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, ruling, or award, but the board shall otherwise hear the appeal upon the record as certified by the administrative law judge and shall dispose of the appeal in summary manner. The board shall not substitute its judgment for that of the administrative law judge as to the weight of evidence on questions of fact, its review being limited to determining whether or not:
- (a) The administrative law judge acted without or in excess of his powers;
 - (b) The order, decision, or award was procured by fraud;
 - (c) The order, decision, or award is not in conformity to the provisions of this chapter;
 - (d) The order, decision, or award is clearly erroneous on the basis of the reliable, probative, and material evidence contained in the whole record; or
 - (e) The order, decision, or award is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (3) Within sixty (60) days following the date on which the last appellate brief was filed, the board shall enter its decision affirming, modifying, or setting aside the order, decision, or award, or in its discretion remanding the claim to the administrative law judge for further proceedings in conformity with the direction of the board. The board may, before decision and upon a sufficient showing of fact, remand the claim to the administrative law judge.

➔Section 1815. KRS 342.315 is amended to read as follows:

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

- (2) The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the *commissioner*~~[executive director]~~. Except as otherwise provided in KRS 342.316, the clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.
- (3) The *commissioner*~~[executive director]~~ or an administrative law judge may, upon the application of any party or upon his own motion, direct appointment by the *commissioner*~~[executive director]~~, pursuant to subsection (1) of this section, of a medical evaluator to make any necessary medical examination of the employee. Such medical evaluator shall file with the *commissioner*~~[executive director]~~ within fifteen (15) days after such examination a written report. The medical evaluator appointed may charge a reasonable fee not exceeding fees established by the *commissioner*~~[executive director]~~ for those services.
- (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer or carrier shall pay the cost of the examination. Upon notice from the *commissioner*~~[executive director]~~ that an evaluation has been scheduled, the insurance carrier shall forward within seven (7) days to the employee the expenses of travel necessary to attend the evaluation at a rate equal to that paid to state employees for travel by private automobile while conducting state business.
- (5) Upon claims in which it is finally determined that the injured worker was not the employee at the time of injury of an employer covered by this chapter, the special fund shall reimburse the carrier for any evaluation performed pursuant to this section for which the carrier has been erroneously compelled to make payment.
- (6) Not less often than annually the designee of the secretary of the Cabinet for Health and Family Services shall assess the performance of the medical schools and render findings as to whether evaluations conducted under this section are being rendered in a timely manner, whether examinations are conducted in accordance with medically recognized techniques, whether impairment ratings are in conformity with standards prescribed by the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association, and whether coal workers' pneumoconiosis examinations are conducted in accordance with the standards prescribed in this chapter.
- (7) The General Assembly finds that good public policy mandates the realization of the potential advantages, both economic and effectual, of the use of telemedicine and telehealth. The *commissioner*~~[executive director]~~ may, to the extent that he *or she* finds it feasible and appropriate, require the use of telemedicine and telehealth practices, as authorized under KRS 194A.125, in the independent medical evaluation process required by this chapter.

➔Section 1816. KRS 342.316 is amended to read as follows:

- (1) (a) The employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability under this section. Also, it does not affect whatever rights the later operator might have against the prior operator.
- (b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later.
- (2) The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to the disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter, except that notice of claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise *the employee*~~him~~ that he *or she* has contracted the disease, or a diagnosis of the disease is first communicated to him *or her*, whichever shall first occur.
- (3) The procedure for filing occupational disease claims shall be as follows:

- (a) The application for resolution of claim shall set forth the complete work history of the employee with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least one (1) written medical report supporting his *or her* claim. This medical report shall be made on the basis of clinical or X-ray examination performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The report shall be made by a duly-licensed physician. The ~~commissioner~~~~executive director~~ shall promulgate administrative regulations which prescribe the format of the medical report required by this section and the manner in which the report shall be completed.
1. For coal-related occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray interpretation by a National Institute of Occupational Safety and Health (NIOSH) certified "B" reader. The chest X-ray upon which the report is made shall be filed with the application as well as spirometric tests when pulmonary dysfunction is alleged.
 2. For other compensable occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray examination and appropriate pulmonary function tests.
- (b) To be admissible, medical evidence offered in any proceeding under this chapter for determining a claim for occupational pneumoconiosis resulting from exposure to coal dust shall comply with accepted medical standards as follows:
1. Chest X-rays shall be of acceptable quality with respect to exposure and development and shall be indelibly labeled with the date of the X-ray and the name and Social Security number of the claimant. Physicians' reports of X-ray interpretations shall: identify the claimant by name and Social Security number; include the date of the X-ray and the date of the report; classify the X-ray interpretation using the latest ILO Classification and be accompanied by a completed copy of the latest ILO Classification report. Only interpretations by National Institute of Occupational Safety and Health (NIOSH) certified "B" readers shall be admissible.
 2. Spirometric testing shall be conducted in accordance with the standards recommended in the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association and the 1978 ATS epidemiology standardization project with the exception that the predicted normal values for lung function shall not be adjusted based upon the race of the subject. The FVC or the FEV1 values shall represent the largest of such values obtained from three (3) acceptable forced expiratory volume maneuvers as corrected to BTPS (body temperature, ambient pressure and saturated with water vapor at these conditions) and the variance between the two (2) largest acceptable FVC values shall be either less than five percent (5%) of the largest FVC value or less than one hundred (100) milliliters, whichever is greater. The variance between the two (2) largest acceptable FEV1 values shall be either less than five percent (5%) of the largest FEV1 value or less than one hundred (100) milliliters, whichever is greater. Reports of spirometric testing shall include a description by the physician of the procedures utilized in conducting such spirometric testing and a copy of the spirometric chart and tracings from which spirometric values submitted as evidence were taken.
 3. The ~~commissioner~~~~executive director~~ shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to effectuate the purposes of this section. The ~~commissioner~~~~executive director~~ shall periodically review the applicability of the spirometric test values contained in the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association and may by administrative regulation substitute other spirometric test values which are found to be more closely representative of the normal pulmonary function of the coal mining population.
 4. The procedure for determination of occupational disease claims shall be as follows:
 - a. Immediately upon receipt of an application for resolution of claim, the ~~commissioner~~~~executive director~~ shall notify the responsible employer and all other interested parties and shall furnish them with a full and complete copy of the application.
 - b. The ~~commissioner~~~~executive director~~ shall assign the claim to an administrative law judge and, except for coal workers' pneumoconiosis claims, shall promptly refer the

employee to such physician or medical facility as the **commissioner**~~executive director~~ may select for examination. The report from this examination shall be provided to all parties of record. The employee shall not be referred by the **commissioner**~~executive director~~ for examination within two (2) years following any prior referral for examination for the same disease.

- c. Except for coal workers' pneumoconiosis claims, within forty-five (45) days following the notice of filing an application for resolution of claim, the employer or carrier shall notify the **commissioner**~~executive director~~ and all parties of record of its acceptance or denial of the claim. A denial shall be in writing and shall state the specific basis for the denial. In coal workers' pneumoconiosis claims, the employer's notice of claim denial or acceptance shall be filed within thirty (30) days of the issuance by the **commissioner**~~executive director~~ of the notice of the consensus reading unless the consensus is that the miner has not developed coal workers' pneumoconiosis category 1/0 or greater. In the event the consensus procedure is exhausted without consensus being established, the employer's notice of claim denial or acceptance shall be filed within thirty (30) days of the **commissioner**~~executive director~~ notification to the administrative law judge that consensus has not been reached.
 - d. Within forty-five (45) days of assignment of a coal workers' pneumoconiosis claim to an administrative law judge, the employer shall cause the employee to be examined by a physician of the employer's choice and shall provide to all other parties and file with the **commissioner**~~executive director~~ the X-ray interpretation by a "B" reader. The examination of the employee shall include spirometric testing if pulmonary dysfunction is alleged by the employee in the application for resolution of a claim. The **commissioner**~~executive director~~ shall determine whether the X-ray interpretations filed by the parties are in consensus.
 - e. If the readings are not in consensus, the **commissioner**~~executive director~~ shall forward both films, masking information identifying the facility where the X-ray was obtained and the referring physician, consecutively to three (3) "B" readers selected randomly from a list maintained by the **commissioner**~~executive director~~ for interpretation. Each "B" reader shall select the highest quality film and report only the interpretation of that film. The **commissioner**~~executive director~~ shall determine if two (2) of the X-ray interpretations filed by the three (3) "B" readers selected randomly are in consensus. If consensus is reached, the **commissioner**~~executive director~~ shall forward copies of the report to all parties as well as notice of the consensus reading which shall be considered as evidence. If consensus is not reached, the administrative law judge shall decide the claim on the evidence submitted.
 - f. "Consensus" is reached between two (2) chest X-ray interpreters when their classifications meet one (1) of the following criteria: each finds either category A, B, or C progressive massive fibrosis; or findings with regard to simple pneumoconiosis are both in the same major category and within one (1) minor category (ILO category twelve (12) point scale) of each other.
 - g. The administrative law judge shall conduct such proceedings as are necessary to resolve the claim and shall have authority to grant or deny any relief, including interlocutory relief, to order additional proof, to conduct a benefit review conference, or to take such other action as may be appropriate to resolve the claim.
 - h. Unless a voluntary settlement is reached by the parties, or the parties agree otherwise, the administrative law judge shall issue a written determination within sixty (60) days following a hearing. The written determination shall address all contested issues and shall be enforceable under KRS 342.305.
5. The procedure for appeal from a determination of an administrative law judge shall be as set forth in KRS 342.285.
- (4) (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the **commissioner**~~executive director~~ within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct

manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise *the employee*~~[him]~~ that he *or she* has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the *commissioner*~~[executive director]~~ within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or *its*~~[his]~~ insurance carrier, voluntarily makes payment therefor, or if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the *commissioner*~~[executive director]~~ within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

- (b) Income benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his *or her* last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.
- (5) The amount of compensation payable for disability due to occupational disease or for death from the disease, and the time and manner of its payment, shall be as provided for under the general provisions of the Workers' Compensation Act, but:
 - (a) In no event shall the payment exceed the amounts that were in effect at the time of the last injurious exposure;
 - (b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later; and
 - (c) In case of death where the employee has been awarded compensation or made timely claim within the period provided for in this section, and an employee has suffered continuous disability to the date of his *or her* death occurring at any time within twenty (20) years from the date of disability, his *or her* dependents, if any, shall be awarded compensation for his *or her* death as provided for under the general provisions of the Workers' Compensation Act and in this section, except as provided in KRS 342.750(6).
 - (6) If an autopsy has been performed, no testimony relative thereto shall be admitted unless the employer or *its*~~[his]~~ representative has available findings and reports of the pathologist or doctor who performed the autopsy examination.
 - (7) No compensation shall be payable for occupational disease if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself *or herself*, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of the occupational disease, or failed or omitted truthfully to state to the best of his *or her* knowledge, in answer to written inquiry made by the employer, the place, duration, and nature of previous employment, or, to the best of his *or her* knowledge, the previous state of his *or her* health.
 - (8) No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which under the provisions of this chapter would give right to compensation, arose subsequent to the beginning of the first compensable disability, except only for after-born children of a marriage existing at the beginning of such disability.
 - (9) Whenever any claimant misconceives his *or her* remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of the cause, that the claim for injury, disability, or death which was the basis for his *or her* application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for injury, disability, or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and compensation may be awarded that is warranted by the whole evidence pursuant to the provisions of this chapter. When amendment of this type is submitted, further or additional evidence may be heard when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done,

shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required by this subsection.

- (10) When an employee has an occupational disease that is covered by this chapter, the employer in whose employment he *or she* was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, except as otherwise provided in this chapter.
- (11)
 - (a) Income benefits for coal-related occupational pneumoconiosis shall be paid fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as established in KRS 342.1242 and fifty percent (50%) by the employer in whose employment the employee was last exposed to the hazard of that occupational disease.
 - (b) Compensation for all other occupational disease shall be paid by the employer in whose employment the employee was last exposed to the hazards of the occupational disease.
- (12) A concluded claim for benefits by reason of contraction of coal workers' pneumoconiosis in the severance or processing of coal shall bar any subsequent claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless there has occurred in the interim between the conclusion of the first claim and the filing of the second claim at least two (2) years of employment wherein the employee was continuously exposed to the hazards of the disease in the Commonwealth.
- (13) For coal-related occupational pneumoconiosis claims, the consensus procedure shall apply to all claims which have not been assigned to an administrative law judge prior to July 15, 2002. The consensus classification shall be presumed to be the correct classification of the employee's condition unless overcome by clear and convincing evidence. If an administrative law judge finds that the presumption of correctness of the consensus reading has been overcome, the reasons shall be specially stated in the administrative law judge's order.

➔Section 1817. KRS 342.320 is amended to read as follows:

- (1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of an administrative law judge pursuant to the statutes and administrative regulations.
- (2) In an original claim, attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:
 - (a) Twenty percent (20%) of the first twenty-five thousand dollars (\$25,000) of the award, fifteen percent (15%) of the next ten thousand dollars (\$10,000), and five percent (5%) of the remainder of the award, not to exceed a maximum fee of twelve thousand dollars (\$12,000). This fee shall be paid by the employee from the proceeds of the award or settlement.
 - (b) Attorney-client employment contracts entered into and signed after July 14, 2000, shall be subject to the conditions of paragraph (a) of this subsection.
- (3) In approving an allowance of attorney's fees, the administrative law judge shall consider the extent, complexity, and quality of services rendered, and in the case of death, the Remarriage Tables of the Dutch Royal Insurance Institute. An attorney's fee may be denied or reduced upon proof of solicitation by the attorney. However, this provision shall not be construed to preclude advertising in conformity with standards prescribed by the Kentucky Supreme Court.
- (4) No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the administrative law judge, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The motion for approval of an attorney's fee shall be submitted within thirty (30) days following finality of the claim. Except when the attorney's fee is to be paid by the employer or carrier, the attorney's fee shall be paid in one (1) of the following ways:
 - (a) The employee may pay the attorney's fee out of his *or her* personal funds or from the proceeds of a lump-sum settlement; or
 - (b) The administrative law judge, upon request of the employee, may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the employee in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.

- (5) At the commencement of the attorney-client relationship, the attorney shall explain to the employee the methods by which this section provides for the payment of the attorney's fee, and the employee shall select the method in which ~~the~~^{his} attorney's fee is to be paid. His *or her* selection and statement that he *or she* fully understands the method to be used shall be submitted by his *or her* attorney, on a notarized form signed by the employee, at the time the motion for approval of the attorney's fee is submitted. The *commissioner*~~[executive director]~~ shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and contain an explanation in nontechnical language of each method.
- (6) The General Assembly declares that by the enactment of KRS 342.316(3), it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge shall give due regard to this legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.
- (7) In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be awarded by the administrative law judge subject to the limits set forth in subsection (2) of this section. In awarding the attorney's fee, the administrative law judge shall consider the factors set forth in subsection (3) of this section. If no additional amount is recovered upon reopening, no attorney's fee shall be awarded. No attorney's fee shall be allowed or approved exceeding the amounts provided in subsection (2)(a) of this section applicable to any additional amount recovered.
- (8) Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge in the same manner as prescribed for attorney representation of employees. Employer attorney's fees are subject to the limitation of twelve thousand dollars (\$12,000) maximum fees except that fees for representing employers shall not be dependent upon the result achieved. Employer attorney's fees may be paid on a periodic basis while a claim is adjudicated and the payments need not be approved until the claims resolution process is completed. Fees for legal services in presenting a claim for reimbursement from the Kentucky coal workers' pneumoconiosis fund shall not exceed one thousand dollars (\$1,000). All such approved fees shall be paid by the employer and in no event shall exceed the amount the employer agreed by contract to pay.

➔Section 1818. KRS 342.329 is amended to read as follows:

- (1) The Division of Ombudsman and *Workers' Compensation* Specialist Services shall be headed by a director appointed by the *commissioner with the approval of the Governor, in accordance with KRS 12.050 and 342.230*~~[executive director]~~. The functions of the division shall include:
 - (a) Serving as an information source for employees, employers, medical, vocational, and rehabilitation personnel, carriers, and self-insurers;
 - (b) Responding to inquiries and complaints relative to the workers' compensation program;
 - (c) Advising all parties of their rights and obligations under this chapter;
 - (d) Assisting workers in obtaining medical reports, job descriptions, and other materials pertinent to a claim for benefits and preparing all documents necessary for a claim application; and
 - (e) Performing other duties as required by the *commissioner*~~[executive director]~~ through administrative regulations promulgated by the *commissioner*~~[executive director]~~.
- (2) The employee, employer, carrier, self-insured administrator, and medical provider shall promptly comply with reasonable information requests from an ombudsman.
- (3) The ombudsman program shall be staffed with personnel trained in techniques performed by ombudsmen and who are familiar with medical and vocational rehabilitation principles and knowledgeable about the provisions of this chapter and applicable administrative regulations.
- (4) A toll-free telephone number shall be provided throughout the Commonwealth to insure easy access by all parties to the division.

➔Section 1819. KRS 342.335 is amended to read as follows:

- (1) No person shall knowingly file, or permit to be filed, any false or fraudulent claim on his *or her* behalf to compensation or other benefits under this chapter, or by fraud, deceit, or misrepresentation procure or cause to be made or receive any payments of compensation or other benefits under this chapter to which the recipient is not lawfully entitled, or conspire with, aid, or abet another so to do. No person shall by deceit or misrepresentation or with intent to defraud cause or procure or conspire with, aid or abet another in so causing or procuring any person entitled to compensation or other benefits under this chapter to delay or omit to claim title thereto or to accept the payment of a less sum than that to which he *or she* may be lawfully entitled ~~to~~ thereunder.
- (2) Any person, as that term is defined in KRS 342.0011, who knowingly, as defined in KRS 501.020, makes any false representation, including misrepresentations of hazards, classifications, payrolls, or other facts by an employer or its agent that are designed to cause a reduction in the employer's premium, for the purpose of or in the course of receiving or providing any service or benefit available under this chapter, shall be subject to the civil fines imposed pursuant to KRS 342.990 for a violation of this subsection. In addition, if a person who violates the provisions of this subsection is also dependent upon a professional license to provide any service or benefit under this chapter, the **commissioner**~~{executive director}~~ shall refer the matter to the appropriate licensing body and recommend revocation of that person's license to work at his *or her* profession in the Commonwealth of Kentucky.

➔Section 1820. KRS 342.340 is amended to read as follows:

- (1) Every employer under this chapter shall either insure and keep insured ~~its~~~~{his}~~ liability for compensation hereunder in some corporation, association, or organization authorized to transact the business of workers' compensation insurance in this state or shall furnish to the **commissioner**~~{executive director}~~ satisfactory proof of ~~its~~~~{his}~~ financial ability to pay directly the compensation in the amount and manner and when due as provided for in this chapter. In the latter case, the **commissioner**~~{executive director}~~ shall require the deposit of an acceptable security, indemnity, or bond to secure, to the extent the **commissioner**~~{executive director}~~ directs, the payment of compensation liabilities as they are incurred. A public sector self-insured employer shall not be required to deposit funds as security, indemnity, or bond to secure the payment of liabilities under this chapter, if the public employer has authority to raise taxes, notwithstanding provisions of KRS 68.245, 132.023, 132.027, and 160.470 relating to recall and reconsideration of local taxes; raise tuition; issue bonds; raise fees or fares for services provided; or has other authority to generate funds for its operation.
- (2) Every employer subject to this chapter shall file, or have filed on its behalf, with the **department**~~{office}~~, as often as may be necessary, evidence of its compliance with the provisions of this section and all others relating hereto. Any insurance carrier or self-insured group providing workers' compensation insurance coverage for a Kentucky location shall file on behalf of the employer, with the **commissioner**~~{executive director}~~, evidence of the employer's compliance with this chapter. Evidence of compliance filed with the **department**~~{office}~~ may include a named additional insured who has been provided proof of workers' compensation insurance coverage by the employer. The filing shall be made within ten (10) days after the issuance of a policy, endorsement to a policy, or similar documentation of coverage. Every employer who has complied with the foregoing provision and has subsequently canceled its insurance or its membership in an approved self-insured group, as the case may be, shall immediately notify, or have notice given on its behalf to the **department**~~{office}~~ of the cancellation, the date thereof, and the reasons therefor; and every insurance carrier or self-insured group shall in like manner notify the **commissioner**~~{executive director}~~ upon the cancellation, lapse, termination, expiration by reason of termination of policy period, or nonrenewal of any policy issued by it or termination of any membership agreement, whichever is applicable under the provisions of this chapter, except that the carrier or self-insured group need not set forth its reasons therefor unless requested by the **commissioner**~~{executive director}~~. The above filings are to be made on the forms prescribed by the **commissioner**~~{executive director}~~. Termination of any policy of insurance issued under the provisions of this chapter shall take effect no greater than ten (10) days prior to the receipt of the notification by the **commissioner**~~{executive director}~~ unless the employer has obtained other insurance and the **commissioner**~~{executive director}~~ is notified of that fact by the insurer assuming the risk. Upon determination that any employer under this chapter has failed to comply with these provisions, the **commissioner**~~{executive director}~~ shall promptly notify interested government agencies of this failure and, with particular reference to employers engaged in coal mining, the **commissioner**~~{executive director}~~ shall promptly report any failures to the Department for Natural Resources so that appropriate action may be undertaken pursuant to KRS 351.175.
- (3) The **Department**~~{Office}~~ of Workers' Claims shall notify a named additional insured at the address listed on the evidence of coverage under a workers' compensation insurance policy upon the cancellation, lapse,

termination, expiration, or nonrenewal of a workers' compensation insurance policy issued by the insurance carrier. The notice required in this subsection shall be provided by the *department*~~{office}~~ no later than ten (10) days after the insurance notice is provided to the *commissioner*~~{executive director}~~ as required in subsection (2) of this section.

➔Section 1821. KRS 342.342 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 342.340, KRS 342.350, or any administrative regulations promulgated pursuant to those provisions, the *commissioner*~~{executive director}~~ shall annually review the adequacy of the financial or other security requirements contained in administrative regulations, promulgated pursuant to the individual self-insurance provisions in this chapter. The *commissioner*~~{executive director}~~ shall report the results of the review to the Labor and Industry Committee of the General Assembly and any recommendations for proposed changes to insure the financial soundness of the individual self-insurers authorized pursuant to this chapter. In addition, the *commissioner*~~{executive director}~~ shall report not less often than annually a summary report on the financial soundness of the individual self-insurers.
- (2) The Labor and Industry Committee of the General Assembly shall annually review the administrative regulations promulgated pursuant to the individual provisions under this chapter.
- (3) On July 1, 1994, the Division of Security and Compliance of the *Department*~~{Office}~~ of Workers' Claims in the ~~{Department of}~~ Labor *Cabinet* shall be expanded by five (5) employees. These additional employees shall be employed for the purpose of conducting financial audits, examinations, and reviews and other activities necessary to ensure and monitor the financial soundness of the individual self-insured employers authorized pursuant to KRS 342.340.

➔Section 1822. KRS 342.345 is amended to read as follows:

- (1) Whenever an employer has complied with the provisions of KRS 342.340 relating to individual self-insurance, the *commissioner*~~{executive director}~~ shall issue to the employer a certificate which shall remain in force for a period fixed by the *commissioner*~~{executive director}~~. But the *commissioner*~~{executive director}~~ may, upon at least ten (10) days' notice and a hearing to the employer, revoke or suspend the certificate upon satisfactory evidence that revocation or suspension is appropriate. If the *commissioner*~~{executive director}~~ revokes a certificate, the *commissioner*~~{executive director}~~ may thereafter, upon petition of the employer and a hearing, grant a new certificate, but the employer shall not, as a matter of right, be entitled to a hearing for this purpose sooner than six (6) months following an order of the *commissioner*~~{executive director}~~ revoking the employer's certificate.
- (2) A self-insurer whose certificate to self-insure has been revoked is not relieved of its obligations for compensation to its employees for work-related injuries or occupational diseases that occur during the period of self-insurance. The required security shall be maintained with the *commissioner*~~{executive director}~~ or under the *commissioner's*~~{executive director's}~~ control until each claim for workers' compensation benefits has been paid, been settled, or lapsed under this chapter.

➔Section 1823. KRS 342.347 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ or *the commissioner's*~~{his}~~ designee shall have power to examine the financial condition and affairs related to workers' compensation of any individual self-insureds and shall have free access to books and documents relating to the self-insurance activities of the entity. The *commissioner*~~{executive director}~~ shall so examine each individual self-insured not less frequently than once every four (4) years. Information obtained through the examination shall be exempt from disclosure, under KRS 61.878(1)(j).
- (2) All individual self-insured employers shall file with the *commissioner*~~{executive director}~~ a statement of financial condition audited by an independent certified public accountant on or before one hundred twenty (120) days from the end of the self-insured's fiscal year for the immediately preceding fiscal year.
- (3) The expense of examination shall be borne by the entity examined and shall include reasonable lodging and travel expenses of the *commissioner's*~~{executive director's}~~ designees, and expert assistance as necessarily incurred in the examination.
- (4) The *Department*~~{Office}~~ of Insurance shall approve the form and contents of excess insurance policies and upon request of the *commissioner*~~{executive director}~~ shall review the application for approval of any

individual self-insured and render an opinion as to the sufficiency of the excess insurance policies or other security posted by the applicant.

- (5) Not less often than biennially, the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance shall review the activities, procedures, administrative regulations, and policies of the **Department**~~{Office}~~ of Workers' Claims and make such recommendations to the Governor and legislative committees as may be appropriate to strengthen the oversight of individual self-insureds so that payment of liabilities to workers under this chapter is assured.

➔Section 1824. KRS 342.350 is amended to read as follows:

- (1) In order to comply with KRS 342.340, groups of employers may form, either among themselves or with employers in other states, mutual insurance associations, or reciprocal or interinsurance exchanges subject to the insurance laws of this state and any reasonable conditions and restrictions not inconsistent therewith fixed by the **commissioner**~~{executive director}~~. Membership in these mutual insurance associations or reciprocal or interinsurance exchanges so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with KRS 342.340.
- (2) The **commissioner**~~{executive director}~~ may, except as provided in subsection (3), require any mutual insurance association or reciprocal or interinsurance exchange to purchase an annuity or to effect reinsurance with a company authorized to transact insurance in this state or to make a deposit with a bank or trust company of this state that shall in either case be approved by the **commissioner**~~{executive director}~~ for the purpose of fully securing the payment of all deferred installments upon any claim for compensation.
- (3) Any mutual insurance association or reciprocal or interinsurance exchange possessing a surplus of at least one hundred thousand dollars (\$100,000) and not less in amount than the capital required of a domestic stock insurance company transacting the same kind of insurance shall not be required to purchase an annuity or effect reinsurance with a company authorized to transact insurance in this state or to make a deposit with a bank or trust company of this state for the purpose of fully securing the payment of all deferred installments upon any claim for compensation.
- (4) In addition, under the provisions of KRS 304.50-010 and administrative regulations promulgated by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance, twenty (20) or more employers with common interests or membership in a bona fide trade association or two (2) or more city, county, charter county, urban-county, or consolidated local government employers or their agencies may enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insured groups.

➔Section 1825. KRS 342.352 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may establish one (1) or more programs for interested employers of integrated management of an employer's workers' compensation and group health insurance claims by an insurer authorized to do business in the Commonwealth and may promulgate any administrative regulations necessary to implement the provisions of this subsection. The integrated management of such claims shall in no event affect any benefits, rights, or coverage established pursuant to a workers' compensation insurance policy. Treatment for work-related conditions shall not be subject to either copayments or deductibles. The **commissioner**~~{executive director}~~ shall make a report comparing the results of each program to the expected results under traditional workers' compensation insurance and traditional workers' compensation with a managed care program. The program shall serve as a tentative model for future experiments.
- (2) No policy for twenty-four (24) hour coverage shall become effective until it is reviewed and approved by the **commissioner**~~{executive director}~~, in consultation with the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance.
- (3) The purchase of a twenty-four (24) hour health policy shall not constitute an exemption from statutory provisions which require other nonmedical insurance coverage. However, an insurance carrier shall reduce its premium for insurance coverage written without the medical or health care component. Notwithstanding the provisions of Subtitle 13 of KRS Chapter 304, the premium reduction required in this subsection shall be subject to the approval of the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance.
- (4) If an employer obtains a twenty-four (24) hour health insurance policy, pursuant to this section, to secure payment of compensation for medical care and treatment under this chapter, the employer shall also procure an insurance policy which shall provide indemnity benefits to ensure that the total coverage afforded by both the

twenty-four (24) hour insurance policy and the policy providing indemnity benefits shall provide the total compensation required by this chapter.

- (5) The participants in a project for twenty-four (24) hour health coverage shall comply with periodic reporting requirements of the commission.
- (6) Each agency of state government shall cooperate with the *commissioner*~~{executive director}~~ if requested to provide information for the purposes of this section.

➔Section 1826. KRS 342.375 is amended to read as follows:

Every policy or contract of workers' compensation insurance under this chapter, issued or delivered in this state, shall cover the entire liability of the employer for compensation to each employee subject to this chapter, except as otherwise provided in KRS 216.2960, 342.020, 342.345, or 342.352. However, if specifically authorized by the *commissioner*~~{executive director}~~, a separate insurance policy may be issued for a specified plant or work location if the liability of the employer under this chapter to each employee subject to this chapter is otherwise secured and provided that no employee transferred from one plant or work location to another within the employment of the same employer shall thereby lose any benefit rights accumulated under the average weekly wage concept.

➔Section 1827. KRS 342.380 is amended to read as follows:

No policy of insurance or rider to be used therewith shall be issued or delivered until a copy of its form has been filed with the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance at least thirty (30) days before such issue or delivery, unless before the expiration of thirty (30) days the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance has approved the form thereof in writing; nor if the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance notifies the company in writing that in his opinion the form of the policy or rider does not comply with the laws of this state, specifying fully the reasons for his opinion. Upon petition of the company, the decision of the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance shall be subject to review by the Franklin Circuit Court and to appeal therefrom to the Court of Appeals.

➔Section 1828. KRS 342.382 is amended to read as follows:

- (1) Any insurer authorized to write a policy of workers' compensation insurance shall transmit the following information on its workers' compensation experience only to the *Department*~~{Office}~~ of Workers' Claims and the Workers' Compensation Advisory Council each year, and that information shall be certified and reported on a net basis with respect to reinsurance for nationwide experience and direct basis with respect to Kentucky experience:
 - (a) Direct premiums written;
 - (b) Direct premiums earned;
 - (c) Dividends paid or credited to policyholders;
 - (d) Losses paid;
 - (e) Allocated loss adjustment expenses;
 - (f) The ratio of allocated loss adjustment expenses to losses paid;
 - (g) Unallocated loss adjustment expenses;
 - (h) The ratio of unallocated loss adjustment expenses to losses paid;
 - (i) The total of losses paid and unallocated and allocated loss adjustment expenses;
 - (j) The ratio of losses paid and unallocated and allocated loss adjustment expenses to premiums earned;
 - (k) The number of claims outstanding as of December 31 of each year;
 - (l) The total amount of losses unpaid as of December 31 of each year;
 - (m) The total amount of allocated and unallocated loss adjustment expenses unpaid as of December 31 of each year;

- (n) The total of losses paid and allocated loss adjustment expenses and unallocated loss adjustment expenses, plus the total of losses unpaid as of December 31 of each year and loss adjustment expenses unpaid as of December 31 of each year; and
 - (o) Net investment gain or loss.
- (2) The first report of the information required in subsection (1) of this section shall include the information for the year ending December 31, 1987. Such report shall be filed no later than August 1, 1988. Beginning with the report for the period ending December 31, 1989, all future reports shall have all information required by subsection (1) of this section broken down by year for the current and two (2) preceding years.

→Section 1829. KRS 342.395 is amended to read as follows:

- (1) Where an employer is subject to this chapter, then every employee of that employer, as a part of his *or her* contract of hiring or who may be employed at the time of the acceptance of the provisions of this chapter by the employer, shall be deemed to have accepted all the provisions of this chapter and shall be bound thereby unless he *or she* shall have filed, prior to the injury or incurrence of occupational disease, written notice to the contrary with the employer; and the acceptance shall include all of the provisions of this chapter with respect to traumatic personal injury, silicosis, and any other occupational disease. However, before an employee's written notice of rejection shall be considered effective, the employer shall file the employee's notice of rejection with the **Department**~~{Office}~~ of Workers' Claims. The **commissioner**~~{executive director}~~ of that **department**~~{office}~~ shall not give effect to any rejection of this chapter not voluntarily made by the employee. If an employee withdraws his *or her* rejection, the employer shall notify the **commissioner**~~{executive director}~~.
- (2) An employer shall not require an employee to execute a rejection of this chapter as either a condition to obtain employment or a condition to maintain employment. An employer shall not terminate an employee for refusal to execute a rejection of this chapter.
- (3) Until notice to the contrary as specified in subsection (1) of this section is given to the employer, the measure of liability of the employer shall be determined according to the compensation provisions of this chapter. Any employee, may, without prejudice to any existing right or claim, withdraw his election to reject this chapter by filing with the employer a written notice of withdrawal, stating the date when the withdrawal is to become effective. Following the filing of that notice, the status of the party withdrawing shall become the same as if the former election to reject this chapter had not been made, except that withdrawal shall not be effective as to any injury sustained or disease incurred less than one (1) week after the notice is filed.

→Section 1830. KRS 342.402 is amended to read as follows:

The **commissioner**~~{executive director}~~, upon showing a certification of noncompliance, may temporarily restrain or temporarily or permanently enjoin the further operation of any employer covered by this chapter. The action shall be brought in Franklin Circuit Court.

→Section 1831. KRS 342.425 is amended to read as follows:

Upon the request of the **commissioner**~~{executive director}~~, the Attorney General, or, under his *or her* direction, the Commonwealth's attorney or county attorney of any county, shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this chapter arising within his *or her* jurisdiction, and shall defend in like manner all actions or proceedings brought against the **department**~~{office}~~, the employees thereof, board members, or administrative law judges in their official capacity.

→Section 1832. KRS 342.430 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall prepare and furnish, free of charge, blank forms of all notices, claims, reports, proofs, and other blank forms and literature which he *or she* considers proper and requisite to the efficient administration of this chapter. He *or she* may authorize the publication and distribution of these blanks by employers and their insurers in manner and form provided by him *or her*, and shall promulgate administrative regulations for their distribution so that they may be readily available.

→Section 1833. KRS 342.435 is amended to read as follows:

Annually on or before the fifteenth day of December, the **commissioner**~~{executive director}~~ shall make a report to the Governor for the preceding fiscal year, which shall include a statement of the number of awards made and of claims rejected by the board and each administrative law judge, a general statement of the causes of accident leading to the injuries for which awards were made or rejected claims based, together with any other information which the **commissioner**~~{executive director}~~ deems proper to call to the attention of the Governor, including any

recommendations he may have to make, and it shall be the duty of the ~~commissioner~~~~executive director~~ to publish and distribute among employers and employees any general information as to the business transacted by the ~~department~~~~office~~ as may be useful and necessary. The annual report shall not exceed ten thousand (10,000) copies. All printing of the ~~department~~~~office~~ shall be done by the contractor or contractors for public printing, subject to the provisions of the general laws governing public printing applicable thereto.

➔Section 1834. KRS 342.447 is amended to read as follows:

- (1) All funds collected by insurance companies from their insureds, prior to October 26, 1987, for assessments of the Kentucky Reinsurance Association or special fund taxes and assessments of the Kentucky Department of Revenue not previously paid, shall be paid in full by January 1, 1988, to the Kentucky Workers' Compensation Funding Commission.
- (2) To ensure compliance with the provisions of subsection (1) of this section, the Department of Revenue shall conduct audits of insurance companies. The costs of such audits shall be borne by the Kentucky Workers' Compensation Funding Commission. The Department of Revenue may enter an agreement with the ~~Department~~~~Office~~ of Insurance for assistance in conducting such audits or it may hire additional auditors on a temporary basis. The audits shall commence within sixty (60) days from October 26, 1987, and shall be completed within six (6) months. The aggregate findings of such audits shall be presented to the commissioner of revenue, the ~~commissioner~~~~executive director~~ of insurance, the Kentucky Workers' Compensation Funding Commission, and the Governor.
- (3) If the audits reveal noncompliance with subsection (1) of this section, the Department of Revenue shall notify the affected party of such fact. The affected party shall remit the amount in question not later than thirty (30) days following notification and the Department of Revenue shall institute a civil action in Franklin Circuit Court if remittance is not made within such thirty (30) day period.
- (4) The failure of an insurance company to comply with the provisions of this section shall constitute grounds for the revocation by the ~~commissioner~~~~executive director~~ of insurance of such entity's authority to write workers' compensation coverage in the Commonwealth.
- (5) The Department of Revenue shall report to the ~~commissioner~~~~executive director~~ of insurance the failure of any insurance company to comply with the provisions of this section and the ~~commissioner~~~~executive director~~ of insurance shall institute revocation procedures of such entity's authority to write workers' compensation coverage in the Commonwealth.
- (6) "Funds collected" as used in subsection (1) of this section shall mean all funds collected without reduction for credits, refund, or returns of any type made to insureds or group members after September 1, 1987.

➔Section 1835. KRS 342.610 is amended to read as follows:

- (1) Every employer subject to this chapter shall be liable for compensation for injury, occupational disease, or death without regard to fault as a cause of the injury, occupational disease, or death.
- (2) A contractor who subcontracts all or any part of a contract and his *or her* carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. Any contractor or his *or her* carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another:
 - (a) To have work performed consisting of the removal, excavation, or drilling of soil, rock, or mineral, or the cutting or removal of timber from land; or
 - (b) To have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation, or profession of such person

shall for the purposes of this section be deemed a contractor, and such other person a subcontractor. This subsection shall not apply to the owner or lessee of land principally used for agriculture.

- (3) Liability for compensation shall not apply where injury, occupational disease, or death to the employee was proximately caused primarily by voluntary intoxication as defined in KRS 501.010, or by his *or her* willful intention to injure or kill himself, *herself*, or another.

- (4) If injury or death results to an employee through the deliberate intention of his *or her* employer to produce such injury or death, the employee or *the employee's*~~his~~ dependent as herein defined shall receive the amount provided in this chapter in a lump sum to be used, if desired, to prosecute the employer. The dependents may bring suit against the employer for any amount they desire. If injury or death results to an employee through the deliberate intention of his *or her* employer to produce such injury or death, the employee or *the employee's*~~his~~ dependents may take under this chapter, or in lieu thereof, have a cause of action at law against the employer as if this chapter had not been passed, for such damage so sustained by the employee, his dependents or personal representatives as is recoverable at law. If a suit is brought under this subsection, all right to compensation under this chapter shall thereby be waived as to all persons. If a claim is made for the payment of compensation or any other benefit provided by this chapter, all rights to sue the employer for damages on account of such injury or death shall be waived as to all persons.
- (5) Prior to issuing any building permit pursuant to KRS 198B.060(10), every local building official shall require proof of workers' compensation coverage from the builder before a permit is issued. A person who is exempt under the exception contained in KRS 342.650(2), and any contractor otherwise exempt from this chapter, shall so certify to the local building official, in writing and on a form prescribed by the *commissioner*~~executive director~~, in lieu of providing proof of workers' compensation coverage.
- (6) Every employer subject to this chapter, at its principal office and such other locations where employees customarily report for payroll and personnel matters, shall post a notice stating the name of its workers' compensation insurance carrier and policy number, setting forth the means to access medical care for injuries, the employee's obligation to give notice of accidents, and such other matters concerning the employee's rights under this chapter as may be required by the *commissioner*~~executive director~~ so as to afford every employee the opportunity to become informed about the employer's workers' compensation program. The format and contents of the notice shall be established by the *commissioner*~~executive director~~ through administrative regulation, and copies shall be provided to the employer by its insurance carrier.

➔Section 1836. KRS 342.615 is amended to read as follows:

- (1) As used in this section:
- (a) "Employee leasing company" or "lessor" means an entity that grants a written lease to a lessee pursuant to an employee leasing arrangement.
 - (b) "Lessee" means an employer that obtains all or part of its workforce from another entity through an employee leasing arrangement.
 - (c) "Leased employee" means a person performing services for a lessee under an employee leasing arrangement.
 - (d) "Employee leasing arrangement" means an arrangement under contract or otherwise whereby the lessee leases all or some of its workers from an employee leasing company. Employee leasing arrangements include, but are not limited to, full-service employee leasing arrangements, long-term temporary arrangements, and any other arrangement which involves the allocation of employment responsibilities among two (2) or more entities. For purposes of this section, "employee leasing arrangement" does not include arrangements to provide temporary workers.
 - (e) "Temporary worker" means a worker who is furnished to an entity to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions for a finite period of time.
 - (f) "Temporary help service" means a service whereby an organization hires its own employees and assigns those employees to clients for finite periods of time to support or supplement the client's workforce in special work situations, including employee absences, temporary skill shortages, and seasonal workloads.
- (2) A corporation, partnership, sole proprietorship, or other business entity which acts as an employee leasing company shall register with the *commissioner*~~executive director~~ in the manner as prescribed by administrative regulations.
- (3) Any lessor of employees whose workers' compensation insurance has been terminated within the past five (5) years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premiums, taxes, or assessments otherwise payable by lessees shall be ineligible to register with the *commissioner*~~executive director~~ or to remain registered, if previously registered.

- (4) A lessee shall fulfill its statutory responsibility to secure benefits for leased employees under this chapter by purchasing and maintaining a standard workers' compensation policy approved by the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance. A lessee may fulfill that responsibility by contracting with an employee leasing company to purchase and maintain the required insurance policy. In either event, it shall be the responsibility of the lessee to maintain in its files at all times the certificate of insurance, or a copy thereof, evidencing the existence of the required insurance. The exposure and experience of the lessee shall be used in determining the premium for the policy and shall include coverage for all leased employees.
- (5) A temporary help service shall be deemed the employer of a temporary worker and shall be subject to the provisions of this chapter.

➔Section 1837. KRS 342.650 is amended to read as follows:

The following employees are exempt from the coverage of this chapter:

- (1) Any person employed as a domestic servant in a private home by an employer who has less than two (2) employees each regularly employed forty (40) or more hours a week in domestic servant employment.
- (2) Any person employed, for not exceeding twenty (20) consecutive work days, to do maintenance, repair, remodeling, or similar work in or about the private home of the employer, or if the employer has no other employees subject to this chapter, in or about the premises where that employer carries on his *or her* trade, business, or profession.
- (3) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.
- (4) Any person for whom a rule of liability for injury or death is provided by the laws of the United States, except those persons covered under Title IV, Public Law 91-173, 91st Congress, commonly referred to as the Black Lung Benefits of the Federal Coal Mine Health and Safety Act of 1969, or as amended.
- (5) Any person employed in agriculture.
- (6) Any person who would otherwise be covered but who elects not to be covered in accordance with the administrative regulations promulgated by the ~~commissioner~~~~executive director~~.
- (7) Any person participating as a driver or passenger in a voluntary vanpool or carpool program while that person is on the way to or from his *or her* place of employment. For the purposes of this subsection, carpool or vanpool means any method by which two (2) or more employees are transported from their residences to their places of employment.
- (8) Members of a religious sect or division that is an adherent of established tenets or teachings by reason of which members are conscientiously opposed to acceptance of the benefits of any public or private insurance which makes payments in the event of death, disability, old age, or retirement, or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance system established by the Federal Social Security Act, 42 U.S.C. secs. 301 et seq., and it is the practice, and has been for ten (10) or more years, for members of the sect or division to make reasonable provision for their dependent members.

➔Section 1838. KRS 342.660 is amended to read as follows:

- (1) An employer ~~that~~~~who~~ has in ~~its~~~~his~~ employment any employee exempted under KRS 342.650 may elect to be subject to this chapter. This election on the part of the employer shall be made by the employer securing the payment of compensation to these exempted employees in accordance with KRS 342.340. Any employee, otherwise exempted under KRS 342.650, of the employer shall be deemed to have elected to come under this chapter, if at the time of the injury for which liability is claimed, his *or her* employer has in force an election to be subject to this chapter with respect to the employment in which the employee was injured and the employee has not, either upon entering into employment or within five (5) days after the filing of an election by the employer, given to his *or her* employer and to the ~~commissioner~~~~executive director~~ notice in writing that he *or she* elects not to be subject to this chapter.
- (2) An employer within the scope of subsection (1) of this section, within five (5) days after securing the payment of compensation in accordance with KRS 342.340, shall give the ~~commissioner~~~~executive director~~ written notice of ~~its~~~~his~~ election to be subject to this chapter. The employer shall post and keep posted on the premises where any employee or employees, otherwise exempted under KRS 342.650, works, printed notices furnished

by the *commissioner*~~[executive director]~~ stating *its*~~[his]~~ acceptance of this chapter. Failure to give the notices required by this paragraph shall not void or impair the employer's election to be subject to or relieve *it*~~[him]~~ of any liability under this chapter.

- (3) Any employer who has complied with subsection (2) of this section may withdraw *its*~~[his]~~ acceptance of this chapter, by filing written notice with the *commissioner*~~[executive director]~~ of the withdrawal of *its*~~[his]~~ acceptance. A withdrawal shall become effective 60 days after the filing of notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The withdrawal shall not be effective until the employer shall theretofore post notice of the withdrawal where the affected employee or employees work or shall otherwise notify the employees of withdrawal.

➔Section 1839. KRS 342.670 is amended to read as follows:

- (1) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which *the employee*~~[he]~~, or in the event of *the employee's*~~[his]~~ death, his *or her* dependents, would have been entitled to the benefits provided by this chapter had that injury occurred within this state, that employee, or in the event of *the employee's*~~[his]~~ death resulting from that injury, his *or her* dependents, shall be entitled to the benefits provided by this chapter, if at the time of the injury:
- (a) His *or her* employment is principally localized in this state;~~[;]~~ or
 - (b) He *or she* is working under a contract of hire made in this state in employment not principally localized in any state;~~[;]~~ or
 - (c) He *or she* is working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law is not applicable to his *or her* employer;~~[;]~~ or
 - (d) He *or she* is working under a contract of hire made in this state for employment outside the United States and Canada.
- (2) The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or his *or her* dependents otherwise entitled on account of such injury or death to the benefits of this chapter shall not be a bar to a claim for benefits under this chapter, if a claim under this chapter is filed within two (2) years after that injury or death. If compensation is paid or awarded under this chapter:
- (a) The medical and related benefits furnished or paid for by the employer under another jurisdiction's workers' compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this chapter had claim been made solely under this chapter;
 - (b) The total amount of all income benefits paid or awarded the employee under another jurisdiction's workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under this chapter, had claim been made solely under this chapter; and
 - (c) The total amount of death benefits paid or awarded under another jurisdiction's workers' compensation law shall be credited against the total amount of death benefits due under this chapter.
- (3) If any employee is entitled to the benefits of this chapter by reason of an injury sustained in this state in employment by an employer who is domiciled in another state and who has not secured the payment of compensation as required by this chapter, the employer or his carrier may file with the *commissioner*~~[executive director]~~ a certificate, issued by the commission or agency of the other state having jurisdiction over workers' compensation claims, certifying that the employer has secured the payment of compensation under the workers' compensation law of the other state and that with respect to the injury the employee is entitled to the benefits provided under that law, and that the benefits to which the employee or his *or her* dependents is entitled are at least as great as those to which he *or she* would be entitled if the injury occurred and was processed under Kentucky law, under Kentucky coverage. In this event:
- (a) The filing of the certificate shall constitute an appointment by the employer or his carrier of the *commissioner*~~[executive director]~~ as his *or her* agent for acceptance of the service of process in any proceeding brought by the employee or his *or her* dependents to enforce his, *her*, or their rights under this chapter on account of the injury;

- (b) The ~~commissioner~~~~executive director~~ shall send to the employer or carrier, by certified mail to the address shown on the certificate, a true copy of any notice of claim or other process served on the ~~commissioner~~~~executive director~~ by the employee or his *or her* dependents in any proceeding brought to enforce his, *her*, or their rights under this chapter;
- (c) 1. If the employer is a qualified self-insurer under the workers' compensation law of the other state, the employer shall, upon submission of evidence satisfactory to the ~~commissioner~~~~executive director~~, of ~~its~~~~his~~ ability to meet ~~its~~~~his~~ liability to the employee under this chapter, be deemed to be a qualified self-insurer under this chapter;
2. If the employer's liability under the workers' compensation law of the other state is insured, the employer's carrier, as to the employee or his *or her* dependents only, shall be deemed to be an insurer authorized to write insurance under and be subject to this chapter; however, unless its contract with the employer requires it to pay an amount equivalent to the compensation benefits provided by this chapter, its liability for income benefits or medical and related benefits shall not exceed the amounts of the benefits for which the insurer would have been liable under the workers' compensation law of the other state;
- (d) If the total amount for which the employer's insurance is liable under (c) above is less than the total of the compensation benefits to which the employee is entitled under this chapter, the ~~commissioner~~~~executive director~~ may, if he *or she* deems it necessary, require the employer to file security, satisfactory to the ~~commissioner~~~~executive director~~, to secure the payment of benefits due the employee or his *or her* dependents under this chapter; and
- (e) Upon compliance with the preceding requirements of this subsection (3), the employer, as to the employee only, shall be deemed to have secured the payment of compensation under this chapter.
- (4) Any professional athlete, coach, or trainer who has been hired outside this Commonwealth by an employer domiciled in a foreign state, including professional baseball, basketball, football, and ice-hockey clubs, is exempted from the provisions of this chapter while that employee is temporarily within this Commonwealth doing work for the employer, if the foreign employer has secured workers' compensation insurance coverage under the workers' compensation law of the foreign state, so as to cover the employee's employment while in this Commonwealth. The benefits under the workers' compensation law of the foreign state shall be the exclusive remedy against that employer and any affiliated club for any injury, whether resulting in death or not, received by any employee while working for that employer in this Commonwealth.
- (5) As used in this section:
- (a) "United States" includes only the states of the United States and the District of Columbia;
- (b) "State" includes any state of the United States, the District of Columbia, or any province of Canada;
- (c) "Carrier" includes any insurance company licensed to write workers' compensation insurance in any state of the United States or any state or provincial fund which insures employers against their liabilities under a workers' compensation law;
- (d) A person's employment is principally localized in this or another state when:
1. His *or her* employer has a place of business in this or the other state and he *or she* regularly works at or from that place of business, or
2. If subparagraph 1. foregoing is not applicable, he *or she* is domiciled and spends a substantial part of his *or her* working time in the service of his *or her* employer in this or the other state;
- (e) An employee whose duties require him *or her* to travel regularly in the service of his *or her* employer in this and one (1) or more other states may, by written agreement with his *or her* employer, provide that his *or her* employment is principally localized in this or another state, and, unless the other state refuses jurisdiction, the agreement shall be given effect under this chapter;
- (f) "Workers' compensation law" includes "occupational disease law."

➔Section 1840. KRS 342.710 is amended to read as follows:

- (1) One of the primary purposes of this chapter shall be restoration of the injured employee to gainful employment, and preference shall be given to returning the employee to employment with the same employer or to the same or similar employment.
- (2) The **commissioner**~~executive director~~ shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public.
- (3) An employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical, and justifiable. When as a result of the injury he **or she** is unable to perform work for which he **or she** has previous training or experience, he **or she** shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him **or her** to suitable employment. In all such instances, the administrative law judge shall inquire whether such services have been voluntarily offered and accepted. The administrative law judge on his **or her** own motion, or upon application of any party or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him **or her** fit for a remunerative occupation. Upon receipt of such report, the administrative law judge may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the employee to suitable, gainful employment, be provided at the expense of the employer or ~~its~~~~his~~ insurance carrier. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks, except in unusual cases when by special order of the administrative law judge, after hearing and upon a finding, determined by sound medical evidence which indicates such further rehabilitation is feasible, practical, and justifiable, the period may be extended for additional periods.
- (4) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, reasonable cost of his **or her** board, lodging, or travel shall be paid for by the employer or ~~its~~~~his~~ insurance carrier.
- (5) Refusal to accept rehabilitation pursuant to an order of an administrative law judge shall result in a fifty percent (50%) loss of compensation for each week of the period of refusal.
- (6) The **commissioner**~~executive director~~ shall cooperate on a reciprocal basis with the Office of Vocational Rehabilitation and the Office of Employment and Training of the Education and Workforce Development Cabinet. In the event medical treatment, medical rehabilitation services, or vocational rehabilitation services are purchased for an injured employee by the Office of Vocational Rehabilitation or Office of Employment and Training following the refusal by the employer or ~~its~~~~his~~ insurance carrier to provide such services, the administrative law judge, after affording the parties an opportunity to be heard, may order reimbursement of the cost of such treatment or services by the employer or ~~its~~~~his~~ insurance carrier as apportioned in the award. This section shall not be interpreted to require mandatory evaluation of employees based on length of disability. Any administrative regulations promulgated pursuant to this section that require mandatory referral to a qualified rehabilitation counselor shall expire on April 4, 1994.
- (7) An employee who is enrolled and participating in a program of rehabilitation training pursuant to this section may elect to receive an acceleration of benefits as awarded under KRS 342.730. Such acceleration shall be available to the employee during the period of retraining, but in no event shall be paid in a weekly amount greater than sixty-six and two-thirds percent (66-2/3%) of the average weekly wage upon which the award is based, not to exceed one hundred percent (100%) of the state average weekly wage. Upon successful completion of the rehabilitation program, the total of all accelerated benefits paid shall be deducted on a dollar-for-dollar basis, without discount, from weekly benefits otherwise due the employee subject to the maximum amount of the award. Such remaining benefits, if any, shall then be divided by the number of weeks remaining payable under the award, and that amount shall be the weekly benefit due the employee. If a program of rehabilitation training is terminated by the employee prior to completion, all sums paid on an accelerated basis shall be discounted at the rate set forth in KRS 342.265 and then deducted on a dollar-for-dollar basis from weekly benefits otherwise due the employee subject to the maximum amount of the award. Such remaining benefits, after the discount, shall be divided by the number of weeks remaining payable under the award, and that amount shall be the weekly benefit due the employee. In no event shall this subsection be construed as requiring payment of benefits in excess of the total of those benefits which would otherwise be payable under the award.

➔Section 1841. KRS 342.730 is amended to read as follows:

- (1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:
- (a) For temporary or permanent total disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related impairment and conditions compensable under KRS 342.732 and hearing loss covered in KRS 342.7305 shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.
- (b) For permanent partial disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by the permanent impairment rating caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, times the factor set forth in the table that follows:

AMA Impairment	Factor
0 to 5%	0.65
6 to 10%	0.85
11 to 15%	1.00
16 to 20%	1.00
21 to 25%	1.15
26 to 30%	1.35
31 to 35%	1.50
36% and above	1.70

Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

- (c) 1. If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments; or
2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability shall be determined under paragraph (b) of this subsection for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be two (2) times the amount otherwise payable under paragraph (b) of this subsection. This provision shall not be construed so as to extend the duration of payments.
3. Recognizing that limited education and advancing age impact an employee's post-injury earning capacity, an education and age factor, when applicable, shall be added to the income benefit multiplier set forth in paragraph (c)1. of this subsection. If at the time of injury, the employee had less than eight (8) years of formal education, the multiplier shall be increased by four-tenths (0.4); if the employee had less than twelve (12) years of education or a high school General Educational Development diploma, the multiplier shall be increased by two-tenths (0.2); if the employee was age sixty (60) or older, the multiplier shall be increased by six-tenths (0.6); if the employee was age fifty-five (55) or older, the multiplier shall be increased by four-tenths (0.4); or if the employee was age fifty (50) or older, the multiplier shall be increased by two-tenths (0.2).

4. Notwithstanding the provisions of KRS 342.125, a claim may be reopened at any time during the period of permanent partial disability in order to conform the award payments with the requirements of subparagraph 2. of this paragraph.
 - (d) For permanent partial disability, if an employee has a permanent disability rating of fifty percent (50%) or less as a result of a work-related injury, the compensable permanent partial disability period shall be four hundred twenty-five (425) weeks, and if the permanent disability rating is greater than fifty percent (50%), the compensable permanent partial disability period shall be five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and shall not exceed seventy-five percent (75%) of the state average weekly wage, except for benefits payable pursuant to paragraph (c)1. of this subsection, which shall not exceed one hundred percent (100%) of the state average weekly wage, nor shall benefits for permanent partial disability be payable for a period exceeding five hundred twenty (520) weeks, notwithstanding that multiplication of impairment times the factor set forth in paragraph (b) of this subsection would yield a greater percentage of disability.
 - (e) For permanent partial disability, impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in KRS 342.7305 shall not be considered in determining the extent of disability or duration of benefits under this chapter.
- (2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.
- (3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his *or her* lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his *or her* death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:
 - (a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or
 - (b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or
 - (c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or
 - (d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the **commissioner**~~executive director~~ provides by administrative regulation.
 - (e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.
- (4) All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee qualifies for normal old-age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f, or two (2) years after the employee's injury or last exposure, whichever last occurs.

In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate when such spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old-age Social Security retirement benefits.

- (5) All income benefits pursuant to this chapter otherwise payable for temporary total and permanent total disability shall be offset by unemployment insurance benefits paid for unemployment during the period of temporary total or permanent total disability.
- (6) All income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.
- (7) If an employee receiving a permanent total disability award returns to work, that employee shall notify the employer, payment obligor, insurance carrier, or special fund as applicable.

➔Section 1842. KRS 342.732 is amended to read as follows:

- (1) Notwithstanding any other provision of this chapter, income benefits and retraining incentive benefits for occupational pneumoconiosis resulting from exposure to coal dust in the severance or processing of coal shall be paid as follows:
 - (a) 1. If an employee has a radiographic classification of category 1/0, 1/1 or 1/2, coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more, the employee shall be awarded a one (1) time only retraining incentive benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined by KRS 342.740, but not more than seventy-five percent (75%) of the state average weekly wage, payable semimonthly for a period not to exceed one hundred four (104) weeks, except as provided in subparagraph 3. of this paragraph.
 2. Except as provided in subparagraph 3. of this paragraph, these benefits shall be paid only while the employee is enrolled and actively and successfully participating as a full-time student taking the equivalent of twelve (12) or more credit hours per week in a bona fide training or education program that if successfully completed will qualify the person completing the course for a trade, occupation, or profession and which program can be completed within the period benefits are payable under this subsection. The program must be approved under administrative regulations to be promulgated by the ~~commissioner~~ ~~executive director~~. These benefits shall also be paid to an employee who is a part-time student taking not less than the equivalent of six (6) nor more than eleven (11) credit hours per week, except that benefits shall be an amount equal to thirty-three and one-third percent (33-1/3%) of the employee's average weekly wage as determined by KRS 342.740, but not more than thirty-seven and one-half percent (37-1/2%) of the state average weekly wage, payable biweekly for a period not to exceed two hundred eight (208) weeks.
 3. These benefits shall also be paid biweekly while an employee is actively and successfully pursuing a General Equivalency Diploma (GED) in accordance with administrative regulations promulgated by the ~~commissioner~~ ~~executive director~~. These benefits shall be paid in the amount of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage not to exceed seventy-five percent (75%) of the state average weekly wage for a maximum period not to exceed seventeen (17) weeks. These income benefits shall be in addition to the maximum amount of retraining incentive benefits payable under this paragraph.
 4. The employer shall also pay, directly to the institution conducting the training or education program, instruction, tuition, and material costs not to exceed five thousand dollars (\$5,000).
 5. The period of weeks during which this benefit is payable shall begin no later than the thirtieth day after the administrative law judge's order awarding the benefit becomes final, except that an employee may elect to defer the beginning of such benefits up to the three hundred sixty-fifth day following the thirtieth day the order becomes final. Unless the employee has requested deferral of income benefits, those income benefits payable under subparagraphs 1. and 2. of this paragraph shall begin no later than thirty (30) days following conclusion of income benefits paid under subparagraph 3. if such benefits were paid.

6. If an employee who is awarded retraining incentive benefits under this paragraph successfully completes a bona fide training or education program approved by the ~~commissioner~~~~executive director~~, upon completion of the training or education program, the employer shall pay to that employee the sum of five thousand dollars (\$5,000) for successful completion of a program that requires a course of study of not less than twelve (12) months nor more than eighteen (18) months, or the sum of ten thousand dollars (\$10,000) for successful completion of a program that requires a course of study of more than eighteen (18) months. This amount shall be in addition to retraining incentive benefits awarded under this paragraph, and tuition expenses paid by the employer.
 7. An employee who is age fifty-seven (57) years or older on the date of last exposure and who is awarded retraining incentive benefits under subparagraphs 1. to 4. of this paragraph, may elect to receive in lieu of retraining incentive benefits, an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage, not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of twenty-five percent (25%) for a period not to exceed four hundred twenty-five (425) weeks, or until the employee reaches sixty-five (65) years of age, whichever occurs first, KRS 342.730(4) notwithstanding.
 8. A claim for retraining incentive benefits provided under this section may be filed, but benefits shall not be payable, while an employee is employed in the severance or processing of coal as defined in KRS 342.0011(23).
 9. If an employer appeals an award of retraining incentive benefits, upon an employee's motion, an administrative law judge may grant retraining incentive benefits pending appeal as interlocutory relief.
 10. If an employee elects to defer payment of retraining incentive benefits for a period of retraining longer than three hundred sixty-five (365) days, benefits otherwise payable shall be reduced week-for-week for each week retraining benefits are further deferred.
- (b)
1. If an employee has a radiographic classification of category 1/0, 1/1, or 1/2 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more of the predicted normal values, there shall be an irrebuttable presumption that the employee has a disability rating of twenty-five percent (25%) resulting from exposure to coal dust, and the employee shall be awarded an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage, but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of twenty-five percent (25%). The award shall be payable for a period not to exceed four hundred twenty-five (425) weeks.
 2. An employee who is awarded benefits under this paragraph may, at the time of the award or before benefit payments begin, elect to receive retraining incentive benefits provided under paragraph (a)1. to 6. of this subsection, in lieu of income benefits awarded under this paragraph, provided that such option is available one (1) time only and is not revokable, and provided that in no event shall income benefits payable under this paragraph be stacked or added to retraining incentive income benefits paid or payable under subparagraphs 1. to 6. of paragraph (a)1. to 6. of this subsection to extend the period of disability.
- (c)
- If it is determined that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, or category 3/2 or 3/3 coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more, there shall be an irrebuttable presumption that the employee has a disability rating of fifty percent (50%) resulting from exposure to coal dust, and the employee shall be awarded an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by

KRS 342.740 multiplied by the disability rating of fifty percent (50%). The award shall be payable for a period not to exceed four hundred twenty-five (425) weeks.

- (d) If it is determined that an employee has a radiographic classification of category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis, based on the latest ILO International Classification of Radiographics, and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values or category 3/2 or 3/3 pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, there shall be an irrebuttable presumption that the employee has a seventy-five percent (75%) disability rating resulting from exposure to coal dust and the employee shall be awarded income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of seventy-five percent (75%). The award shall be payable for a period not to exceed five hundred twenty (520) weeks. Income benefits awarded under this paragraph shall be payable to the employee during the disability.
 - (e) If it is determined that an employee has radiographic classification of 3/2 or 3/3 occupational pneumoconiosis and respiratory impairment evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values, or complicated pneumoconiosis (large opacities category A, B, or C progressive massive fibrosis), there shall be an irrebuttable presumption that the employee is totally disabled resulting from exposure to coal dust, and the employee shall be awarded income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability.
- (2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the largest forced vital capacity (FVC) value or the largest forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.
 - (3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge shall make his *or her* decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula $(103.5 - 0.42X)$, where X equals the claimant's age at the time of the arterial blood gas study.
 - (4) Upon request, the **commissioner**~~executive director~~ shall refer an employee who has been awarded retraining incentive benefits under subsection (1)(a) of this section to the Office of Vocational Rehabilitation for evaluation and assessment of the training, education, or other services necessary to prepare the employee for a trade, occupation, or profession that will return the employee to remunerative employment, or services necessary and appropriate to prepare and enable the employee to successfully complete a bona fide training or education program approved by the **commissioner**~~executive director~~. The **commissioner**~~executive director~~ shall contract with the Office of Vocational Rehabilitation to provide vocational rehabilitation or education services commensurate with the skill levels and abilities of the employee. Services provided under this subsection shall be funded by the coal workers' pneumoconiosis fund, KRS 342. 1242 notwithstanding.
 - (5) The **commissioner**~~executive director~~ shall promulgate administrative regulations sufficient to effectuate the provisions relating to retraining incentive benefits provided under subsection (1)(a) of this section. The administrative regulations shall:
 - (a) Define a "bona fide training or education program" to mean a postsecondary education or training program, including but not limited to the postsecondary programs registered with the Higher Education Assistance Authority, and successful completion of which will qualify the person completing the course for a trade, occupation, or profession, and which program can be completed within the period benefits are payable under subsection (1)(a) of this section;

- (b) Establish requirements for approval and certification of a bona fide training or education program;
- (c) Provide that funds paid to the training or education program by the employer as required under subsection (1)(a)4. of this section shall be applied only to instruction, tuition, material costs, and any fees necessary for the completion of the program;
- (d) Establish requirements for successful participation in and completion of an approved and certified bona fide training or education program, and eligibility standards that must be satisfied to receive sums to be paid by the employer pursuant to subsection (1)(a)6. of this section; and
- (e) Establish attendance, performance and progress standards, and reporting requirements in consultation with the Kentucky Adult Education Program within the Council on Postsecondary Education as conditions that must be satisfied to receive retraining incentive income benefits pursuant to subsection (1)(a)3. of this section.

- (6) In no event shall income benefits awarded under this section be stacked or added to income benefits awarded under KRS 342.730 to extend the period of disability and in no event shall income or retraining incentive benefits be paid to the employee while the employee is working in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a).

➔Section 1843. KRS 342.734 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall promulgate administrative regulations pursuant to KRS Chapter 13A:
- (a) Establishing the form and content of a statement for services;
 - (b) Specifying the manner in which the employee may designate and change the designation of physicians;
 - (c) Requiring selection of gatekeeper physicians;
 - (d) Requiring reports from providers on the condition of the employee; and
 - (e) Establishing procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of medical services shall be resolved.
- (2) Pending the effective date of administrative regulations promulgated by the **commissioner**~~{executive director}~~, all administrative regulations heretofore promulgated by the Workers' Compensation Board pertaining to these matters shall remain in effect, it being determined that those administrative regulations are within the statutory grant of authority, meet legislative intent, and are not in conflict with the provisions of this chapter.

➔Section 1844. KRS 342.735 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall promulgate administrative regulations to expedite the payment of temporary total disability and medical expense benefits.
- (2) The **commissioner**~~{executive director}~~ may promulgate administrative regulations incorporating managed care intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.
- (3) The **commissioner**~~{executive director}~~ shall promulgate administrative regulations pursuant to KRS Chapter 13A establishing an expedited method for resolving medical issues prior to the filing of a claim with the **Department**~~{Office}~~ of Workers' Claims. The administrative regulations shall permit an employee or other interested party, prior to the filing of a claim, to request a determination by an administrative law judge on medical issues relating to the reasonableness or appropriateness of the proposed medical care or relating to the obligation of the employer or the employer's insurance carrier to make payment of contested medical bills. However, the employee has the burden of proof to show the medical expenses are related to the injury, reasonable and necessary prior to an application of benefits being filed and before an award or order of benefits. Thereafter, the burden is upon the employer. The respondent to the moving party shall be given ten (10) days to answer a request for an expedited determination of medical issues, and the administrative law judge shall issue a ruling within seven (7) days thereafter. The interested parties shall be provided a form to provide to the medical care provider and the completed form filed with the **department**~~{office}~~ and served upon the respondent shall initiate the time for response and determination.

➔Section 1845. KRS 342.740 is amended to read as follows:

- (1) For the purposes of this chapter, the average weekly wage of the state shall be determined by the ~~commissioner~~~~executive director~~ as follows: On or before September 1 of each year, the total wages reported by subject employers under the Kentucky Unemployment Insurance Law for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total number of insured workers reported for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest cent. This average weekly wage shall be certified to the ~~commissioner~~~~executive director~~ by the Education and Workforce Development Cabinet in a manner prescribed by the ~~commissioner~~~~executive director~~ by administrative regulation. The average weekly wage as so determined shall be applicable for the full period during which income or death benefits are payable, when the date of occurrence of injury or of disablement in the case of disease, or of death, falls within the calendar year commencing January 1 following the September 1 determination.
- (2) Whenever a change in the average weekly wage of the state is of an amount that increases or decreases the minimum weekly income benefits for total disability or death by \$1 or more, or the maximum weekly income benefits for total disability or for death by \$2 or more, computed in each case and rounded to the nearest dollar, an adjustment in those minimums or maximums which are affected in the requisite amount by the change in the average weekly wage of the state shall be made which will reflect the increase or decrease, but no change in these limitations shall otherwise be made.

➔Section 1846. KRS 342.750 is amended to read as follows:

If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in subsections (3) and (4) of this section:

- (1) (a) If there is a widow or widower and no children of the deceased, to such widow or widower 50 percent of the average weekly wage of the deceased, during widowhood or widowerhood.
- (b) To the widow or widower, if there is a child or children living with the widow or widower, 45 percent of the average weekly wage of the deceased, or 40 percent, if such child is not or such children are not living with a widow or widower, and in addition thereto, 15 percent for each child. Where there are more than two (2) such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike.
- (c) Two (2) years' indemnity benefits in one (1) lump sum shall be payable to a widow or widower upon remarriage.
- (d) To the children, if there is no widow or widower, 50 percent of such wage for one (1) child, and 15 percent for each additional child, divided among such children, share and share alike.
- (e) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen (18), or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of 22. A child who originally qualified as a dependent by virtue of being less than 18 years of age may, upon reaching age 18, continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.
- (f) To each parent, if actually dependent, 25 percent.
- (g) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, 25 percent to each such dependent. If there should be more than one (1) of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike.
- (h) The income benefits of each beneficiary under paragraphs (f) and (g) above shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen (18) or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent.
- (i) A person ceases to be actually dependent when his *or her* income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workers' compensation

income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subsection, but full payments shall not be suspended during the pendency of any proceeding to determine dependency.

- (2) Upon the cessation of income benefits under this section to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.
- (3) For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in KRS 342.740. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefit that was or would have been payable for total disability to the deceased, including benefits to his dependents.
- (4) The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed 75 percent of the average weekly wage of the deceased as calculated under KRS 342.140, subject to the maximum limits in subsection (3) above. The maximum aggregate limitation shall not operate in case of payment of two (2) years' income benefits to the widow or widower upon remarriage as provided under paragraph (c) of subsection (1) of this section, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subsection (2) of this section, but the weekly income benefits as to such remaining beneficiaries shall not exceed the weekly income benefit that was or would have been payable for total disability to the deceased. The classes of beneficiaries specified in paragraphs (a), (b), and (d) of subsection (1) of this section shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subsection should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in paragraph (f) of subsection (1) in another class.
- (5) All relations of dependency referred to in this section shall mean dependency existing at the time of the accident to the employee or at the time his *or her* disability from an occupational disease began.
- (6) In addition to other benefits as provided by this chapter, if death occurs within four (4) years of the date of injury as a direct result of a work-related injury, a lump-sum payment of fifty thousand dollars (\$50,000) shall be made to the deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be paid. Annually, the *commissioner*~~executive director~~ shall compute, in accordance with KRS 342.740, the increase or decrease in the state average weekly wage, and consistent therewith, shall adjust the amount of the lump-sum payment due under this subsection for injuries occurring in the succeeding year.
- (7) All benefits awarded pursuant to this section, other than those provided in subsection (6) of this section, shall be subject to the limitations contained in KRS 342.730(4).

➔Section 1847. KRS 342.760 is amended to read as follows:

- (1) There is hereby authorized in the ~~{Department of}~~Labor *Cabinet* an uninsured employers' fund for the purpose of making payments in accordance with the provisions of subsection (4) of this section. The *secretary*~~commissioner~~ of the ~~{Department of}~~Labor *Cabinet* shall be the custodian of the fund, and all moneys and securities in the fund shall be held in trust by the *secretary*~~commissioner~~ of the ~~{Department of}~~Labor *Cabinet* and shall not be considered a part of the general funds of the state.
- (2) The *secretary*~~commissioner~~ of the ~~{Department of}~~Labor *Cabinet* is authorized to disburse moneys from the fund only upon written order of the administrative law judge or the board.
- (3) All amounts collected as fines and penalties under this chapter shall be paid into the uninsured employers' fund.
- (4) The uninsured employers' fund shall be responsible for the payment of compensation when there has been default in the payment of compensation due to the failure of an employer to secure payment of compensation as provided by this chapter. Such employer shall be liable for payment into the fund of all the amounts authorized

to be paid therefrom under the authority of this subsection including reimbursement of the special fund of all liability apportioned to it and for the purposes of enforcing this liability the ~~{Department of}~~ Labor **Cabinet**, for the benefit of the fund, shall be subrogated to all the rights of the person receiving such compensation from the fund. This provision shall apply to all pending claims upon which a final order has not been entered.

- (5) In furtherance of this purpose, the Attorney General shall appoint a member or members of his *or her* staff or special counsel to represent the fund in all proceedings brought to enforce claims against or on behalf of the fund. Necessary expenses for this purpose including salaries of said staff or special counsel shall be borne by the fund. The ~~{Department of}~~ Labor **Cabinet** shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund.
- (6) On December 29, 1987, the liabilities of the uninsured employers' fund and its assets remaining in the State Treasury shall be transferred to the uninsured employers' fund created within the ~~{Department of}~~ Labor **Cabinet** pursuant to this section.

➔Section 1848. KRS 342.765 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS Chapter 342 to the contrary, the office of the Attorney General shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund. Funds to reimburse the Attorney General's office for expenses incurred in litigation and administration in defense of the uninsured employers' fund shall be transferred upon request of the Attorney General's office and approval by the *secretary*~~{commissioner}~~ of the ~~{Department of}~~ Labor **Cabinet**.
- (2) The office of the Attorney General shall report monthly to the Interim Joint Committee on Appropriations and Revenue, the Interim Joint Committee on Labor and Industry, and the *commissioner*~~{executive director}~~ the amount of the agency fund expenditures in each month for the uninsured employers' fund and the nature of these expenditures. In addition, the Office of the Attorney General shall report quarterly to the *commissioner*~~{executive director}~~ on the amount of funds recouped from uninsured employers.

➔Section 1849. KRS 342.770 is amended to read as follows:

- (1) Upon the filing of a claim the *commissioner*~~{executive director}~~ shall ascertain whether the employer, or any other person against whom a claim is filed and who is not exempt by KRS 342.630 or 342.650, has secured payment of compensation by either securing insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. Upon determination that any employer under this chapter has failed to comply with the provisions of KRS 342.340, the *commissioner*~~{executive director}~~ shall record, as provided by subsection (2) of this section, a certificate prepared and furnished him *or her* by the general counsel showing the date on which such claim was filed, the date of the injury alleged, the name and last known address of the employer against whom it was filed, and the fact that the employer has not secured the payment of compensation as required. Upon recordation, such certificate constitutes a valid lien against the assets of the employer in favor of the uninsured employers' fund for the whole amount which may be due as compensation. Such lien shall be superior to the lien of any mortgage or other encumbrance thereafter created and shall continue for ten (10) years from the time of such recording, unless sooner released or otherwise discharged. A copy of such certificate shall be served upon the employer by the *commissioner*~~{executive director}~~.
- (2) The certificate constituting a lien in favor of the uninsured employers' fund shall be filed in the following offices:
 - (a) The office of the county clerk of the county in which the defendant employer resides.
 - (b) The office of the county clerk of the county in which the defendant employer has its principal place of business.
 - (c) The office of the county clerk in the counties where such employer's property is located.

➔Section 1850. KRS 342.790 is amended to read as follows:

When an award is made against an employer who:

- (1) Has not secured payment of compensation by either securing insurance coverage or qualifying as a self-insurer; and
- (2) Has not made a deposit of security, indemnity, or bond acceptable to the *commissioner*~~{executive director}~~ to secure the payment of compensation liability; and

- (3) Has failed to make payment of compensation according to the terms of that award, the award shall constitute a liquidated claim for damages against that employer in an amount commuted to a lump sum which will equal the present value of the total sum of the probable future payments discounted at four percent (4%) true discount compounded annually on each payment, which amount is to be ascertained and fixed by the **commissioner**~~{executive director}~~, and the **commissioner**~~{executive director}~~ shall certify the same to the Attorney General who shall forthwith institute a civil action against that employer in the name of the uninsured employers' fund for the collection of that award. In that action, it shall be sufficient for plaintiff to set forth a copy of the award of the administrative law judge relative to the claim as certified by the **commissioner**~~{executive director}~~ and to state that there is due to plaintiff on account of the opinion, order, or award of the administrative law judge a specified sum which plaintiff claims with interest. A certified copy of the award in the claim shall be attached to the complaint and shall constitute prima facie evidence of the truth of the facts therein contained.

➔Section 1851. KRS 342.792 is amended to read as follows:

- (1) The claim of any miner last exposed to the occupational hazards of coal workers' pneumoconiosis between December 12, 1996, and July 15, 2002, shall nonetheless be governed by the provisions of KRS 342.732 and notwithstanding the provisions of KRS 342.125 all claims for benefits which were filed for last injurious occupational exposure to coal dust occurring between December 12, 1996, and July 15, 2002, shall be considered pursuant to the provisions of KRS 342.732 and administrative regulations promulgated by the **commissioner**~~{executive director}~~, and closed claims, except claims dismissed for reasons other than failure to meet medical eligibility standards, may be reopened by the claimant. Income or retraining incentive benefits shall be awarded thereon as if the entitlement standards established by the amendments to KRS 342.732 were effective at the time of last exposure. Any benefits previously granted by an award or settlement shall be credited against any subsequent award or settlement and no interest shall be payable on additional benefits. A previous grant of retraining incentive benefits shall be credited only to the extent that the benefits were actually paid. All income or retraining incentive benefits greater than those which would have been awarded were not these new provisions applicable shall be paid without interest from the Kentucky coal workers' pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding.
- (2) The original claim of any miner last exposed to the occupational hazards of coal workers' pneumoconiosis prior to December 12, 1996, which was subject to a university evaluation pursuant to KRS 342.315 and was dismissed upon a finding that the miner did not prove the presence of coal workers' pneumoconiosis radiographically may be reopened by the claimant notwithstanding the provisions of KRS 342.125, pursuant to administrative regulations adopted by the **commissioner**~~{executive director}~~. Income benefits may be awarded thereon pursuant to entitlement standards effective as of the date of last exposure, except the income or retraining benefits shall be paid without interest from the Kentucky coal workers' pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding.
- (3) Notwithstanding the provisions of KRS 342.316(4)(a), the coal workers' pneumoconiosis claim of any miner last exposed between December 12, 1996, and July 15, 2002, may be filed with the **commissioner**~~{executive director}~~ on or before December 12, 2003, or within the time frame prescribed by KRS 342.316(4)(a), whichever is longer. All income or retraining incentive benefits greater than those which would have been awarded were not these new provisions applicable shall be paid by the Kentucky coal workers' pneumoconiosis fund without interest, the provisions of KRS 342.1242 notwithstanding.
- (4) Administrative regulations promulgated by the **commissioner**~~{executive director}~~ pursuant to subsections (1) and (2) of this section shall provide that chest X-rays previously taken at university medical schools pursuant to KRS 342.315 shall be obtained by the **commissioner**~~{executive director}~~ and forwarded to three (3) randomly selected "B" readers for determination of consensus pursuant to KRS 342.316(3)(b)4.e. The claim shall be assigned to an administrative law judge for determination of whether the claim should be reopened and the award of additional benefits, if any.

➔Section 1852. KRS 342.794 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall maintain a list of duly qualified "B" reader physicians who are licensed in the Commonwealth. The list shall include "B" reader physicians at the university medical schools and other "B" reader physicians certified by the National Institute of Occupational Safety and Health (NIOSH) who have agreed to interpret chest X-rays pursuant to KRS 342.316 for a fee to be fixed by the **commissioner**~~{executive director}~~ and paid by the Kentucky coal workers' pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding.

- (2) Physicians from the "B" reader list shall be utilized as necessary to obtain consensus classifications of chest films in coal workers' pneumoconiosis claims. The consensus classification shall be presumed to be the correct classification of the employee's condition unless overcome by clear and convincing evidence. If an administrative law judge finds that the presumption of correctness of the consensus reading has been overcome, the reasons shall be specially stated in the administrative law judge's order.
- (3) "B' reader" means a physician who has demonstrated proficiency in evaluating chest roentgenograms for roentgenographic quality and in the use of the ILO classification for interpreting chest roentgenograms for pneumoconiosis and other diseases by taking and passing a specially designed proficiency examination given on behalf of the National Institute of Occupational Safety and Health (NIOSH) or by the Appalachian Laboratory for Occupational Safety and Health (ALOSH), or successors.
- (4) The university medical schools in consultation with the ~~commissioner~~~~executive director~~ shall jointly develop a procedure to annually report the performance of physicians on the "B" reader list who have participated in the consensus procedure established in KRS 342.316. The physicians shall be evaluated with respect to the timeliness and completeness of their reports, as well as the frequency at which the physician's classification of X-rays differs from the consensus reading. The ~~commissioner~~~~executive director~~ shall remove a physician from the "B" reader list if the physician consistently renders incomplete or untimely reports, or if the physician's interpretations of X-rays are not in conformity with the consensus reading fifty percent (50%) of the time. The report required under this subsection shall be provided to the Interim Joint Committee on Labor and Industry beginning in July 1, 2003 and by July 1 of each year thereafter.

➔Section 1853. KRS 342.796 is amended to read as follows:

- (1) Notwithstanding any provisions of the KRS to the contrary, every employer engaged in the severance or processing of coal, as defined in KRS 342.0011, at its principal office and such other locations where employees customarily report for payroll and personnel matters, shall conspicuously post a notice advising employees of the education and training opportunities available under this chapter. The notice shall include:
 - (a) Toll-free telephone numbers for the:
 1. ~~Department~~~~Office~~ of Workers' Claims;
 2. Kentucky Community and Technical College System; and
 3. Kentucky Higher Education Assistance Authority;
 - (b) Telephone numbers for the local board of education and centers for adult education and literacy; and
 - (c) A list of approved education and training programs available to employees engaged in the severance or processing of coal.
- (2) The notice shall be made available to all employers at no cost and upon request of the employer. The notice shall also be posted on the Web sites maintained by the ~~Department~~~~Office~~ of Workers' Claims and the Kentucky Community and Technical College System.

➔Section 1854. KRS 342.807 is amended to read as follows:

- (1) The authority shall be governed by a board of directors. The board shall exercise complete jurisdiction over the authority.
- (2) The board shall consist of the:
 - (a) Secretary of the Finance and Administration Cabinet;
 - (b) Secretary of the Personnel Cabinet;
 - (c) Secretary of the ~~Labor~~~~Environmental and Public Protection~~ Cabinet; and
 - (d) Seven (7) at-large members appointed by the Governor, subject to confirmation by the Senate.
- (3) Any vacancy which occurs prior to the expiration of a term shall be filled by the Governor in the same manner as the initial appointment was made, and the new appointee shall serve only the remainder of the unexpired term.
- (4) No person shall serve on the board who:

- (a) Fails to meet or comply with the conflict of interest policies established by the board and KRS 304.24-270;
 - (b) Is not bondable;
 - (c) Is an employee, attorney, or contractor of a competing insurer providing workers' compensation insurance in the Commonwealth; or
 - (d) Is not a resident of this Commonwealth.
- (5) In making the appointments to the board, subject to Senate confirmation, the Governor shall ensure adequate representation from the major sectors of the economy and workforce in the Commonwealth.

➔Section 1855. KRS 342.817 is amended to read as follows:

- (1) The authority, through its board and manager, shall establish separate rating plans, rates, and underwriting standards for different classes of risks for the authority.
- (2) The rating plans, rates, and underwriting standards developed for the categories of risk shall be based on generally-accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board. The rates shall be actuarially sound for both the voluntary market and the market of last resort and set at levels which are expected, in the aggregate, to be sufficient to pay all workers' compensation claims incurred by the participating employer risks and other permitted expenses of the authority.
- (3) Multitiered premium or rating plans may be developed to provide workers' compensation coverage to insureds in the Commonwealth.
- (4) The manager shall develop statistical and other information as necessary to distinguish its writings in the voluntary market, and its writings as a market of last resort.
- (5) The rates established by the authority for its policyholders shall be based only on Kentucky loss experience data, except that other loss experience data may be utilized as a supplement to Kentucky data if supplemental or additional data are necessary to establish statistical credibility of an employment classification.
- (6) Any and all rates, whether for the voluntary market or the market of last resort, established by the board are deemed competitive and shall be filed with the **commissioner**~~executive director~~ of insurance in accordance with KRS Chapter 304 in the same manner as any other mutual insurance company writing workers' compensation in the Commonwealth.
- (7) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus requirements for mutual insurance companies in the Commonwealth shall not apply to the authority until the authority has been in operation for eighty-four (84) months, unless modified by the General Assembly. In addition to other reporting requirements in KRS 342.809 and 342.821, the authority shall report to the Labor and Industry Committee of the General Assembly, no later than October 31 of each year, on the status of its efforts to build and maintain a surplus as required by KRS Chapter 304.

➔Section 1856. KRS 342.823 is amended to read as follows:

- (1) In determining the solvency of the authority in regard to maintaining adequate reserves, the **commissioner**~~executive director~~ of insurance, the independent accountant engaged for the annual audit, and the board, in exercising its prudent stewardship, shall not utilize the practice of "discounting" the funds to reduce future liabilities, except in conformity with standards or rules promulgated by the National Association of Insurance Commissioners.
- (2) The authority shall file reports required by KRS 304.3-240.
- (3) The authority shall file a report not later than March 31 of each year indicating the business done by the authority during the previous year, including a balance sheet showing assets and liabilities at the beginning and conclusion of that year. The report shall be a public record and shall be delivered to the Governor, **commissioner**~~executive director~~ of insurance, Auditor of Public Accounts, Attorney General, and the co-chairs of the Legislative Research Commission. Additionally, a statement of solvency shall be prepared which shall include, at a minimum:
 - (a) A summary of the prior quarterly reports required in KRS 342.821;

- (b) A management projection of the future solvency status for the authority; and
 - (c) Any recommendations pertaining to the same.
- (4) The authority shall not enter into any contract with a certified public accountant for an audit unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within thirty (30) days of receipt of a written request for an audit. Any contract with a certified public accountant entered into as a result of the Auditor of Public Accounts declining to perform the audit shall specify the following:
- (a) That the certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts, Attorney General, and Legislative Research Commission; and
 - (b) That the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers.
- (5) If at any time the assets of the authority are less than its liabilities, the board may levy an assessment on its policyholders in the manner provided in Subtitle 24 of KRS Chapter 304.

➔Section 1857. KRS 342.902 is amended to read as follows:

As used in KRS 342.900 to 342.912, unless the context requires otherwise:

- (1) "Insolvent self-insurer" means either an individual self-insured employer or a self-insured group who has failed to pay compensation as a result of a declaration of bankruptcy or insolvency by a court of competent jurisdiction, and whose security deposit has been called by the *commissioner*~~{executive director}~~, or who has failed to provide compensation and who has been issued a certificate of default by the *commissioner*~~{executive director}~~ and whose security deposit has been called by the *commissioner*~~{executive director}~~.
- (2) "Member" means a self-insured employer or self-insured group that participates in a guaranty fund created pursuant to KRS 342.900 to 342.912.
- (3) "Guaranty fund" means one (1) of the three (3) guaranty funds established pursuant to KRS 342.900 to 342.912.
- (4) "Directors" means the board of directors of a guaranty fund.
- (5) "Certificate of default" means a notice issued by the *commissioner*~~{executive director}~~ based upon a finding that a self-insured employer or self-insured group has failed to pay compensation required by this chapter.

➔Section 1858. KRS 342.906 is amended to read as follows:

- (1) There is created a nonprofit, unincorporated legal entity to be known as the Kentucky individual self-insurance guaranty fund to function as the guaranty fund for individually insured employers, excluding individually self-insured coal employers, to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the *commissioner*~~{executive director}~~. Each noncoal, individually self-insured employer who has qualified and been certified by the *commissioner*~~{executive director}~~ as a self-insured employer on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to this subsection as a condition of maintaining its certificate required to be self-insured under this chapter. The *commissioner*~~{executive director}~~ shall revoke any self-insurer's certificate and authority to be self-insured if the self-insured employer fails to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to this subsection.
- (2) There is created a nonprofit, unincorporated legal entity known as the Kentucky group self-insurance fund to function as a guaranty fund for self-insured groups or associations established under KRS 342.350(4) and 304.50-010, to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance. Each self-insured group or association that is authorized to self-insure and certified by the *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection, as a condition of maintaining its authorization and certificate to self-insure. The *commissioner*~~{executive director}~~ of the *Department*~~{Office}~~ of Insurance shall revoke any authorization and certificate to self-insure of any self-insured group or association for failure to maintain membership in the guaranty fund or failure to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.

- (3) There is created a nonprofit, unincorporated legal entity known as the Kentucky coal employers self-insurance fund to function as a guaranty fund for individually self-insured coal employers to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the ~~commissioner~~~~executive director~~. Each coal employer that is individually self-insured and that has been authorized and certified to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection as a condition of maintaining authorization and certification to self-insure. The ~~commissioner~~~~executive director~~ shall revoke a coal employer's authority and certification to self-insure for failure to maintain membership in the guaranty fund or to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.
- (4) The guaranty funds created pursuant to this section are created for the purposes of meeting the obligations of insolvent individually self-insured employers or members of a self-insured group or association incurred while members of a guaranty fund and after exhaustion of all security, including bonds, escrow deposits, insurance, or reinsurance, required by this chapter or KRS 304.50-045 and 304.50-050. The method of operation of each guaranty fund created pursuant to the provisions of this section shall be established by a plan of operation pursuant to administrative regulations promulgated by the ~~commissioner~~~~executive director~~.
- (5) The Kentucky individual self-insurance guaranty fund and the Kentucky coal employers self-insurance guaranty fund shall each be governed by a nine (9) member board of directors who shall serve staggered terms not to exceed four (4) years, be representative of individual self-insurers, and be elected by the members of the guaranty fund. Each member of the board shall have one (1) vote. In addition to the nine (9) directors elected by the members, the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims and the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A member of the board of directors may designate another member to act in the member's place as though the member were acting, and the designee's actions shall be deemed those of the member.
- (6) The Kentucky group self-insurance guaranty fund shall be governed by a board of directors composed of one (1) representative of each self-insured group or association. In addition, the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims and the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A director may designate another member to act in the member's place, and the designee's actions shall be deemed those of the director.
- (7) Each guaranty fund created pursuant to this section shall establish bylaws and a plan of operation subject to prior approval of the ~~commissioner~~~~executive director~~, necessary to the purposes of this chapter and to carry out the responsibilities of each guaranty fund. Each guaranty fund may carry out its responsibilities directly or by contract and may purchase services and insurance and borrow funds as it deems necessary for the protection of the members and their employees.
- (8) Security called by the ~~commissioner~~~~executive director~~ and disbursed to the guaranty funds, and assessments made upon members, shall vest in the guaranty funds, shall not thereafter be deemed state property, and shall not be subject to appropriation by the General Assembly or any other state agency.
- (9) All moneys in the individual guaranty funds, exclusive of costs reasonably necessary to conduct business, shall be used solely to compensate persons entitled to receive workers' compensation benefits from a Kentucky member who has defaulted in performance of its workers' compensation benefit payment obligations under this chapter.
- (10) No liability shall lie, whether at law or in equity, against any director, agent, or employee of a guaranty fund created pursuant to this section, on account of any action or inaction taken by any of them in the administration of a guaranty fund.

➔Section 1859. KRS 342.908 is amended to read as follows:

- (1) The ~~commissioner~~~~executive director~~ shall notify a guaranty fund if the ~~commissioner~~~~executive director~~ has knowledge that any member of the guaranty fund has failed to timely pay workers' compensation benefits required by this chapter or if a court of competent jurisdiction has declared the member to be bankrupt or insolvent.
- (2) In the event of issuance of a certificate of default, the ~~commissioner~~~~executive director~~ shall call all security and transfer it to the appropriate guaranty fund created pursuant to this section. The ~~commissioner~~~~executive director~~ shall also immediately notify, by certified mail, the guaranty fund and order the guaranty fund to

assume the workers' compensation obligations of the member required in this chapter. The guaranty fund shall commence payment of these obligations within fourteen (14) days of receipt of notification and order of the ~~commissioner~~~~executive director~~. Payment shall be made to claimants whose entitlement to benefits can be ascertained by the guaranty fund with or without proceedings before the ~~Department~~~~Office~~ of Workers' Claims or a court of competent jurisdiction. Upon assumption of the obligations of a member by a guaranty fund, the guaranty fund shall have the right to immediate possession of any security, and the custodian, surety, or issuer of any irrevocable letter of credit shall turn over the security, proceeds of the surety bond, or letter of credit to the guaranty fund, together with the interest that has accrued since the date of the member's insolvency. The guaranty fund may administer payment of benefits or it may retain a third party to do so.

- (3) Notwithstanding any other provision of law, any cash, securities, irrevocable letters of credit, specific excess or aggregate excess insurance proceeds, or any other security deposited or posted in accordance with this section shall be used first, when due, to pay workers' compensation claims. After the security has been exhausted, the payment of workers' compensation claims from member assessments may be made. Where the guaranty fund member-assessment account is used to pay workers' compensation claims on an emergency or an interim basis, pending receipt by the guaranty fund of security which is due but not yet received, the member-assessment account shall be reimbursed for payment from the security when it is received, and the priorities stated above shall thereafter apply.
- (4) To the extent necessary to secure funds for the initial establishment of each guaranty fund member-assessment account, the board of directors of each guaranty fund created pursuant to this section shall levy assessments based on the premium of each individual self-insured employer, as defined and calculated pursuant to KRS 342.0011(28), for members of the Kentucky individual self-insurers guaranty fund and for the Kentucky coal employers self-insurance guaranty fund, and KRS 342.0011(24) for the Kentucky group self-insurance guaranty fund, but no such assessments shall ever exceed, in the aggregate, from all members of a single guaranty fund, an amount in excess of one million dollars (\$1,000,000) at any given time. The assessments shall be made at a maximum annual assessment of: one-half of one percent (0.5%) of the premium for each member of the Kentucky individual self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(28); two percent (2%) of the premium for each member of the Kentucky coal employers guaranty fund as defined and calculated pursuant to KRS 342.0011(28); and three-fourths of one percent (0.75%) of the premium for each member of the Kentucky group self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(24).
- (5) The initial assessment for each guaranty fund created pursuant to this section shall be for an amount equal to five hundred thousand dollars (\$500,000), to be levied and collected within a one (1) year period. There shall be no reassessments against any member unless the current balance of such guaranty fund created pursuant this section is insufficient after deducting the amount paid for or reserved for outstanding claims and for administrative and other costs in managing the guaranty fund at which point the board of directors shall raise assessments sufficient to bring the minimum amount of the guaranty fund to five hundred thousand dollars (\$500,000) or such other amount not to exceed, in any event, one million dollars (\$1,000,000) based upon a maximum annual assessment for each guaranty fund.
- (6) A guaranty fund created pursuant to this section shall pay no dividends, rebates, interest, or otherwise distribute income from the guaranty fund to any of its members, unless the guaranty fund has the assets prescribed in subsection (5) of this section and the distributions are approved by the ~~commissioner~~~~executive director~~.
- (7) The ~~commissioner~~~~executive director~~ shall be provided with any relevant information by the employer, any excess insurer, any third party administrator, or any issuer of any irrevocable letter of credit, issuer of any surety bond, or custodian of any security necessary for the ~~commissioner~~~~executive director~~ to carry out the ~~commissioner's~~~~executive director's~~ obligations under this chapter, and the ~~commissioner~~~~executive director~~ shall provide this information to the guaranty fund as necessary to carry out its obligations.
- (8) The payment of benefits by a guaranty fund does not release any person or entity from any liability to the individual guaranty fund for full reimbursement.

➔Section 1860. KRS 342.912 is amended to read as follows:

- (1) The directors of each guaranty fund shall annually contract for an independent certified audit of the financial activities of the guaranty fund. An annual report on the financial status of the guaranty fund as of June 30 of each year shall be submitted to the ~~commissioner~~~~executive director~~ and to each member.

- (2) Each guaranty fund shall be established on March 1, 1997.
- (3) The individual guaranty fund shall be liable for payment of benefits only for members where there has been a declaration of bankruptcy or insolvency by a court of competent jurisdiction after the date on which the guaranty fund is established, or where the **commissioner**~~{executive director}~~ has issued a certificate of default which has occurred after the date on which the guaranty fund is established.

➔Section 1861. KRS 342.920 is amended to read as follows:

- (1) The General Assembly finds and declares that there is a need to protect employees of workers' compensation self-insured employers who had claims for injuries that occurred prior to the creation of the workers' compensation self-insurance guaranty funds under this chapter. The General Assembly further finds that there may be instances in which the security of a former self-insured employer is insufficient to pay the entire workers' compensation claim of an injured employee who was injured prior to March 1, 1997.
- (2) There is hereby established the self-insurance fund for the purpose of making payments to workers' compensation claimants injured prior to March 1, 1997, when the security of a former self-insured employer has been depleted.
- (3) (a) The **commissioner**~~{executive director}~~ shall be:
 1. Authorized to disburse moneys from the fund in accordance with written orders of an administrative law judge or the board; and
 2. Responsible for administration of the fund and conservation of the assets of the fund.
 (b) The **commissioner**~~{executive director}~~ may hire an administrator to oversee the payment of claims as provided in this section.
- (4) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, all amounts collected after July 12, 2006, as fines and penalties under KRS 342.267 and 342.990 shall be paid into the self-insurance fund.
- (5) The self-insurance fund shall be responsible for the payment of compensation when there has been a default in the payment of compensation by a self-insured employer and the security held by the **Department**~~{Office}~~ of Workers' Claims has been completely depleted.
- (6) The **Department**~~{Office}~~ of Workers' Claims shall appoint an attorney on its staff or special counsel to represent the self-insurance fund in all proceedings brought to enforce claims against or on behalf of the self-insurance fund. Necessary expenses for this purpose including salaries or special counsel shall be borne by the self-insurance fund.
- (7) Any party seeking reopening under KRS 342.125 or action on a claim involving the self-insurance fund shall name the self-insurance fund in its action.
- (8) (a) The Workers' Compensation Funding Commission shall hold, invest, and reinvest the funds collected for the self-insurance fund;
 (b) The funding commission shall have the same authority and duties with regard to the self-insurance fund as described in KRS 342.1223; and
 (c) The funding commission shall disburse moneys of the fund as requested by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workers' Claims pursuant to subsection (3) of this section.
- (9) Amounts in the self-insurance fund not expended at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year. Any interest earnings of the self-insurance fund shall become part of the fund and shall not lapse.

➔Section 1862. KRS 342.990 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall initiate enforcement of civil and criminal penalties imposed in this section.
- (2) When the **commissioner**~~{executive director}~~ receives information that he *or she* deems sufficient to determine that a violation of this chapter has occurred, he *or she* shall seek civil penalties pursuant to subsections (3) to (7) of this section, criminal penalties pursuant to subsections (8) and (9) of this section, or both.

- (3) The **commissioner**~~[executive director]~~ shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.
- (4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the **commissioner**~~[executive director]~~ that he *or she* intends to contest the citation, then the citation shall be deemed final.
- (5) If a cited party notifies the **commissioner**~~[executive director]~~ that he *or she* intends to challenge a citation issued under this section, the **commissioner**~~[executive director]~~ shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the **commissioner**~~[executive director]~~ to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.
- (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.
- (7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:
 - (a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense.
 - (b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense.
 - (c) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the **commissioner**~~[executive director]~~ of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the **commissioner**~~[executive director]~~ within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the **department**~~[office]~~ pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice.
 - (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense.
 - (e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the **commissioner**~~[executive director]~~ pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation.
 - (f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars (\$300) shall be fined per occurrence not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.
 - (g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars

(\$300) shall be fined per occurrence not more than five thousand dollars (\$5,000) per individual nor ten thousand dollars (\$10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.

- (h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each violation.
 - (i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per occurrence, or both.
 - (j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District Court and the Franklin Circuit Court.
- (8) The ~~commissioner~~~~executive director~~ shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the ~~commissioner~~~~executive director~~ shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.
- (9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:
- (a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisoned for not less than thirty (30) days nor more than one hundred eighty (180) days, or both.
 - (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.
 - (c) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in KRS 342.615 for the purpose of depriving one (1) or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium shall upon conviction thereof be subject to a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisonment for not more than one hundred eighty (180) days, or both, for each offense.
 - (d) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.
- (10) Fines paid pursuant to KRS 342.267 and subsections (7) and (9) of this section shall be paid into the self-insurance fund established in KRS 342.920.
- (11) In addition to the penalties provided in this section, the ~~commissioner~~~~executive director~~ and any administrative law judge or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

➔Section 1863. KRS 343.010 is amended to read as follows:

As used in this chapter unless the context requires otherwise:

- (1) "Apprentice" means a person at least sixteen (16) years of age who has entered into an apprenticeship agreement with an employer or an association of employers or an organization of employees;

- (2) "Apprenticeship agreement" means a voluntary written agreement entered into by the apprentice or through his *or her* parent or guardian with an employer, or an apprenticeship and training committee acting as agent for an employer, which agreement contains the terms and conditions of the employment and training of the apprentice to enable the apprentice to learn the trade, craft or business of the employer;
- (3) "~~Commissioner~~~~Executive director~~" means *commissioner*~~executive director~~ of the *Department*~~Office~~ of Workplace Standards, under the direction and supervision of the *secretary*~~commissioner~~ of the ~~Department of~~ Labor *Cabinet*, or any person authorized to act in his *or her* behalf, having jurisdiction over laws or regulations governing wages and hours of employees working in this state;
- (4) "Council" means apprenticeship and training council;
- (5) "Supervisor" means supervisor of apprenticeship and training;
- (6) "Trainee" means a person at least sixteen (16) years of age who has entered into an on-the-job training agreement with an employer or an association of employers or an organization of employees in a construction occupation under a program which has been approved by a federal agency as promoting equal employment opportunity in conjunction with federal-aid construction projects.
- (7) "Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, including such matters as the requirement for a written apprenticeship agreement;
- (8) "On-the-job training program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of a trainee, including such matters as the requirement for a written on-the-job training agreement other than an apprenticeship program; provided, however, that said program has been approved by a federal agency as promoting equal employment opportunity in conjunction with federal-aid construction projects;
- (9) "Sponsor" means any person, association, committee, or organization in whose name or title the program is or is to be registered, irrespective of whether such entity is an employer;
- (10) "Employer" means any person or organization employing an apprentice or trainee whether or not such person or organization is a party to an apprenticeship or on-the-job training agreement with the apprentice or trainee;
- (11) "Related instruction" means an organized and systematic form of instruction designed to provide the apprentice or trainee with knowledge of the theoretical and technical subjects related to his *or her* trade.

➔Section 1864. KRS 343.020 is amended to read as follows:

- (1) (a) The Governor shall appoint an Apprenticeship and Training Council composed of four (4) representatives from employer organizations, four (4) representatives from employee organizations, and one (1) at-large member who shall serve for a term of four (4) years and until their successors are appointed and qualified. The *commissioner*~~executive director~~ of the *Department*~~Office~~ of Workplace Standards, the commissioner of the Department for Workforce Investment, and the chancellor for the Technical Institutions' Branch in the Kentucky Community and Technical College System shall be ex officio members of the council. The chairman shall be elected by vote of the Apprenticeship and Training Council.
- (b) The regular members of the council shall each have one (1) vote. In the event of a tie vote among the regular members, the *commissioner*~~executive director~~ of the *Department*~~Office~~ of Workplace Standards shall have the right to cast the tie-breaking vote. Each member of the council shall receive his *or her* actual and necessary expenses incurred in attending its meetings.
- (c) The council shall meet at the call of the *commissioner*~~executive director~~ and shall aid him *or her* in formulating policies for the effective administration of this chapter. The *commissioner*~~executive director~~ with the aid of the council shall have the authority to make and revise such rules and regulations as he *or she* may deem appropriate to carry out the provisions and purposes of this chapter.
- (2) (a) On June 25, 2009, the terms of the council members appointed on September 12, 2006, shall end, and the Governor shall make the following appointments to the Apprenticeship and Training Council:
1. Two (2) representatives from employer organizations, and two (2) representatives from employee organizations to serve for terms that shall expire on December 31, 2009;

2. Two (2) representatives from employer organizations, and two (2) representatives from employee organizations to serve for terms that shall expire on December 31, 2010; and
 3. One (1) at-large member to serve for a term that shall expire on December 31, 2011.
- (b) Subsequent members shall serve terms of four (4) years and shall serve until their successors are appointed and qualified.
- (3) The council shall be attached to the ~~Department of~~ Labor **Cabinet** for administrative purposes.

➔Section 1865. KRS 343.030 is amended to read as follows:

The **commissioner**~~executive director~~, with the approval of the Governor, may appoint a supervisor of apprenticeship and training. This appointment shall be subject to the confirmation of the council by a majority vote. He *or she* may also appoint such clerical, technical, and professional help as shall be necessary to effectuate the purposes of this chapter.

➔Section 1866. KRS 343.040 is amended to read as follows:

The supervisor, under the direction of the **commissioner**~~executive director~~ and with the advice and guidance of the council, may administer this chapter in cooperation with the apprenticeship and training council; set up conditions and training standards for apprenticeship or on-the-job training programs and agreements; act as secretary to the council; approve, if in his *or her* opinion approval is to the best interest of both parties, any apprenticeship or on-the-job training program and agreement submitted to him *or her* by the parties thereto, that meets the standards established under this chapter; keep a record of apprenticeship and on-the-job training programs and agreements and their disposition; issue certificates of completion of apprenticeship and on-the-job training; and perform such other duties as are necessary to carry out the intention of this chapter.

➔Section 1867. KRS 343.070 is amended to read as follows:

- (1) Upon the complaint of either party to the agreement, or upon his *or her* own initiative, the supervisor may investigate or determine if there has been a violation of the terms of the apprenticeship or on-the-job training agreement approved under this chapter. He may conduct inquiries and other proceedings necessary to any investigation and determination. The parties to the agreement shall, after reasonable notice, be given an informal hearing. All informal hearings, investigations, and determinations shall be made under authority of reasonable administrative regulations promulgated by the council subject to the approval of the **commissioner**~~executive director~~.
- (2) The determination of the supervisor shall be filed with the **commissioner**~~executive director~~. If no appeal therefrom is filed with the **commissioner**~~executive director~~ within fifteen (15) days, the determination shall become final. Any party aggrieved by any determination or action of the supervisor may appeal to the **commissioner**~~executive director~~, who shall hold an administrative hearing in accordance with KRS Chapter 13B.
- (3) Any party to an apprenticeship or on-the-job training agreement aggrieved by a final order of the **commissioner**~~executive director~~ may appeal to the Franklin Circuit Court.

➔Section 1868. KRS 345.010 is amended to read as follows:

When used in this chapter:

- (1) "Public employer" means a city of the first class or a consolidated local government, or any city that petitions the **secretary**~~commissioner~~ of the ~~Department of~~ Labor **Cabinet** to be included by this chapter;
- (2) "Firefighter" means an employee of the public employer engaged in serving the public by providing fire protection, including those covered by KRS Chapter 95;
- (3) "Labor organization" means any chartered labor organization of any kind in which firefighters participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of employment;
- (4) "Exclusive representative" means the labor organization which has been designated by the State Labor Relations Board as the representative of the majority of firefighters in appropriate units or has been so recognized by the public employer;
- (5) "Board" means the State Labor Relations Board;

- (6) "Person" includes one (1) or more individuals, labor organizations, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;
- (7) "~~Secretary~~~~[Commissioner]~~" means the ~~secretary~~~~[commissioner]~~ of the ~~[Department of]~~Labor *Cabinet* of the Commonwealth of Kentucky.

➔Section 1869. KRS 345.080 is amended to read as follows:

- (1) If after a reasonable period, but in no event less than thirty (30) days, of negotiations over the terms of a new collective bargaining agreement or modifications in an existing agreement the parties to the negotiations are deadlocked, either party or the parties jointly may petition the board, by certified mail, return receipt requested, or by registered mail, to initiate fact finding.
- (2) Upon receipt of a petition to initiate fact finding, the ~~secretary~~~~[commissioner]~~ shall cause an investigation to determine whether or not the parties are deadlocked in their negotiations. During the course of this investigation, the ~~secretary~~~~[commissioner]~~ is empowered to utilize his *or her* office in an effort to effectuate a settlement between the parties through mediation and conciliation.
- (3) Upon completion of the ~~secretary's~~~~[commissioner's]~~ investigation, and if a settlement between the parties has still not been reached, the ~~secretary~~~~[commissioner]~~ shall within five (5) days appoint a qualified and disinterested person as the impartial chairman of a three (3) man panel to function as the fact finders. In addition to the impartial chairman, the other two (2) members of the panel shall be one (1) member named by the labor organization and one (1) by the employer, parties to the deadlocked negotiations.
- (4) Upon consultation with the other members of the panel, the impartial chairman shall establish dates and places for public hearings. Whenever feasible, public hearings shall be held within the jurisdiction in which the employer is located. The panel may subpoena witnesses, and a written transcript of the hearing shall be made. Upon completion of the hearings the panel shall, by majority decision, make written findings of fact and recommendations for solution of the dispute. The panel shall cause all of its written findings, recommendations, and opinions to be served on the employer and labor organization (parties) and same shall be released to the public. Expenses incurred by the three (3) man panel in this section shall be paid by the parties involved in the labor dispute.
- (5) The ~~secretary~~~~[commissioner]~~ may adopt, promulgate, amend, and rescind such rules and regulations as he *or she* deems necessary and administratively feasible not inconsistent with the provisions of this chapter to carry out his *or her* responsibilities over the fact-finding procedures set forth in this section. However, unless the parties agree to extend the time for the hearings, they must be completed with recommendations from the fact-finding panel, within one hundred twenty (120) days from the date the petition to initiate the fact-finding procedure was received by the ~~secretary~~~~[commissioner]~~.

➔Section 1870. KRS 345.120 is amended to read as follows:

- (1) There is hereby created and established a State Labor Relations Board to assist in resolving disputes between public employers and firefighters or their labor organization which shall be composed of three (3) members appointed by the Governor, one (1) for a term of two (2) years, one (1) for a term of three (3) years, and one (1) for a term of four (4) years. The Governor shall designate one (1) member to serve as chairman of the board. Thereafter, upon the expiration of the term of any member, members shall be appointed for four (4) year terms by the Governor.
- (2) Each member of the board shall have been an elector in this state for at least one (1) year next preceding his *or her* appointment. Any member may be removed by the Governor for cause, shown in an administrative hearing conducted in accordance with KRS Chapter 13B. The Governor shall fill any vacancy by appointment for the unexpired term. No member shall receive a salary but each member shall be paid fifty dollars (\$50) and expenses for each day during which he *or she* is engaged in the duties of the board. The board is authorized to hold hearings at any place in this state. Any and all expenses incurred by the Labor Relations Board shall be shared by all parties concerned in the dispute.
- (3) The board shall appoint employees necessary to carry out the work of the board. All files, records, and documents accumulated by the board shall be kept in offices provided by the board. All decisions shall be made by a majority of the board.

- (4) To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses; issue subpoenas to require the production of books, papers, records, and documents which may be needed as evidence in any matter under inquiry; and administer oaths and affirmations.
- (5) In case of neglect or refusal to obey a subpoena issued to any person, the Circuit Court of the county in which the investigations or the public hearings are taking place, upon application by the board may issue an order requiring the person to appear before the board, any member, or agent, to produce evidence or give testimony about the matter under investigation. A failure to obey a court order may be punished by the court as a contempt.
- (6) Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter, with the exception of notice requirements for administrative hearings as provided in KRS Chapter 13B, may be served personally, by certified mail, return receipt requested, or by leaving a copy at the principal office or place of residence of the respondent required to be served. A return, made and verified by the individual making service and setting forth the manner of service, is proof of service and a returned post-office receipt, when certified mail is used, is proof of service. All process of any court to which application may be made under the provisions of this chapter may be served in the county in which the persons required to be served reside or may be found.
- (7) The board shall, promulgate, amend, or repeal any administrative regulations necessary and administratively feasible to carry out the provisions of this chapter. Public hearings shall be held by the board, pursuant to KRS Chapter 13A, on any proposed administrative regulation of general applicability designed to implement, interpret, or prescribe policy, procedure, or practice requirements under the provisions of this chapter and on any proposed change in an existing administrative regulation.
- (8) The board shall be attached to the ~~{Department of}~~ Labor *Cabinet* for administrative purposes.

➔Section 1871. KRS 349.010 is amended to read as follows:

As used in this chapter:

- (1) "Abandoned" when used in connection with a well or hole means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of coalbed methane or the injection or disposal of fluid therein;
- (2) "Coal interest holder" means every record coal owner, record coal lessee, mine licensee as defined in KRS 352.010(1)(s) and mine permittee as defined in KRS 350.010(21) whose coalbed is penetrated, or proposed to be penetrated, by a coalbed methane well;
- (3) "Coalbed" or "coal seam" means a seam of coal, whether workable or unworkable;
- (4) "Coalbed methane" means gas produced from a reservoir found in a coalbed, a mined-out area, or gob;
- (5) "Coalbed methane well" means any well drilled, deepened, converted, or reopened for the purpose of capturing coalbed methane for sale or use. Any well initially used for a coal mining-related purpose, such as a vent well, but which is subsequently used for the purpose of recovering coalbed methane for sale or use, shall then be deemed to be a coalbed methane well and shall comply with the provisions of this chapter at the time that the well is converted or used for the purpose of recovering coalbed methane for sale or use;
- (6) "Commissioner" means the commissioner of the Department for Natural Resources;
- (7) "Correlative rights" means the reasonable opportunity of each person entitled to recover, without waste, the coalbed methane in and under his or her tract or tracts, or the equivalent thereof;
- (8) "Department" means the Department for Natural Resources;
- (9) "Director" means the director of the Division of Oil and Gas ~~{Conservation}~~ as established in KRS 353.530;
- (10) "Drilling unit" means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable coalbed methane in the area. Where the department has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, the area shall be a drilling unit;
- (11) "Division" means the Division of Mine Permits in the Department for Natural Resources;

- (12) "Field rules" means rules established by orders of the review board relating to the drilling, completion, production of, and specifications for coalbed methane wells in a particular geographic area as defined by an order;
- (13) "Gob" means the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coalbed;
- (14) "Gob well" means a well drilled or a vent hole converted to a well pursuant to this chapter which produces or is capable of producing coalbed methane for sale or use, from a de-stressed zone associated with any full seam extraction of coal that extends above or below a mined-out coalbed;
- (15) "Horizontally drill" or "horizontal drilling" means the intentional act of drilling a borehole, shaft, or hole, which deviates from vertical for the purpose of penetrating a coal seam to produce coalbed methane;
- (16) "Mine licensee" means the mine licensee as defined in KRS 352.010(1)(s);
- (17) "Mine permittee" means the permittee as defined in KRS 350.010(21);
- (18) "Nonparticipating working interest owner" means a coalbed methane owner or lessee of a tract included in a drilling unit who elects to share in the operation of the coalbed methane well on a carried basis by agreeing to have his or her proportionate share of the costs allocable to his or her interest charged against his or her share of production from the coalbed methane well;
- (19) "Nonparticipating operator" means a nonparticipating working interest owner who is also the operator of the coalbed methane well;
- (20) "Operator" means any owner of the right to drill, develop, operate, and produce coalbed methane from a pool and to appropriate the coalbed methane produced therefrom, either for himself or herself, or for himself, herself, and others; in the event there is no coalbed methane lease in existence with respect to the tract in question, the owner of the coalbed methane rights therein shall be considered as an "operator" to the extent of seven-eighths (7/8) of the coalbed methane in that portion of the pool underlying the tract owned by that owner, and as a "royalty owner" as to one-eighth (1/8) interest in that coalbed methane;
- (21) "Other interested coalbed methane parties" means all working interest owners other than the operator, all royalty and overriding royalty interest owners or holders, and any other party who owns or holds a right or interest in a drilling unit, coalbed methane well site for which a drilling permit has been issued or is pending, and all associated equipment, facilities, infrastructure, and improvements;
- (22) "Participating working interest owner" means a coalbed methane owner or lessee who elects to bear a share of the risks and costs of drilling, completing, equipping, operating, plugging, and abandoning a coalbed methane well equal to the proportion which the acreage in the drilling unit he or she owns or holds under lease bears to the total acreage of the drilling unit;
- (23) "Participating operator" means a participating working interest owner who is also the operator of the coalbed methane well;
- (24) "Person" means any person, corporation, association, partnership, limited liability company, receiver, governmental agency subject to this chapter, trustee, so-called common law or statutory trust, guardian, executor, administrator, or fiduciary of any kind, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (25) "Plat" means a map, drawing, or print showing the location of a well;
- (26) "Review board" means the Coalbed Methane Well Review Board;
- (27) "Royalty owner" means any owner of coalbed methane in place, or coalbed methane rights, to the extent that the owner is not an operator as defined in subsection (20) of this section;
- (28) "Stimulate" means any action taken to increase the flow of coalbed methane, or the inherent productivity of a coalbed methane well, including but not limited to fracturing, shooting, acidizing, or waterflooding, but excluding cleaning out, bailing, or workover operations;
- (29) "Surface owner" means the person in whose name the surface of the land is assessed for purposes of taxes imposed according to the property valuation administrator;

- (30) "Unit" means any tract or tracts which the department has determined are underlaid by a pool or pools of coalbed methane and are not drilling units as defined in subsection (10) of this section;
- (31) "Unitization" means the act of combining separately owned tracts or separate interests therein into a unit constituting all or some portion of a coalbed that produces or is capable of producing coalbed methane and the joint operation of that unit;
- (32) "Unit operator" means the party designated in a pooling order to develop a unit by the drilling of one (1) or more coalbed methane wells;
- (33) "Vent hole" means a borehole, shaft driven, or hole dug, drilled, deepened, converted or reopened, which is used for the purpose of releasing or venting coalbed methane to the atmosphere and not for the purpose of capturing or producing coalbed methane for sale or use;
- (34) "Venting" means the act of releasing coalbed methane to the atmosphere;
- (35) "Well" means any borehole, shaft driven, or hole dug, drilled, deepened, converted or reopened for the purpose of capturing or producing coalbed methane for sale or use; and
- (36) "Workable coalbed" means:
- (a) Any coalbed twenty-four (24) inches or more in thickness;
 - (b) Any coalbed actually being operated commercially;
 - (c) Any coalbed that the department decides can be operated commercially, and the operation of which can reasonably be expected to commence within not more than ten (10) years; or
 - (d) Any coalbed that, from outcrop indication or other definite evidence, proves to the satisfaction of the department to be workable and, when operated, will require protection if wells are drilled through or into it.

➔Section 1872. KRS 349.055 is amended to read as follows:

- (1) The Coalbed Methane Well Review Board is hereby established. The review board shall be composed of five (5) members and shall have the powers and duties specified under this chapter.
- (2) The review board shall consist of the commissioner of the Department for Natural Resources or his or her designee within the department, the director of the Division of Mine Reclamation and Enforcement and the director of the Division of Oil and Gas ~~Conservation~~ within the Department for Natural Resources, a representative of the oil and gas industry, and a representative of the coal industry. The representatives from the oil and gas industry and the coal industry shall be appointed by the Governor for terms of four (4) years subject to confirmation by the Senate.
- (3) The review board shall be, for administrative purposes only, attached to the ***Energy and Environment*** ~~Environmental and Public Protection~~ Cabinet, Department for Natural Resources.

➔Section 1873. KRS 350.010 is amended to read as follows:

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

- (1) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface impacts incident to an underground coal mine. The activities shall include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, extended depth secondary recovery systems, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching, or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine site. Excavation for the purpose of obtaining coal includes extraction of coal from refuse piles. The activities shall not include the extraction of coal by a landowner of fifty (50) tons or less within twelve (12) successive calendar months for his own noncommercial use from land owned or leased by him; the extraction of twenty-five (25) to two hundred fifty (250) tons of coal as an incidental part of privately financed construction where the coal is donated to a charitable or educational organization for noncommercial use or noncommercial distribution; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of

other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; or coal exploration subject to KRS 350.057. Surface coal mining operations shall also include the areas upon which the activities occur or where the activities disturb the natural land surface. The areas shall also include any adjacent land, the use of which is incidental to the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities. This definition shall include the terms "strip mining" of coal and the "surface effects of underground mining" of coal as used in this chapter;

- (2) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a landowner for his own noncommercial use of fifty (50) tons or less within twelve (12) successive calendar months from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; coal exploration subject to KRS 350.057; nor shall it include the surface effects or surface impacts of underground coal mining;
- (3) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of the operations as required by this chapter;
- (4) "Overburden" means material of any nature, consolidated or unconsolidated, excluding topsoil, which lies above a natural deposit of coal and also means the material after removal from its natural state in the process of surface coal mining;
- (5) "Area of land affected" means any area of land or water upon which surface coal mining and reclamation operations are conducted or located or are to be conducted or located;
- (6) "Operations" means surface coal mining operations, all of the premises, facilities, roads, and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or the removal of coal;
- (7) "Method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the coal;
- (8) "Operator" means any person, partnership, or corporation engaged in surface coal mining operations who removes or intends to remove more than twenty-five (25) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location;
- (9) "Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or other business organization and shall also include any agency, unit, or instrumentality of federal, state, or local government including any publicly-owned utility or publicly-owned corporation of federal, state, or local government;
- (10) "Cabinet" means the *Energy and Environment*~~(Environmental and Public Protection)~~ Cabinet;
- (11) "Secretary" means the secretary of the *Energy and Environment*~~(Environmental and Public Protection)~~ Cabinet;
- (12) "Reclamation" means the reconditioning of the area affected by surface coal mining operations under a plan approved by the cabinet;

- (13) "Degree" when used in this chapter shall mean from the horizontal, and in each case shall be subject to a tolerance of five percent (5%) of error;
- (14) "Bench" means the ledge, shelf, or terrace formed in the contour method of strip mining;
- (15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the cabinet determines that they are in compliance with KRS 350.455;
- (16) "Certification" by a qualified registered professional engineer, as required by this chapter and administrative regulations promulgated hereunder, means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of this chapter and administrative regulations promulgated hereunder, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates. Certification shall not be construed to constitute a warranty or guarantee;
- (17) "Reclamation development fund" means only that reconditioning of land affected by surface mining, which will directly promote and benefit the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land;
- (18) "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under KRS 154.01-010(20);
- (19) "Reclamation development plan" means a plan submitted to the cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project;
- (20) "Permit applicant" or "applicant" means a person applying for a permit;
- (21) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations;
- (22) "Unanticipated event or condition" as used in KRS 350.085(7) means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit;
- (23) "Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under KRS 350.560(1) or (2);
- (24) "Coal combustion by-products" means fly ash, bottom ash, scrubber sludge, and waste from fluidized bed combustion, produced by the combustion of coal. Coal combustion by-products do not include boiler slag, or residues of refuse derived fuels, such as municipal solid waste, tires, and solvents;
- (25) "NAD 83" means the North American Datum, 1983 version, in feet units; and
- (26) "Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate System of 1983, based on the Lambert Conformal map projection with double standard parallels on the North American Datum, as established in 10 KAR 5:010.

➔Section 1874. KRS 350.020 is amended to read as follows:

The General Assembly finds that the Commonwealth is the leading producer of coal and that the production of coal in Kentucky contributes significantly to the nation's energy needs. The General Assembly further finds that unregulated surface coal mining operations cause soil erosion, damage from rolling stones and overburden, landslides, stream pollution, the accumulation of stagnant water and the seepage of contaminated water, increase the likelihood of floods, destroy the value of land for agricultural purposes, destroy aesthetic values, counteract efforts for the conservation of soil, water and other natural resources, destroy or impair the property rights of citizens, create fire hazards, and in general create hazards dangerous to life and property, so as to constitute an imminent and inordinate peril to the welfare of the Commonwealth. The General Assembly further finds that lands that have been subjected to surface coal mining operations and have not been reclaimed and rehabilitated in accordance with modern standards constitute the aforementioned perils to the welfare of the Commonwealth. The General Assembly further finds that there are wide variations in the circumstances and conditions surrounding and arising out of surface coal mining operations due primarily to difference in topographical and geological conditions, and by reason thereof it is

necessary, in order to provide the most effective, beneficial and equitable solution to the problem, that a broad discretion be vested in the authority designated to administer and enforce the regulatory provisions enacted by the General Assembly. The General Assembly further finds that governmental responsibility for regulating surface coal mining operations rests with state government and hereby directs the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet to take all actions necessary to preserve and exercise the Commonwealth's authority, to the exclusion of all other governmental entities except the Commonwealth and agencies thereof and except as provided in KRS Chapter 100, and any county surface mining regulation contained within a zoning ordinance adopted prior to April 1, 1988, in regulating surface coal mining operations. Therefore, it is the purpose of this chapter to provide such regulation and control of surface coal mining operations as to minimize or prevent injurious effects on the people and resources of the Commonwealth. To that end, the cabinet is directed to rigidly enforce this chapter and to adopt whatever administrative regulations are found necessary to accomplish the purpose of this chapter.

➔Section 1875. KRS 350.028 is amended to read as follows:

The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall have and exercise the following authority and powers:

- (1) To adopt administrative regulations after a hearing pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of this chapter;
- (2) To conduct investigations and hearings under provisions of this chapter or regulations adopted pursuant thereto;
- (3) To issue, after an opportunity for a hearing, suspension orders or show cause orders requiring an operator, permittee, or person to adopt remedial measures that are necessary to comply with this chapter and administrative regulations adopted pursuant thereto. Failure to attend a hearing shall be excused for good cause shown;
- (4) To issue, after an opportunity for a hearing, a final order imposing civil penalties for violations of this chapter or directing the Department for Natural Resources to revoke a permit, when the requirements set forth by the notice of noncompliance, order of cessation, or an order of the cabinet requiring remedial measures have not been complied with according to the terms therein. When the secretary or his authorized representatives determines that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the secretary or his authorized representatives also find that the violations are caused by the unwarranted failure of the permittee to comply with any requirements of this chapter or any permit conditions or that the violations are willfully caused by the permittee, the secretary or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide an opportunity for a hearing. Failure to attend a hearing shall be excused for good cause shown; and
- (5) To adopt administrative regulations to allow the state to administer and enforce the initial and permanent regulatory programs of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977." Administrative regulations shall be no more stringent than required by that law. Nothing in this chapter shall be construed as superseding, amending, modifying, or repealing any of the acts listed in Section 702(a) of Public Law 95-87, or any administrative regulation promulgated thereunder.

➔Section 1876. KRS 350.050 is amended to read as follows:

The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet under the supervision of the secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall have and exercise the following authority and powers:

- (1) To exercise general supervision and administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder;
- (2) To encourage and conduct investigations, research, experiments, and demonstrations, and to collect and disseminate information relating to strip mining and reclamation of lands and waters affected by strip mining;
- (3) To adopt, without hearing, internal procedures with respect to the filing of reports, the issuance of permits, and other matters of procedure and administration;
- (4) To examine and pass upon all plans and specifications submitted by the permit applicant for the method of operation, backfilling, grading, and for the reclamation of the area of land affected by his operation;

- (5) To make investigations or inspections which may be deemed necessary to insure compliance with any provision of this chapter;
- (6) To order, through personnel of the cabinet, the suspension of any permit for failure to comply with any of the provisions of this chapter or any regulations adopted pursuant thereto;
- (7) To order, through personnel of the cabinet, the stopping of any operation that is started without first having secured a permit as required by this chapter.

➔Section 1877. KRS 350.054 is amended to read as follows:

- (1) There is established a special fund to be known as the "Illegal Mining and Conveyance Reclamation Fund" which shall be under the control of the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet.
- (2) The fund shall consist of all moneys from the sale or forfeiture of all instrumentalities used in violation of KRS 350.057(3) or 350.060(1) as provided for in KRS 350.053.
- (3) Moneys in the fund may be used for the following purposes:
 - (a) To reclaim lands mined without a permit or authorization, as required by KRS 350.057 or 350.060(1), and not eligible for the abandoned mine lands reclamation fund; and
 - (b) To defray all expenses associated with the seizure, storing, and sale of forfeited property pursuant to KRS 350.053.
- (4) Moneys contained in the illegal mining and conveyance reclamation fund shall be deemed a trust and agency account and shall not lapse.
- (5) The cabinet shall have access to and control of the moneys held in the illegal mining and conveyance reclamation fund, but shall expend the moneys only for the purposes set forth in subsection (3) of this section.

➔Section 1878. KRS 350.057 is amended to read as follows:

- (1) The secretary of the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall promulgate regulations for the permitting and performance of coal exploration operations which substantially disturb the natural land surface. The regulations shall include at a minimum provisions for giving notice of intention to explore including a description of the area to be explored and the period of supposed exploration and provisions for reclamation, as required by this chapter, of all land disturbed in the exploration.
- (2) Any requirements of public access to records set forth in the Kentucky Revised Statutes to the contrary notwithstanding, the secretary shall order that confidential trade secrets or privileged commercial or financial information in the possession of the cabinet or pursuant to a coal exploration permit remain confidential.
- (3)
 - (a) No person or operator shall remove more than twenty-five (25) tons of coal by coal exploration operations without first obtaining a coal exploration permit from the cabinet.
 - (b) No person or operator conducting coal exploration operations in which more than twenty-five (25) tons of coal are removed shall knowingly and willfully receive, transport, sell, convey, exchange, transfer, trade, donate, deliver, or otherwise convert to a commercial use any coal extracted during the course of the operations, except with the prior written approval of the cabinet for the purpose of testing or determining the properties of the coal.
- (4) All persons or operators conducting operations pursuant to this section shall be subject to the applicable provisions of KRS 350.990.

➔Section 1879. KRS 350.139 is amended to read as follows:

- (1) All prior enactments of this General Assembly to the contrary notwithstanding, all funds received by the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet through the payment of fees and civil penalties shall be deposited in the State Treasury to the credit of the general fund except as provided in KRS 350.990(1). All funds from the forfeiture of bonds shall be placed in the State Treasury in an interest-bearing account and credited to a special agency account. The interest shall become a supplemental fund and may be used to supplement forfeited bonds which are inadequate to complete the reclamation plan. Except as provided in KRS 350.131(1), forfeited bond funds shall be expended upon the lands for which the bond was given. The interest may be expended upon lands other than those for which the bond was given. No more than twenty-five

percent (25%) of the supplemental fund may be expended upon any single site, unless a larger expenditure is necessary to abate an imminent danger to public health or safety.

- (2) The State Treasurer shall on or before August 1 of each year transfer thirty-three and one-third percent (33-1/3%) of all funds paid during the preceding fiscal year as fees for the issuance of any permit for surface coal mining operations to the fiscal courts of the county in which the permitted operation is located for the general purposes of that fiscal court.

➔Section 1880. KRS 350.151 is amended to read as follows:

- (1) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall promulgate permanent program administrative regulations for the mining and reclamation of land disturbed or removed by operations resulting from or incident to underground coal mining. The regulations shall recognize the distinct differences between underground mining and strip mining of coal, shall be promulgated pursuant to this chapter, and shall be enforced as provided in KRS 350.130 and 350.990. Those activities may include, but not be limited to, the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and all lands affected by haulage, excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, but the regulations shall not be more stringent than those applied to strip mining of coal.
- (2) The permit applicant shall file with the cabinet a reclamation bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the sum to be determined by the cabinet for each acre or fraction thereof of the area of land affected, with a minimum bond of ten thousand dollars (\$10,000) conditioned upon the faithful performance of the requirements set forth in this section and of the administrative regulations of the cabinet. The cabinet shall forfeit the entire amount of the bond for the permit area or increment in the event of forfeiture. The cabinet shall accept, in lieu of the surety provided in this subsection, the deposit by the operator of United States government securities, cash or its equivalent in a sum equal to the principal amount of the required bond, or a self-bond pursuant to administrative regulations promulgated by the cabinet.
- (3) In order to protect the stability of the land, the cabinet shall suspend underground mining activities under urbanized areas, and adjacent to industrial or commercial buildings, major impoundments, or permanent streams, if the cabinet finds imminent danger to inhabitants of the urbanized areas.

➔Section 1881. KRS 350.152 is amended to read as follows:

- (1) The Commonwealth, acting by and through its ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, shall have the power to acquire, either by negotiation or by exercise of the power of eminent domain, land which has been affected or disturbed by strip or auger mining, or by other surface coal mining operations which consists of orphan banks or unreclaimed spoil piles.
- (2) Prior to acquiring any land pursuant to KRS 350.152 to 350.163 and KRS 350.240, the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall extend to the owners thereof an opportunity to backfill, grade, plant, and do other acts of restoration thereon to the same extent and within the same time limits as prescribed by this chapter and regulations adopted pursuant thereto. If the owner or owners agree in writing to perform such restoration and, weather permitting, start such restoration within a period of thirty (30) days, the land shall not be acquired by the Commonwealth.
- (3) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall attempt to purchase any land which it has determined should be acquired for the purpose of restoration and which the owners have not agreed to restore as provided in subsection (2) above. In any case where the cabinet and the owners of the land are unable to agree upon the amount to be paid for the land, the cabinet may exercise the power of eminent domain against such land by filing a condemnation suit under the procedure of the Eminent Domain Act of Kentucky.
- (4) The purchase price, in the case of a negotiated acquisition, or the damages as finally determined, in the case of acquisition by condemnation, and the necessary expenses incidental thereto, shall be paid from appropriations made by the General Assembly for such purposes and appropriations to which federal funds made available for such purposes have been credited.

➔Section 1882. KRS 350.240 is amended to read as follows:

The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet may adopt in the manner provided in subsection (17) of KRS 224.10-100 and subsections (5) and (6) of KRS 224.01-110 reasonable regulations for the reclamation of land disturbed or removed in the mining of clay. Such regulations shall encourage water impoundments and shall follow the standards established in Article III of the Interstate Mining Compact. The cabinet shall have the authority to adopt such regulations prior to the effective date of the Interstate Mining Compact and irrespective of whether the state becomes a member or withdraws from membership in the Interstate Mining Compact.

➔Section 1883. KRS 350.255 is amended to read as follows:

Any person may petition the secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet to initiate a proceeding for the issuance, amendment, or repeal of any regulation under this chapter.

- (1) Notice and an opportunity shall be provided for the petitioner and any person wishing to participate to be heard at a public hearing within thirty (30) days following the filing of the petition on the facts, technical justification, and law alleged in the petition.
- (2) The secretary shall render a final order in writing within thirty (30) days after the hearing granting or denying the petition on grounds that there is a reasonable basis for the petitioned rule change, or is not, or that it is required or prohibited by law and setting forth the reasons for the decision.
- (3) The secretary shall initiate a rulemaking proceeding pursuant to KRS Chapter 13A within thirty (30) days after a petition is granted proposing the issuance, amendment, or repeal of the petitioned regulations in conformity with the final order.
- (4) Any participant in the petition proceedings may seek review in the Circuit Court of Franklin County of a final order of the secretary denying all or any portion of the action requested in a petition.

➔Section 1884. KRS 350.260 is amended to read as follows:

There is hereby created a Small Coal Operators Advisory Council which shall report directly to the secretary of the Governor's Executive Cabinet. The council shall advise on matters affecting coal production and utilization including coal market development, transportation, and storage problems. The council shall have the function of coordinating and improving the working relationships between those state agencies administering programs which regulate, serve, or aid small coal mine operators. The council shall consist of fifteen (15) members. Ten (10) of those members shall be appointed by the Governor. Seven (7) of the ten (10) members shall be full-time operators producing three hundred thousand (300,000) or fewer tons of coal per year. Three (3) of the ten (10) appointees shall be with backgrounds in one (1) or more of the following areas: transportation, marketing, mining education, and mining engineering. The secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet, the commissioners of the Department of Agriculture and the Department for Natural Resources, and the special assistant to the Governor for coal and energy policy shall be ex officio members. Each individual appointment shall be for a four (4) year term which shall begin on July 15, 1984. Members may serve successive terms if reappointed. Vacancies shall be filled in a manner consistent with the provisions for initial appointments. At the first meeting held on or after July 1 of each year, a chairman shall be elected by and from the membership. The council shall meet at least quarterly during each year and may meet more often at the call of the chairman. The council shall be attached to the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet for administrative purposes. Council members shall be eligible for reimbursement by the cabinet for actual expenses directly related to serving on the council.

➔Section 1885. KRS 350.275 is amended to read as follows:

- (1) The General Assembly finds that:
 - (a) The backstowing of coal processing and coal underground development waste is a disposal method which, under appropriate conditions, is authorized under state and federal coal mining laws;
 - (b) The state Division of Water and Department for Natural Resources, United States Environmental Protection Agency, and United States Mine Safety and Health Administration each have responsibilities under different state and federal laws relative to any proposal to backstow or reinject coal processing and coal underground development waste; and
 - (c) The maximization of coordination of agency review of such a proposal is in the best interest of each agency, the proponent, and the public-at-large.
- (2) It is the intent of the General Assembly that the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet negotiate improved coordination among state and federal agencies in the review of proposals for backstowing or reinjection of coal processing and coal underground development waste,

consistent with all requirements of KRS Chapters 224 and 350 and other state and federal laws relating to such proposals.

➔Section 1886. KRS 350.310 is amended to read as follows:

- (1) The "Mining Council," hereinafter called "the council," is hereby established in the office of the Governor. The council shall be the advisory body referred to in Article V(a) of the Interstate Mining Compact. No member of the council shall receive any compensation on account of his service thereon, but any such member shall be entitled to reimbursement for expenses actually incurred by him in connection with his possible service as the Governor's alternate on the Interstate Mining Commission.
- (2) The council shall be composed of eight (8) members: one (1) of whom shall be the Lieutenant Governor; three (3) of whom shall be representatives of mining industries; two (2) of whom shall be representatives of nongovernmental conservation interests; the commissioner for environmental protection and the secretary of the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet.
- (3) The members of the council representing mining industries and nongovernmental conservation interests shall be appointed by the Governor. The term of office of such members shall be for four (4) years concurrent with that of the Governor or until their successor has been qualified.

➔Section 1887. KRS 350.320 is amended to read as follows:

In accordance with Article V(i) of the compact, the commission shall file copies of its bylaws and any amendments thereto with the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet.

➔Section 1888. KRS 350.425 is amended to read as follows:

The permittee, operator, or other person shall design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection (f) of Section 515 of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977," all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments. The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet through this chapter shall have exclusive jurisdiction over KRS Chapter 151 concerning the regulation of dams, levees, embankments, dikes, bridges, fills, or other obstructions across or along any stream or in the floodway of any stream, which structures or obstructions are permitted under this chapter.

➔Section 1889. KRS 350.465 is amended to read as follows:

- (1) The provisions of this section and regulations promulgated pursuant thereto, except with regard to the mining of clay, limestone, sand, gravel, fluorspar, stone, and rock asphalt, shall apply to the regulation of all surface coal mining and reclamation operations in the Commonwealth in the event that the Commonwealth receives from the United States Department of Interior and pursuant to the Surface Mining Control and Reclamation Act of 1977, PL 95-87, approval of a permanent state regulatory program, and the Commonwealth has promulgated regulations pursuant to this section.
- (2) The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet is hereby authorized and directed to prepare, develop and promulgate a comprehensive permanent regulatory program for the implementation of the Surface Mining Control and Reclamation Act of 1977, PL 95-87, for the purpose of accepting and administering primary enforcement responsibilities pursuant to that act. The implementation of this section shall contain procedures similar to the Surface Mining Control and Reclamation Act of 1977, PL 95-87, and shall require surface coal mining operation performance standards no more stringent than provided for in that act. Nothing in this section shall be construed to empower the cabinet to adopt a regulatory program in conflict with the policy and purposes of the Surface Mining Control and Reclamation Act of 1977, PL 95-87. To that end, the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall include in its permanent regulatory program:
 - (a) Environmental protection performance standards to prevent or minimize the adverse environmental effects of surface coal mining and reclamation operations on the land and water resources of the Commonwealth.
 - (b) A procedure for designating as being unsuitable for mining certain lands because of their topographical, geological, hydrological, climatological, biological, or chemical characteristics or historical, cultural, scientific, or aesthetic values.

- (c) Procedures and regulations for the allowance of those persons having an interest which is or may be adversely affected to have the opportunity to be heard at every significant or critical part of the administrative and judicial process, including, but not limited to, the permit review and issuance process, the general enforcement process and hearings incident thereto, and the rulemaking procedures conducted by the cabinet; and procedures and regulations for persons having a valid legal interest which is or may be adversely affected by the setting, release, and inspection of bonds to have an opportunity to be heard at every significant or critical part of the administrative and judicial process relating to bonds. The regulations shall provide reasonable procedures for notice and an opportunity to be heard, access to minesites, access to records, and other reasonable procedures to accomplish the purposes of this chapter.
 - (d) Procedures for the administrative and judicial review of all actions of the cabinet to administer and enforce the provisions of this chapter, including the award of costs and expenses, including attorney's fees and expert witness fees, by the cabinet or the court.
 - (e) Plans and procedures for the reclamation and restoration of land and water resources affected by mining which have been abandoned or inadequately reclaimed to the standards imposed by this section and for which no bond is held or legal obligation to reclaim continues. The plan shall include provisions for the imposition of liens for necessary reclamation expenditures made on private property.
 - (f) Procedures for the assumption of the small operator assistance program pursuant to the Surface Mining Control and Reclamation Act of 1977, PL 95-87. The cabinet shall assume and implement that program and apply for and administer funds as may be provided pursuant to that act and such state funds as may be provided for the program.
- (3) In addition to any other authority, power, and duty vested in it by law, the cabinet shall have and exercise broad authority, power, and duty to:
- (a) Require those persons who wish to engage in surface coal mining and reclamation operations to submit application for a permit from the cabinet to conduct the operations, and to include in that application all information required by the cabinet pertaining to that operation.
 - (b) Issue, deny, or modify under such conditions as the cabinet may prescribe, permits to conduct surface coal mining and reclamation operations within the Commonwealth.
 - (c) Enter and inspect any permitted surface coal mining and reclamation operation or any known or suspected unpermitted mining operation for the purpose of ascertaining compliance with any provision of this chapter or of the permit.
 - (d) Order the cessation of mining activities, and if necessary impose affirmative abatement obligations, upon the permittee, operator, or person when, upon inspection, the cabinet determines that this section or any permit condition is being or has been violated so as to constitute an imminent and inordinate peril to the welfare of the Commonwealth.
 - (e) Order a person, permittee, or an operator to comply with the requirements of this section or his permit if inspection reveals a violation of the conditions of his permit or of any provision of this section.
 - (f) Order a permittee to appear and show cause why his permit should not be suspended or revoked and his bond forfeited if the cabinet determines that the permittee or operator or the permitted operation has a pattern of violations of this section or permit conditions, and has willfully violated this section or permit conditions or a pattern of violations exists and that the violations are caused by the operator's or permittee's unwarranted failure to comply with this section or permit conditions.
 - (g) Require, increase, release, or decrease, under such conditions as the cabinet may prescribe, reclamation performance bonds and cause the forfeiture and collection of those bonds where the permittee has abandoned the operation or for which the permit under which the bond was given has been revoked or has expired without the required reclamation.
 - (h) To administratively impose, in lieu of those civil penalties provided for in KRS 350.990, civil penalties of up to five thousand dollars (\$5,000) per day for violations of permit conditions, this section, or any orders of the cabinet and enforce the administrative assessment of the penalties by initiating civil action in the Franklin Circuit Court or in any court having jurisdiction of the defendant.
 - (i) Conduct hearings and make investigations of any matter relating to the regulation of surface coal mining and reclamation operations, and provide for the assessment and payment of civil penalties including the

placement of proposed civil penalty assessments into an escrow account prior to a contest on the amount of the assessment, consistent with the process of law.

- (j) Provide for variances or exceptions consistent with KRS 350.450 from or in addition to mining performance standards, recognizing the specific characteristics inherent in:
 - 1. Steep slope mining;
 - 2. Mountaintop removal;
 - 3. Relatively low acreage disturbance or annual coal production;
 - 4. Prime farmland mining as defined by the United States Department of Agriculture, and to provide for other variances where land uses and watersheds will be improved; and
 - 5. Postmining uses different from and as beneficial as the premining uses.
- (k) Receive and expend funds or aid from whatever source to accomplish the purposes of this chapter.
- (l) Propose and promulgate regulations to accomplish the purposes of this section.

- (4) The cabinet shall not promulgate regulations which are inconsistent with the Surface Mining Control and Reclamation Act of 1977, PL 95-87.
- (5) Any person who violates a provision of this section or the regulations promulgated pursuant thereto shall be subject to those penalties and remedies set forth in KRS 350.990 except as provided for in subsection (3)(h) of this section.

➔Section 1890. KRS 350.475 is amended to read as follows:

- (1) The ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet is directed to promulgate regulations which specifically address what liability surface mining permittees shall have to reclaim permit areas on which parties or forces not controlled by the permittee have disturbed the reclamation previously performed by the permittee. Such parties or forces not controlled by the permittee shall include, without limitation, acts of God, oil and gas operations, loggers, recreational vehicles, and trespassers.
- (2) The ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet is also directed to promulgate regulations which specifically set forth the procedure for transferring liability for reclamation of a surface mining permit to a party who will make a post mining use of the permit area.

➔Section 1891. KRS 350.550 is amended to read as follows:

- (1) There is hereby created within the Commonwealth of Kentucky an Abandoned Mine Lands Program, to be administered within the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet. The secretary of the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet may promulgate regulations necessary to implement this program. The provisions of KRS 350.150, 350.152, 350.154, 350.156(1) and (2), 350.158, 350.161, and 350.163 shall not be applicable to this program.
- (2) The Finance and Administration Cabinet is hereby directed to establish a fund to be known as the abandoned mine reclamation fund (hereinafter referred to as the "fund").
- (3) The fund shall consist of amounts deposited in the fund from time to time, including but not limited to:
 - (a) The reclamation fees levied pursuant to Section 402 of P.L. 95-87 and allocated to the Commonwealth of Kentucky;
 - (b) Any income derived from or any user charge imposed on or for land reclaimed pursuant to the Abandoned Mine Lands Program after the expenses of the program have been deducted;
 - (c) Donations by persons, corporations, associations, governmental entities, and foundations for the purposes of the Abandoned Mine Lands Program;
 - (d) Interest credited to the fund pursuant to Section 401(e) of P.L. 95-87 and allocated to the Commonwealth of Kentucky; and
 - (e) All other moneys as provided for consistent with this chapter.
- (4) Moneys in the fund may be used for the following purposes:

- (a) Reclamation and restoration of land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas; sealing and filling of abandoned deep mine entries and voids; planting of land adversely affected by past coal mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by coal mine drainage, including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ; and prevention, abatement, and control of coal mine subsidence;
- (b) Acquisition and filling of voids and sealing of tunnels, shafts, and entryways;
- (c) Acquisition of land as provided for in this chapter;
- (d) Restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining which constitute an emergency as provided for in this program;
- (e) Administrative expenses of the program to accomplish the purposes of this program;
- (f) For the purposes of Section 507(c) of P.L. 95-87; and
- (g) All other necessary expenses to accomplish the purposes of this program.

➔Section 1892. KRS 350.565 is amended to read as follows:

The ***Energy and Environment*** ~~(Environmental and Public Protection)~~ Cabinet shall have the authority to prepare and submit to the Secretary, United States Department of the Interior, reclamation plans, annual projects, applications for federal support, and any other reports or plans which are provided for or required pursuant to Title IV of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87).

➔Section 1893. KRS 350.570 is amended to read as follows:

- (1) If the cabinet makes a finding of fact pursuant to the Abandoned Mine Lands Program that:
 - (a) Land or water resources have been adversely affected by past coal mining practices; and
 - (b) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
 - (c) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available; or
 - (d) The owners will not give permission for the United States, the Commonwealth, political subdivisions, or their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

then, upon giving notice by mail to the owners if known, or if not known, by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality or county in which the land lies, the cabinet and its authorized representatives, agents, and contractors shall have the right to enter upon the property adversely affected by past coal mining practices, and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

- (2) The cabinet and its authorized representatives, agents, and contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare, and shall not be construed as an act of condemnation of property nor trespass thereon.

- (3) The Commonwealth shall have the power to acquire, by purchase, donation, devise, or condemnation, any land which is adversely affected by past coal mining practices if acquisition of such land is necessary for successful reclamation and that:
 - (a) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; or
 - (b) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or
 - (c) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this chapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.
- (4) Title to all lands acquired pursuant to this section shall be in the name of the Commonwealth. The price paid for the land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices. The Commonwealth may exercise the power of eminent domain against such land by filing a condemnation suit under the procedure of the Eminent Domain Act of Kentucky. Provided, that when the Commonwealth acquires land adversely affected by past coal mining practices pursuant to the Abandoned Mine Lands Program and when such abandoned mine reclamation fund moneys are less than the purchase price, the Commonwealth shall be authorized to use whatever funds are available pursuant to KRS 350.156(3).
- (5) The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet may receive any federal, state, or other funds for the purpose of reclaiming lands affected by past coal mining practices, including federal funds made available to it pursuant to Title IV of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87). The cabinet may avail itself of any services which may be provided by other state agencies or the federal government, and may compensate them for such services.
- (6) The cabinet shall have the power to backfill, grade, revegetate, and perform other acts of restoration and reclamation on lands acquired pursuant to this section. The cabinet may cause the reclamation work to be done by its own employees or by employees of other governmental agencies or soil conservation districts, or through contracts with qualified persons. Such contracts shall be awarded pursuant to regulations promulgated by the cabinet. The cabinet and any other agency and any contractor under a contract with the cabinet shall have the right of access to the land affected to carry out such reclamation.
- (7) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the Commonwealth shall have the power to sell such land by public sale under a system of competitive bidding, at not less than fair market value and under such regulations as may be promulgated to insure that such lands are put to proper use consistent with local and state land use plans, if any. The proceeds of any such sale shall be credited to the abandoned mine reclamation fund. The cabinet, when requested after appropriate public notice, shall hold a public hearing, with the appropriate notice, in the county or counties in which lands acquired pursuant to this section are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.
- (8) In addition to the authority to acquire and reclaim land for the purposes set forth in subsection (3) of this section, the Commonwealth is given authority to use money in the fund to acquire land by purchase, donation, devise, or condemnation and to reclaim such land and to transfer it to any political subdivision of the Commonwealth or to any person, firm, association, or corporation, if such is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as provided in KRS 350.585, or persons dislocated as the result of natural disasters or catastrophic failures from any cause, or any related commercial, industrial, agricultural, recreational, or governmental use of facilities. Such activities shall be accomplished under such terms and conditions as the Commonwealth shall require, which may include transfers of land with or without monetary consideration. Provided, that to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association,

or corporation. No part of the funds provided under the abandoned mine reclamation fund may be used to pay the actual construction costs of housing.

- (9) All acquisitions and disposals of land or any interests therein pursuant to the authority granted by this section shall be governed by the applicable provisions of KRS Chapters 45A and 56.

➔Section 1894. KRS 350.600 is amended to read as follows:

- (1) The General Assembly finds that there has been a recent interest in the Commonwealth in the mining and processing of oil shale due to the critical need for fossil fuel which has developed in this country. The General Assembly further finds that the development of this fossil fuel could be of significant long-range benefit to the Commonwealth and to the United States of America, but that the unregulated extraction and processing of oil shale within the Commonwealth could cause soil erosion, water pollution, and the destruction of aesthetic and agricultural values. The General Assembly further finds that, in order to effectively regulate the extraction and processing of oil shale, the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall conduct extensive research concerning the process, waste production, and potentially adverse environmental impacts of such recovery operations.
- (2) It is the intent of the General Assembly to provide such regulation and control of the mining and processing of oil shale as to minimize and prevent its adverse effects on the citizens and the environment of the Commonwealth. The General Assembly further finds that the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet is the most competent agency to regulate the extraction and processing of oil shale due to its expertise in the handling of the surface mining of other minerals and in the regulation of other sources of air and water pollution.
- (3) The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall file with the regulations compiler reasonable rules and regulations pertaining to oil shale mining operations, which shall include strip mining as defined by KRS 350.010, the surface effects of underground mining of oil shale, and the in situ mining of oil shale by June 30, 1981. No person shall engage in the commercial mining or processing of oil shale until such time as the cabinet promulgates rules and regulations to provide standards for such mining.
- (4) In promulgating regulations pursuant to subsection (3) of this section, the secretary shall make written finding that the regulations promulgated are based on sound scientific and engineering data and are reasonably necessary to protect the people and environment of the Commonwealth from the adverse effects of oil shale extraction. The secretary shall promulgate regulations consistent with existing standards for land, water, and air protection. The secretary may conduct a public hearing on the subject of the cabinet's regulation of the extraction and processing of oil shale for the purpose of collecting data and receiving public comments on this issue. The hearing will be held at a time and place to be determined by the secretary in accordance with the policy of the cabinet.
- (5) Prior to the adoption of the regulations required by this section, any person may conduct core drilling, experimentation, removal of samples, or a pilot and demonstration project which involves the mining of not more than five (5) acres for the production of oil shale in any one (1) county. Such core drilling, experimentation, removal of samples, or pilot and demonstration project involving the mining of not more than five (5) acres for the production of oil shale in any one (1) county shall not be initiated until written notification of the intent to perform such operations shall be filed at least fifteen (15) days prior to commencement of such projects by registered mail by the mine operator with the secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet of the Commonwealth of Kentucky and with the person(s) holding title to the surface of the land to be utilized for such operations.
- (6) The secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet of the Commonwealth of Kentucky shall be granted the right to monitor such core drilling, experimentation, removal of samples, or pilot and demonstration project as it may deem necessary for the purpose of establishing sound and reasonable scientific and engineering data upon which rules and regulations pertaining to oil shale mining operations in the Commonwealth of Kentucky can be based.

➔Section 1895. KRS 350.610 is amended to read as follows:

- (1) The secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet is hereby authorized to establish a planning process enabling objective decisions based upon competent and scientifically sound data as to which, if any, lands of the Commonwealth are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in this chapter; provided, that any such designation shall not prevent coal or other mineral exploration of any area so designated.

- (2) Upon petition and hearing pursuant to subsection (6) of this section, the secretary shall designate an area as unsuitable for all or certain types of surface coal mining operations, if the secretary determines that reclamation pursuant to this chapter is not technologically and economically feasible.
- (3) Upon petition and hearing pursuant to subsection (6) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will:
 - (a) Be incompatible with existing state and local land use plans; or
 - (b) Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values, and natural systems; or
 - (c) Affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or food or fiber products, and such lands to include aquifers and aquifer recharge areas; or
 - (d) Affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.
- (4) Determinations of the unsuitability of land for surface coal mining shall be integrated as closely as possible with present and future land use planning and regulation processes at any appropriate level of government, including but not limited to any valid exercise of authority of a municipality or county, acting independently or jointly, pursuant to KRS Chapter 100.
- (5) The requirements of this section shall not apply to lands on which coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to this chapter or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.
- (6) Other provisions of this chapter relating to hearings to the contrary notwithstanding, any person having an interest which is or may be adversely affected shall have the right to petition the cabinet to the extent such a petition would be consistent with subsections (2) and (3) of this section, to have a specific and well-defined area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts which shall be specific as to the petitioner's designated area, including a justification that the criteria alleged occur throughout and form a significant feature, and shall be based upon objective evidence which would tend to establish the allegations. The cabinet shall make a determination or finding whether the petition is complete, incomplete, or frivolous. Within ten (10) months after the receipt of the petition, the cabinet shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing, pursuant to regulations promulgated by the cabinet to implement this section, provided that when a permit application is pending before the cabinet and such application involves an area in a designation petition, the cabinet shall hold the hearing on the petition within ninety (90) days of its receipt. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty (60) days after such a hearing, the cabinet shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all petitioners stipulate agreement prior to the requested hearing and withdraw their request, such hearing need not be held. Within thirty (30) days after receipt of an order, determination, finding, or decision by the cabinet or the secretary hereunder, any applicant, or any person with an interest which is or may be adversely affected and who is aggrieved by the order, determination, finding, or decision of the cabinet or secretary, may obtain judicial review thereof by appealing to the Circuit Court of Franklin County pursuant to the provisions of KRS 224.10-470.
- (7) Prior to designating any land areas as unsuitable for surface coal mining operations, the cabinet shall prepare a detailed statement on:
 - (a) The potential coal resources of the area;
 - (b) The demand for coal resources;
 - (c) The impact of such designation on the environment, the economy, and the supply of coal; and
 - (d) The characteristics of the petition area including a justification that the criteria alleged occur throughout the petition area and form a significant feature.

- (8) Subject to subsection (5) of this section, the cabinet shall not issue a permit to conduct surface coal mining and reclamation operations in contravention of any designation or any decision on any petition pursuant to subsection (6) of this section regarding any surface area designated unsuitable for mining; nor shall the cabinet issue a permit to conduct surface coal mining and reclamation operations in an area under study for such designation in an administrative proceeding already commenced under subsection (6) of this section.

➔Section 1896. KRS 350.990 is amended to read as follows:

- (1) Any permittee, person, or operator who violates any of the provisions of this chapter or administrative regulations promulgated pursuant thereto or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit or other authorization as provided in this chapter, or who violates any determination or order issued pursuant to the provisions of this chapter, may be liable to a civil penalty of not more than five thousand dollars (\$5,000) for the violation, and an additional civil penalty of not more than five thousand dollars (\$5,000) for each day during which the violation continues, and in addition, may be enjoined from continuing the violations provided in this section. Any permittee, operator, or person who fails to abate a violation noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement shall be assessed a civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which the violation continues. Any person issued an order pursuant to KRS 350.130(4) shall be assessed a civil penalty of not more than five thousand dollars (\$5,000) for each violation cited in the underlying notice of noncompliance issued therewith. No separate civil penalty shall be assessed for the order issued pursuant to KRS 350.130(4). Each day of continuing violation may be deemed a separate violation for purposes of penalty assessment. The cabinet shall develop a method for calculating monetary penalties and shall promulgate it as an administrative regulation. The secretary or a designated representative, upon his or her own initiative or upon written request received within fifteen (15) days after the cabinet mails its proposed penalty assessment, may waive the use of the method for calculating monetary penalties if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case. If the secretary or his or her designated representative waives the use of the formula, he or she shall determine the appropriate penalty upon consideration of the permittee's history of previous violations at the particular surface coal mining operation, the seriousness of the violation, whether the permittee was negligent, and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation. The penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the ~~cabinet's Office of Legal Services~~. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto. All sums recovered shall be placed in the State Treasury, except those moneys collected in excess of eight hundred thousand dollars (\$800,000) in any fiscal year shall be deposited in the bond pool fund for purposes set forth in KRS 350.595 and KRS 350.700 to 350.755 until the fund reaches sixteen million dollars (\$16,000,000) or a higher amount as may be established by the most recent actuarial study, after which excess money collected shall be deposited fifty percent (50%) to the bond pool fund and fifty percent (50%) to the supplemental fund established under KRS 350.139(1), and used for the purposes of that section. If the bond pool fund falls below sixteen million dollars (\$16,000,000) or a higher amount as may be established by the most recent actuarial study, all excess moneys shall be deposited in the bond pool fund until that fund reaches sixteen million dollars (\$16,000,000) or a higher amount as may be established by the most recent actuarial study. All moneys previously deposited in the abandoned mine land enhancement fund shall be redeposited in the bond pool fund.
- (2) Any person or operator who engages in surface coal mining operations without first securing a permit, as provided in KRS 350.060, or any person who engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who engages in other mining operations, without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, shall be liable to a civil penalty for damages to the Commonwealth of not less than five thousand dollars (\$5,000) nor more than twenty-five thousand dollars (\$25,000) and in addition, may be enjoined from continuing the violations. Each day shall constitute a separate violation. In addition to the foregoing penalties, any permittee, person, or operator who fails to abate a violation of KRS 350.060 or KRS 350.029 or KRS 350.057, as noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement, shall be assessed an additional civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which the violation continues. However, the penalties

provided in subsection (1) of this section shall apply in lieu of the penalties provided in this subsection where an operator or permittee through inadvertence has exceeded the boundaries or expiration date of the permit in effect at that time.

- (3) The ~~cabinet~~~~{cabinet's Office of Legal Services}~~ shall bring an action for the recovery of penalties and bring an action for a restraining order, temporary or permanent injunction, against any permittee, operator, or person violating or threatening to violate any of the provisions of this chapter or violating or threatening to violate any order or determination issued pursuant to the provisions of this chapter. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto.
- (4) Any permittee, operator, or person who knowingly and willfully violates any of the provisions of this chapter, except as provided in subsection (5) of this section, or any determination or order issued pursuant to the sections of this chapter which have become final, shall be guilty of a Class A misdemeanor. Each day on which the violation occurs may constitute a separate offense.
- (5)
 - (a) Any person or operator who, in violation of KRS 350.060(1)(a) willfully and knowingly engages in surface coal mining operations without first obtaining a permit from the cabinet, or any person or operator who willfully and knowingly engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who willfully and knowingly engages in other mining operations without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, with the intent to violate the laws, shall be guilty of a Class D felony.
 - (b) Any person or operator who in violation of KRS 350.060(1)(b) willfully and knowingly receives, transports, sells, conveys, transfers, trades, exchanges, donates, purchases, delivers, or in any way derives benefit from coal removed from any surface mining operations conducted in violation of KRS 350.060(1)(a) or 350.057 shall be guilty of a Class D felony.
- (6) Any person who violates any of the provisions of KRS 350.600 or administrative regulations promulgated pursuant thereto shall be subject to civil penalties of not more than twenty-five thousand dollars (\$25,000). Each day of continuing violation shall be deemed a separate violation.
- (7) Any permittee, operator, or person who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained by the cabinet, shall upon conviction be guilty of a Class A misdemeanor.
- (8) Except as permitted by law, any permittee, operator, or person who willfully and knowingly resists, prevents, impedes, or interferes with the secretary or other personnel of the cabinet in the performance of duties pursuant to this chapter shall be guilty of a Class A misdemeanor.
- (9) When a corporate permittee violates any provision of this chapter or administrative regulation promulgated pursuant thereto or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.
- (10) Upon notice by the secretary that any surety has failed to comply with the provisions of KRS 350.032(3), the ~~commissioner~~~~{executive director}~~ of the Kentucky ~~Department~~~~{Office}~~ of Insurance shall revoke the surety's certificate of authority to conduct insurance business within the Commonwealth of Kentucky.
- (11) The cabinet, upon written request by any permittee, person, or operator subject to any penalty assessment under this section and pursuant to procedures, if any, set forth by administrative regulation and after consultation with the local county fiscal court, may allow as an alternative to the payment of any assessed penalty under this section the performance of in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution. The in-kind work shall not substitute for those remedial measures mandated by the cabinet for the correction of any violations. The estimated cost of the in-kind work shall be greater than the penalty assessment. The cabinet's Division of Abandoned Mine Lands shall have the authority to approve proposed in-kind projects and to recommend projects to the cabinet, and shall determine whether

the estimated cost of the in-kind work exceeds the penalty assessment. For the purposes of this subsection, the cost of the in-kind work shall include only those expenditures for actual on-site reclamation or rehabilitation work, including direct equipment, personnel, and material cost, but excluding administrative overhead or transportation costs. Failure to perform the in-kind work as agreed upon by the person or operator subject to the penalty assessment shall reinstate the liability of the person, permittee, or operator for the full amount of the assessed penalty. The cabinet may prepare and promulgate administrative regulations as are necessary to implement and administer the provisions of this subsection.

➔Section 1897. KRS 351.070 is amended to read as follows:

- (1) The commissioner shall have full authority over the department and shall superintend and direct the activities of the mine inspectors and other personnel of the department. There is created within the Department for Natural Resources an Office of Mine Safety and Licensing.
- (2) The secretary shall appoint an executive director to the Office of Mine Safety and Licensing in accordance with KRS 224.10-020(2) and prescribe his powers and duties.
- (3) The commissioner may, whenever necessary, divide the coal fields of the state into as many inspection districts as necessary, so as to equalize as nearly as practicable the work of each inspector, and may assign to the inspectors their respective districts.
- (4) The commissioner may, whenever he or she deems it necessary in the interest of efficient supervision of the mines, temporarily employ the services of additional mine inspectors or change inspectors from one (1) district to another.
- (5) The commissioner shall superintend and direct the inspection of mines and cause to be investigated the character and quality of air in mines whenever conditions indicate the necessity of doing so.
- (6) The commissioner shall collect statistics relating to coal mining in the state and make an annual report of the statistics.
- (7) The commissioner shall see that maps, plans, projections, and proposed developments of all underground coal mines are made and filed in his office.
- (8) The commissioner shall keep a properly indexed, permanent record of all inspections made by himself and the personnel of the department.
- (9) The commissioner shall exercise general supervision over the training of officials and workmen in safety and first aid and mine rescue methods, and may conduct demonstrations in safety whenever he deems it advisable.
- (10) The commissioner shall exercise general supervision over the dissemination of information among officials and employees concerning mine ventilation, mining methods, and mine accidents and their prevention, and shall assume full charge in the event of mine fire or explosion or other serious accident at any mine in the state.
- (11) The commissioner may assist in the resumption of operations of any mine or gather data for the development of any coal seams that would be of any benefit to the state or create new employment.
- (12) The commissioner may prescribe reasonable safety standards governing the use of explosives, and electrical and mechanical equipment in the operation of open-pit or surface mines.
- (13) The secretary of the **Energy and Environment** ~~Environmental and Public Protection~~ Cabinet shall have the power and authority to promulgate, amend, or rescind any administrative regulations he or she deems necessary and suitable for the proper administration of this chapter. Administrative regulations may be promulgated, amended, or rescinded by the secretary only after public hearing or an opportunity to be heard thereon of which proper notice by publication pursuant to KRS Chapter 424, has been given. Administrative regulations so promulgated shall carry the full force and effect of law.
- (14) The commissioner shall ascertain the cause or causes of any coal mining fatality and any accidents involving serious physical injury and, within sixty (60) days of completion of the investigation, shall report his or her findings and recommendations to the Governor, the Mine Safety Review Commission, the Mining Board, and the Legislative Research Commission. Accident interviews conducted by the Office of Mine Safety and Licensing shall be closed proceedings. The recommendations may include without being limited to the need to promulgate or amend administrative regulations to prevent the recurrence of the conditions causing the fatality. Effective January 1, 2009, the Office of Mine Safety and Licensing shall appoint an existing full-time employee to act as a family liaison. The family liaison shall have the responsibility during an accident

investigation to keep the families of miners informed of the progress and findings of the accident investigation. The family liaison shall be trained in mining and in grief counseling.

- (15) The commissioner shall assess civil monetary penalties against licensed facilities for violations of laws in this chapter and KRS Chapter 352 pertaining to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or serious physical injury. The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall promulgate administrative regulations within ninety (90) days of July 12, 2006, providing for the manner and method of the assessment of the penalties and appeals therefrom. In no event shall the civil penalty assessed pursuant to this subsection for the violation exceed five thousand dollars (\$5,000). Nothing contained in this subsection shall be construed to impair or contravene the authority granted under KRS 351.025(2) for imposing penalties against licensed facilities.

➔Section 1898. KRS 351.1041 is amended to read as follows:

- (1) The Mine Safety Review Commission is created as an independent governmental entity attached to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet, Office of the Secretary, for administrative purposes. The commission shall:
- (a) Conduct hearings and issue orders regarding a licensee, coal operation, or other person involved in the mining of coal in accordance with KRS 351.194;
 - (b) Jointly with the department establish a process for the department's referral of allegations of mine safety violations, allegations of unsafe working conditions, violation of a miner's drug- and alcohol-free condition of certification, or supervisory personnel's failure to immediately report a fatal accident or an accident involving serious physical injury to the commission for adjudication;
 - (c) Make any recommendations to the department that it believes appropriate upon its review, consideration, and analysis of:
 1. All reports of coal mining fatalities and serious physical injuries provided by the commissioner under KRS 351.070(14);
 2. Any case in which a miner or a mine owner or operator, in the professional opinion of the department has a history of significant and substantial safety violations even though there has been no serious physical injury or death resulting from the violations;
 3. Any case in which a miner or a mine owner or operator has been convicted of a criminal charge for a violation of a federal mine safety standard or standards; and
 4. Any case in which the Federal Mine Safety and Health Administration has made a recommendation relating to certification of an individual certified under this chapter.
- (2) The Mine Safety Review Commission shall consist of three (3) members appointed by the Governor subject to the consent of the Senate and the House of Representatives in accordance with KRS 11.160. Of the members of the Mine Safety Review Commission first appointed under this section, one (1) shall be appointed for a term of one (1) year; one (1) shall be appointed for a term of two (2) years; and one (1) shall be appointed for a term of three (3) years. After the initial appointments, members of the board shall be appointed for terms of four (4) years. A member may be reappointed at the expiration of his or her previous term. Members shall continue to serve until a successor is appointed and qualified.
- (3) The members of the Mine Safety Review Commission shall have the qualifications required of Judges of the Court of Appeals, except for residence in a district, and shall be subject to the same standards of conduct made applicable to a part-time judge by the Rules of the Kentucky Supreme Court. The members shall receive the per diem equivalent of the salary of a Judge of the Court of Appeals for each day spent in conducting the business of the commission.
- (4) The Governor shall designate a member of the Mine Safety Review Commission to serve as chair and shall fill any vacancy in the office of chair.
- (5) The Governor may remove any member for good cause, including violation of the Code of Judicial Conduct and repeated failure to perform satisfactorily the specific duties assigned in this chapter or KRS Chapter 352. The Governor may remove the member only after furnishing him or her with a written copy of the charges against that member and holding a public hearing if requested by the member.

- (6) The commission shall meet on the call of the chair or a majority of the members of the commission.
- (7) The ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet shall provide administrative services to the Mine Safety Review Commission. If the commission deems it necessary to employ hearing officers to assist it, the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet shall employ hearing officers to assist the commission in accordance with KRS Chapter 13B and this chapter, notwithstanding the provisions of KRS 13B.030(2)(b).
- (8) The commission may conduct hearings, compel the attendance of witnesses, administer oaths, and conduct oversight activities as may be required to ensure the full implementation of its duties.
- (9) The department shall provide the Mine Safety Review Commission with all information requested by the commission for the fulfillment of its responsibilities under this chapter and KRS Chapter 352.
- (10) The secretary of the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet shall effectuate the hiring of any staff deemed necessary and affordable for the efficient operations of the Mine Safety Review Commission. This may include an executive director, general counsel, or other administrative support positions, to be appointed in accordance with KRS 12.010 and 12.050.

➔Section 1899. KRS 351.1055 is amended to read as follows:

- (1) There is hereby established a Mine Equipment Review Panel attached to the Department for Natural Resources in the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet.
- (2) The Mine Equipment Review Panel shall be a permanent panel of recognized experts who shall review and make recommendations annually to the executive director of the Office of Mine Safety and Licensing and the Interim Joint Committee on Agriculture and Natural Resources regarding best available mine safety technologies, including but not limited to wireless tracking and communications devices for use by miners in underground mines. Subject to budgetary constraints and approval by the United States Mine Safety and Health Administration (MSHA), if there is no existing law to the contrary, the commissioner may implement the recommendations of the panel. Based on the recommendations provided by the panel, the executive director shall comprise a list of commercially available mine safety equipment, including wireless tracking and communications devices that may be approved for use by coal miners.
- (3) The panel shall meet at the call of the chair. The chair of the panel shall be the executive director of mine safety and licensing. Members of the panel shall serve without pay, but shall be entitled to reimbursement of travel-related expenses.
- (4) The Mine Equipment Review Panel shall be composed of the following members, who shall be appointed by the commissioner not less than thirty (30) days after July 12, 2006:
 - (a) One (1) member shall represent the National Institute of Occupational Safety and Health;
 - (b) One (1) member shall represent the federal Mine Safety and Health Administration;
 - (c) One (1) member shall represent the coal industry;
 - (d) One (1) member shall be appointed from the membership of the United Mine Workers of America and shall represent mine labor, preferably a member of a Kentucky mine rescue team;
 - (e) One (1) member shall represent the Department of Mining Engineering at the University of Kentucky; and
 - (f) One (1) member shall be the executive director of the Office of Mine Safety and Licensing.
- (5) The Mine Equipment Review Panel shall provide initial recommendations to the executive director of the Office of Mine Safety and Licensing not more than one hundred twenty (120) days after the panel members have been appointed and the panel is duly constituted to conduct business. Periodically, the panel shall review and make recommendations to the executive director on changes to or innovations in mine safety equipment that could be deployed in coal mines.

➔Section 1900. KRS 351.175 is amended to read as follows:

- (1) The operation of a coal mine in Kentucky is a privilege granted by the Commonwealth of Kentucky to a licensee who satisfies the requirements of this section and demonstrates that the mine is or will be operated in a safe manner and in accordance with the laws of this Commonwealth.

- (2) Within forty-five (45) days after January 1, 1953, and of each year thereafter, the owner, operator, lessee, or licensee of each mine shall procure from the department a license to operate the mine, and the license shall not be transferable. Any owner, operator, lessee, or licensee who assumes control of a mine, opens a new mine, or reopens an abandoned mine during any calendar year shall procure a license before mining operations are begun.
- (3) The license shall be in printed form as the commissioner may prescribe and when issued shall be kept posted at a conspicuous place near the main entrance of the mine.
- (4) Requests for a license shall be made to the department and shall be accompanied by a United States postal money order or cashier's check drawn in favor of the State Treasurer in an amount established by administrative regulations of a minimum of one hundred dollars (\$100) and a maximum of fifteen hundred dollars (\$1,500). The license shall be issued when the following are properly submitted to the commissioner:
 - (a) The annual report of the licensee and the annual mine map required in KRS 351.170 and 352.450;
 - (b) A certification from the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workers' Claims that the licensee has provided positive proof of compliance with the provisions of KRS Chapter 342;
 - (c) A certification from the commissioner of the Department of Revenue that the licensee is not a "delinquent taxpayer" as defined in KRS Chapter 131;
 - (d) Mine seal construction plan filed with the state and approved by MSHA;
 - (e) Roof control plan filed with the state and approved by MSHA;
 - (f) The ventilation plan required in KRS 352.020; and
 - (g) An approved emergency action plan required by KRS 352.640.
- (5) The department shall immediately revoke any license if the department receives:
 - (a) Withdrawal of the certification of compliance with KRS Chapter 342 issued by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workers' Claims; or
 - (b) Notice from the commissioner of the Department of Revenue that the licensee is a "delinquent taxpayer" as defined in KRS Chapter 131.
- (6) The commissioner, the executive director of the Office of Mine Safety and Licensing, or the mine inspector shall have the authority to stop production or close any mine whose operator fails to procure a license or fails to furnish a certification of workers' compensation coverage as required under this section.
- (7) The department shall be authorized to seek injunctive relief for any violation of this section. Revocation of a license by the department shall be an administrative function of the department. Appeals from revocation by the department shall be brought in Franklin Circuit Court.
- (8) A license which has been revoked under the "delinquent taxpayer" provision shall not be reissued until a written tax clearance has been received from the commissioner of revenue.
- (9) No mine underlying a cemetery shall be licensed by the commissioner unless two-thirds (2/3) of the governing body of that cemetery vote in approval of the operation. The application for a license shall contain an affidavit setting forth the approval of the cemetery's governing body. This subsection applies only to those cemeteries with governing bodies.

➔Section 1901. KRS 351.186 is amended to read as follows:

- (1) Any employer who is also a licensee that has implemented a drug-free workplace program certified by the Office of Mine Safety and Licensing shall be eligible to obtain a credit on the licensee's premium for workers' compensation insurance.
- (2) Each insurer authorized to write workers' compensation insurance policies shall provide the credit on the workers' compensation premium to any employer who is also a licensee for which the insurer has written a workers' compensation policy. The credit on the workers' compensation premium shall not:

- (a) Be available to those employers that are also licensees who do not maintain their drug-free workplace program for the entire workers' compensation policy period; or
 - (b) Apply to minimum premium policies.
- (3) The ~~Department~~~~Office~~ of Insurance shall approve workers' compensation rating plans that give a credit on the premium for a certified drug-free workplace so long as the credit is actuarially sound. The credit shall be at least five percent (5%) unless the ~~Department~~~~Office~~ of Insurance determines that five percent (5%) is actuarially unsound.
 - (4) The credit on the workers' compensation premium may be applied by the insurer at the final audit.

➔Section 1902. KRS 351.330 is amended to read as follows:

- (1) Blasting of explosives for use in the neighborhood of any public highway, stream of water, dwelling house, public building, school, church, commercial or institutional building, pipeline, or utility shall be done in accordance with the provisions of this section, and rules and regulations promulgated by the department.
- (2) Where necessary in a blasting operation, the department may require that the operator submit a blasting plan to the department for approval.
- (3) In all blasting operations, except as hereinafter otherwise provided, the maximum peak particle velocity of the ground motion in any direction shall not exceed two (2) inches per second at the immediate location of any dwelling house, public building, school, church, commercial or institutional building, and the particle velocity at such location immediately after a period of one (1) second following the peak particle velocity produced by any charge shall not continuously exceed one-half (1/2) inch per second.
- (4) Blasting operations without instrumentation will be considered as being within the limits set forth in this subsection if such blasting operations are conducted in accordance with rules and regulations of the department establishing the maximum amount of explosives to be used in a single charge and in a single subcharge within specified distances from any location provided by subsection (1). No more than 40,000 pounds of explosives may be used in any charge except with the approval of the commissioner. Regulations promulgated by the department pursuant to this subsection shall be in such terms that compliance therewith will assure compliance with the provisions of subsection (3).
- (5) No two (2) consecutive subcharges containing the maximum permitted by the department pursuant to this subsection shall have a detonation time separated by less than eight (8) milliseconds, except that if the amount of explosive used in any subcharge is less than maximum permitted by the department pursuant to subsection (4), the time delay between detonation times may be decreased in the same ratio.
- (6) Any blasting operation may be conducted without reference to any maximum amount or period provided by or pursuant to subsection (4) if the operator of such blasting operation demonstrates by instrumentation that maximum particle velocity of the ground motion in any direction does not exceed the limits provided in subsection (3).
- (7) Instruments for determining particle velocity as set forth in this subsection shall be limited to such specific types of devices as shall have been expressly approved by the department and the commissioner or his duly authorized agent may enter upon any premises for the purpose of conducting or supervising any necessary instrumentations provided by KRS 351.315 to 351.375.
- (8) When blasting operations are contemplated which would result in ground vibrations that would have a particle velocity in any direction in excess of 2 inches per second at the immediate location of any dwelling house, public building, school, church, commercial or institutional building, blasting operations may proceed after receiving written consent from the property owner or owners affected.
- (9) When blasting operations, other than those conducted at a fixed site as a part of any industry or business operated at such site, are to be conducted within the vicinity of a pipeline or public utility, the blaster or person in charge of the blasting operations shall take due precautionary measures for the protection of the pipeline or utility, and shall give adequate notice to the owner or his agent that such blasting operations are intended. The blaster shall be subject to regulations promulgated by the department concerning such a blasting operation.
- (10) Blasting operations near streams shall be prohibited in all cases where the effect of the blasting is liable to change the course or channel of any stream without first obtaining a permit from the department which has been approved by the Division of Water in the ~~Energy and Environment~~~~Environmental and Public Protection~~ Cabinet.

- (11) Blasting operations shall not be conducted within eight hundred (800) feet of any public highway, unless due precautionary measures are taken to safeguard the public.
- (12) Mudcapping in blasting operations shall be permitted only where it would endanger the safety of the workers to drill the rock or material to be blasted. If mudcapping is necessary, no more than ten (10) pounds of explosives shall be used for each charge.
- (13) When the use of detonating cord would cause severe air blast the department may cause all trunk lines to be covered by 5 to 6 inches of loose earth.
- (14) In blasting operations, flying rocks shall not be allowed to fall greater than one-half (1/2) the distance between the blast and a dwelling house, public building, school, church, commercial or institutional building. Protective material shall be used to insure this limit.
- (15) When a blast is about to be fired, ample warning shall be given to allow all persons to retreat to a safe place, and care shall be taken to ascertain that all persons are in the clear. Each operator shall follow a definite plan of warning signals that can be clearly seen or heard by anyone in the blasting area. The operator shall inform all employees at the operation as to the established procedure.
- (16) No person shall use explosives in such manner that safety to persons or property is threatened.
- (17) The two (2)-inch-per-second maximum peak particle velocity as specified in subsections (3) and (8) of this section shall be construed as the threshold below which blasting damage is unlikely to occur. However, the department shall have the authority to promulgate regulations requiring more restrictive levels of maximum peak particle velocity when necessary to maintain consistency with federal statutes or regulations.

➔Section 1903. KRS 353.510 is amended to read as follows:

As used in KRS 353.500 to 353.720, unless the context otherwise requires:

- (1) "Department" means the Department for Natural Resources~~[as defined in KRS 351.010];~~
- (2) "Commissioner" means the commissioner of the Department for Natural Resources~~[as defined in KRS 351.010];~~
- (3) "Director" means the director of the Division of Oil and Gas ~~[Conservation]~~ as provided in KRS 353.530;
- (4) "Commission" means the Kentucky Oil and Gas Conservation Commission as provided in KRS 353.565;
- (5) "Person" means any natural person, corporation, association, partnership, receiver, governmental agency subject to KRS 353.500 to 353.720, trustee, so-called common-law or statutory trust, guardian, executor, administrator, or fiduciary of any kind, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (6) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof;
- (7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;
- (8) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined in subsection (7) of this section as oil;
- (9) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each productive zone of a general structure which is completely separated from any other zone in the structure, or which for the purpose of KRS 353.500 to 353.720 may be so declared by the department, is covered by the word "pool" as used herein;
- (10) "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool; and "field" includes the underground reservoir containing oil or gas or both. The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved; however, "field," unlike "pool," may relate to two (2) or more pools;
- (11) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying his tract or tracts;

- (12) "Abandoned," when used in connection with a well or hole, means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of oil or gas or for the injection or disposal of fluid therein;
- (13) "Workable bed" means:
- (a) A coal bed actually being operated commercially;
 - (b) A coal bed that the department decides can be operated commercially and the operation of which can reasonably be expected to commence within not more than ten (10) years; or
 - (c) A coal bed which, from outcrop indications or other definite evidence, proves to the satisfaction of the commissioner to be workable, and which, when operated, will require protection if wells are drilled through it;
- (14) "Well" means a borehole drilled, shaft driven, or hole dug or such proposed or otherwise used for the purpose of producing natural gas or petroleum, or one through which natural gas or petroleum is being produced, or for the purpose of injecting any water, gas, or other fluid therein or one into which any water, gas, or other fluid is being injected;
- (15) "Shallow well" means any well drilled and completed at a depth less than four thousand (4,000) feet except, in the case of any well drilled and completed east of longitude line 84 degrees 30'; shallow well means any well drilled and completed at a depth less than four thousand (4,000) feet or above the base of the lowest member of the Devonian Brown Shale, whichever is the deeper in depth;
- (16) "Deep well" means any well drilled and completed below the depth herein provided for a shallow well;
- (17) "Operator" means any owner of the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for himself or for himself and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as "operator" to the extent of seven-eighths (7/8) of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth (1/8) interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the right to develop, operate, and produce the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool;
- (18) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that such owner is not an operator as defined in subsection (17) of this section;
- (19) "Drilling unit" generally means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable oil or gas in such area. Where the regulatory authority has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, such area shall be a drilling unit;
- (20) "Underground source of drinking water" means those subsurface waters identified as such in regulations promulgated by the department which shall be consistent with the definition of underground source of drinking water in regulations promulgated by the Environmental Protection Agency pursuant to the Safe Drinking Water Act, 42 U.S.C. secs. 300(f) et seq.;
- (21) "Underground injection" means the subsurface emplacement of fluids by well injection but does not include the underground injection of natural gas for purposes of storage;
- (22) "Endangerment of underground sources of drinking water" means underground injection which may result in the presence in underground water, which supplies or can reasonably be expected to supply any public water system, of any contaminant and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons;
- (23) "Class II well" means wells which inject fluids:
- (a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;
 - (b) For enhanced recovery of oil or natural gas; and

(c) For storage of hydrocarbons which are liquid at standard temperature and pressure;

- (24) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

➔Section 1904. KRS 353.530 is amended to read as follows:

- (1) The *secretary of the Energy and Environment Cabinet*~~Governor~~ shall appoint, as director of the Division of Oil and Gas~~Conservation~~ in the Department for Natural Resources, a person who has, at the time of his appointment, at least five (5) years' experience in the exploration for or the production of oil or gas.
- (2) It shall be his duty to administer the provisions of KRS 353.500 to 353.720 subject to the direction and supervision of the commissioner.
- (3) Before taking office, the director shall take oath, which shall be certified by the officer administering it. The oath, in writing, and the certificate shall be filed in the office of the Secretary of State.
- (4) No director shall, while holding office, acquire any financial interest, directly or indirectly, in any venture or activity for the exploration for or production of oil or gas in this Commonwealth.

➔Section 1905. KRS 353.560 is amended to read as follows:

- (1) Without limiting its general authority, the department shall regulate:
 - (a) The drilling and plugging of all wells;
 - (b) The spacing or locating of wells; and
 - (c) The use of vacuum.
- (2) The department shall make recommendations to the U.S. Environmental Protection Agency and the *Energy and Environment*~~Environmental and Public Protection~~ Cabinet as to disposal of salt water and oil field wastes.

➔Section 1906. KRS 353.565 is amended to read as follows:

- (1) There is hereby created in the Department for Natural Resources, the "Kentucky Oil and Gas Conservation Commission" which shall be composed of five (5) members. Four (4) of the members shall be appointed by the Governor and the fifth member, who shall serve as chairman of the commission, shall be the director of the Division of Oil and Gas~~Conservation~~ and who shall serve in an ex officio capacity as a nonvoting member except in the case of a tie. The four (4) members appointed by the Governor shall be residents of this state and not more than one (1) of them may be directly employed in the exploration for or the production of oil or gas, or deriving more than fifty percent (50%) of that person's income from the exploration for or production of oil or gas, or engaged in a business directly servicing or supplying these activities. No member of the commission shall participate in the deliberations of the commission or vote on any matter before the commission in which he, his employer, or any business unit in which he has a financial interest is an interested party, but a member of the commission is not prohibited from deliberating or voting on matters of general interest, such as the fixing of statewide spacing patterns, affecting him, his employer, or a business unit in which he has financial interest as a member of a class of persons to be affected by an administrative regulation or order of the commission. The commission shall not contain more than one (1) representative from any one (1) operator, including subsidiaries or affiliates. Of the four (4) members appointed by the Governor, two (2) shall be residents of eastern Kentucky and two (2) shall be residents of western Kentucky. Longitude 84 deg. 30 min. shall be deemed as the division line between eastern Kentucky and western Kentucky.
- (2) The members of the commission, except the chairman, shall be appointed for terms of four (4) years each, except that:
 - (a) The original appointments shall be for terms of one (1), two (2), three (3), and four (4) years respectively; and
 - (b) Of the members appointed after July 15, 1998, one (1) member appointed to fill the term expiring June 21, 1999, shall serve until January 21, 2000; one (1) member appointed to fill the term expiring June 21, 2000, shall serve until January 21, 2001; one (1) member appointed to fill one (1) of the two (2) terms expiring June 21, 2001, shall serve until January 21, 2002; and one (1) member appointed to fill the second of the two (2) terms expiring June 21, 2001, shall serve until January 21, 2003; and subsequent

appointments shall be for four (4) year terms ending on January 21. Each member appointed by the Governor shall serve until his successor has been appointed and qualified. Members may be reappointed by the Governor to serve successive terms. The members of the commission, before performing any duty hereunder, shall take an oath which shall be certified by the officer administering it. The oath in writing and the certificate shall be filed in the office of the Secretary of State. Vacancies in the membership appointed by the Governor shall be filled by appointment by him and for the unexpired term of the member whose office shall be vacant, and the appointment shall be made by the Governor within sixty (60) days of the occurrence of a vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance of office.

- (3) The commission shall meet at times and places as shall be designated by the chairman. The chairman may call a meeting of the commission at any time, and he shall call a meeting of the commission upon the written request of two (2) members. Notification of each meeting shall be given in writing to each member by the chairman at least five (5) days in advance of the meeting. Any three (3) members, one (1) of which may be the chairman, shall constitute a quorum for the transaction of any business, including the holding of hearings. A majority of the commission present shall be required to determine any issue brought before it for decision.
- (4) Each member of the commission, except the chairman, shall receive one hundred fifty dollars (\$150) per diem not to exceed one hundred (100) days per calendar year while actually engaged in the performance of his duties as a member of the commission. Each member of the commission, including the chairman, shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.
- (5) The commission shall execute and carry out, administer, and enforce the provisions of KRS 353.651 and 353.652. The commission may make any investigation of records and facilities as it deems proper.
- (6) If an emergency is found to exist by the commission which, in its judgment, requires the making, changing, renewal, or extension of an administrative regulation or order without first having a hearing, an emergency regulation may be promulgated in accordance with KRS Chapter 13A and an emergency order may be issued in accordance with KRS 13B.125.
- (7) The commission shall have specific authority to:
 - (a) Promulgate and enforce reasonable administrative regulations and issue orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commission, and otherwise administer the provisions of KRS 353.651 and 353.652; and
 - (b) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams, and other pertinent documents, and administer oaths and affirmations to witnesses, whenever, in the judgment of the commission, it is necessary to do so for the effective discharge of its duties under the provisions of KRS 353.651 and 353.652.
- (8) Any interested person may have the commission call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commission by making a request therefor in writing. Upon the receipt of any request, the commission promptly shall call a hearing thereon, and, after the hearing and with all convenient speed, and in any event within thirty (30) days after the conclusion of the hearing, shall take appropriate action with regard to the subject matter thereof as it may deem appropriate. If the hearing is adjudicatory in nature, it shall be conducted in accordance with KRS Chapter 13B.
- (9) Agreements made in the interest of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same field or pool, or in any area that appears from geologic or other data to be underlaid by a common accumulation of oil or gas, or both, and agreements between and among these owners or operators, or both, and royalty owners therein, for the purpose of bringing about the development and operation of the field, pool, or area, or any part thereof, as a unit, and for establishing and carrying out a plan for the cooperative development and operation thereof, when the agreements are approved by the commission, are hereby authorized and shall not be held or construed to violate any of the laws of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade.
- (10) Nothing in this section shall be construed as giving to the commission the right or authority to supersede the authority of the department in the administration of KRS 353.060.

➔Section 1907. KRS 353.590 is amended to read as follows:

- (1) Any person seeking a permit required by KRS 353.570 shall submit to the department a written application in a form prescribed by the department.
- (2) Each application shall be accompanied by a specified fee as follows:
 - (a) The fee shall be three hundred dollars (\$300) for each well to be drilled, deepened, or reopened for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole.
 - (b) If the department receives delegation of authority for administration of the underground injection control program under Section 1425 of the Safe Drinking Water Act (Pub. L. 93-523 as amended), the department may, by administrative regulation, establish a fee or schedule of fees in an amount not to exceed fifty dollars (\$50) per well, in addition to the fees imposed by paragraph (a) of this subsection, upon each application to drill, deepen, or reopen a well for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole. The fees or schedule of fees to be established by administrative regulation shall not exceed an amount sufficient to recover the costs incurred by the department in administering the Underground Injection Control Program less any other state or federal funds which are made available for this purpose.
 - (c) All money paid to the State Treasurer for fees required by paragraph (b) of this subsection shall be for the sole use of the department in the administration of the Underground Injection Control Program under Section 1425 of the Safe Drinking Water Act (Pub. L. 93-523 as amended).
- (3) All money paid to the State Treasurer for licenses and fees required by KRS 353.500 to 353.720 shall be for the sole use of the department and shall be in addition to any moneys appropriated by the General Assembly for the use of the department.
- (4) Each application shall be accompanied by a plat, which shows the location and elevation of each well, prepared according to the administrative regulations promulgated under KRS 353.500 to 353.720. The plat shall be certified as accurate and correct by a professional land surveyor licensed in accordance with the provisions of KRS Chapter 322.
- (5) When any person submits to the Department for Natural Resources an application for a permit to drill a well, or to reopen, deepen, or temporarily abandon any well which is not covered by surety bond, the department shall, except as provided in this section, require from the well operator the posting of a bond. Except for bonds for well depths greater than four thousand (4,000) feet, the bond shall be posted in accordance with the following schedule:

Well Depth	Bond Amount
0 to 500 feet	\$500.00
501 feet to 1,000 feet.....	\$1,000.00
1,001 feet to 1,500 feet.....	\$1,500.00
1,501 feet to 2,000 feet.....	\$2,000.00
2,001 feet to 2,500 feet.....	\$2,500.00
2,501 feet to 3,000 feet.....	\$3,000.00
3,001 feet to 3,500 feet.....	\$3,500.00
3,501 feet to 4,000 feet.....	\$4,000.00
4,001 feet and deeper.....	\$5,000.00

- (6) The commission may establish a bond in a sum greater than five thousand dollars (\$5,000) for any well to be drilled to a depth of more than four thousand (4,000) feet if the members of the commission determine that the particular circumstances of the drilling of the well warrant an increase in the bond amount established in subsection (5) of this section.

- (7) All bonds required to be posted under this section shall:
- (a) Be made in favor of the Department for Natural Resources;
 - (b) Be conditioned that the wells, upon abandonment, shall be plugged in accordance with the administrative regulations of the department and that all records required by the department be filed as specified; and
 - (c) Remain in effect until the plugging of the well is approved by the department, or the bond is released by the department.
- (8) An operator may petition the department to amend the drilling depth and bond amount applicable to a particular well and shall not proceed to drill to a depth greater than that authorized by the department until the operator is so authorized, except pursuant to administrative regulations promulgated by the department.
- (9) (a) Any qualified well operator, in lieu of the individual bond, may file with the department a blanket bond according to the following tiered structure:
1. One (1) to twenty-five (25) wells require a ten thousand dollar (\$10,000) bond;
 2. Twenty-six (26) to one hundred (100) wells require a twenty-five thousand dollar (\$25,000) bond;
 3. One hundred one (101) to five hundred (500) wells require a fifty thousand dollar (\$50,000) bond;
 4. Five hundred one (501) or more wells require a one hundred thousand dollar (\$100,000) bond.
- (b) Any nonqualified well operator, in lieu of an individual bond, may file with the department a blanket bond according to the following tiered structure:
1. One (1) to one hundred (100) wells require a fifty thousand dollar (\$50,000) bond;
 2. One hundred one (101) or more wells require a one hundred thousand dollar (\$100,000) bond.
- (10) To qualify for a blanket bond under the tiered structure set forth in subsection (9)(a) of this section, an operator shall:
- (a) Have a blanket bond in place filed with the department prior to July 15, 2006, and have no outstanding, unabated violations of KRS Chapter 353 or regulations adopted pursuant thereto which have not been appealed;
 - (b) Demonstrate for a period of thirty-six (36) months prior to the request for blanket bonding a record of compliance with the statutes and administrative regulations of the division; or
 - (c) Provide proof of financial ability to plug and abandon wells covered by the blanket bond.
- (11) In addition to the requirements set forth in subsection (12) of this section, proof of financial ability set forth in subsection (10)(c) of this section shall be established by an audited financial statement that satisfies at least two (2) of the following ratios:
- (a) A ratio of total liabilities to net worth less than two (2); or
 - (b) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liability greater than one-tenth (0.1); or
 - (c) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).
- (12) If the operator is a corporate subsidiary, the operator further shall provide a corporate guarantee in which the guarantor shall be the parent corporation of the operator of the wells covered under the bond. The corporate guarantee shall provide:
- (a) That if the operator fails to perform with the proper plugging and abandonment of any well covered by the blanket bond, the guarantor shall do so or provide for alternate financial assurance; and
 - (b) The corporate guarantee shall remain in force unless the guarantor sends notice of the cancellation by certified mail to the operator and to the department. Cancellation shall not occur, however, during the one hundred twenty (120) day period beginning on the first day that both the operator and the department have received notice of cancellation, as evidenced by the certified mail return receipts.

- (13) An operator shall not be eligible for blanket bonding if:
 - (a) It has more than ten (10) violations of KRS Chapter 353 or the regulations adopted pursuant thereto within the thirty-six (36) month period;
 - (b) It has any outstanding, unabated violations of KRS Chapter 353 or the regulations adopted pursuant thereto which have not been appealed;
 - (c) It has a forfeiture of a bond, whether an individual bond or portion of a blanket bond, on any permit where the operator has not entered into an agreed order with the department for the plugging and proper abandonment of the well or wells on the forfeited permit or permits; or
 - (d) It has a permit or permits, upon which a bond or portion of a bond has been forfeited and the proceeds from the forfeiture have been spent by the department to plug or reclaim the permitted well or wells, unless the operator has made restitution to the department for all costs associated with the forfeiture, plugging, and proper abandonment.
- (14) A deposit in cash or a bank-issued irrevocable letter of credit may serve in lieu of either of the individual well or blanket bonds.
- (15) Individuals acquiring a single well for domestic use may post a combination bond which shall consist of a cash bond in the amount of one thousand dollars (\$1,000) plus a lien on the property to cover future plugging costs. Only one (1) combination bond may be posted by each individual.
- (16) A certificate of deposit, the principal of which is pledged in lieu of a bond and whose interest is payable to the party making the pledge, may serve for an individual well bond. A certificate of deposit, the principal of which is pledged in lieu of a bond and whose interest is payable to the party making the pledge, may serve for a blanket bond, provided that the first five thousand dollars (\$5,000) of the blanket bond is posted with the department in cash.
- (17) The bond or bonds referred to in this section shall be executed by the well operator as principal and, if a surety bond, by a corporate surety authorized to do business in the Commonwealth.
- (18) A deposit in cash shall serve in lieu of either of the above bonds; all cash bonds accepted by the department shall be deposited into an interest-bearing account, with the interest thereon payable to the special agency account known as the oil and gas well plugging fund, created in subsection (24) of this section, to be used in accordance with the purposes described therein. All cash bonds being held by the department on July 13, 1990, shall likewise be deposited in the interest-bearing account, with the proceeds to be used for the purposes established for the oil and gas well plugging fund.
- (19) The bond amounts prescribed by subsection (5) of this section shall be applicable only to permits issued upon and after July 15, 2006. All bonds posted for permits issued prior to July 15, 2006, shall remain in full force and effect for the duration of the permits.
- (20) The blanket bond amounts prescribed by subsection (9) of this section shall be effective upon and after July 15, 2006. Any operator having filed a blanket bond with the department prior to July 15, 2006, may at its discretion increase the level of the blanket bond incrementally by increasing the blanket bond by the amount of the individual bond prescribed by subsection (9) of this section on any wells drilled subsequent to July 15, 2006, until the blanket bond has reached the level prescribed by subsection (9) of this section.
- (21) A successor to the well operator shall post bond, pay a twenty-five dollar (\$25) fee per well to the department, and notify the department in writing in advance of commencing use or operation of a well or wells. The successor shall assume the obligations of this chapter as to a particular well or wells and relieve the original permittee of responsibility under this chapter with respect to the well or wells. It shall be the responsibility of the selling operator to require the successor operator to post bond before use or operation is commenced by the successor and relief of responsibility under this chapter is granted to the original permittee.
- (22) If the requirements of this section with respect to proper plugging upon abandonment and submission of all required records on all well or wells have not been complied with within the time limits set by the department, by administrative regulation, or by this chapter, the department shall cause a notice of noncompliance to be served upon the operator by certified mail, addressed to the permanent address shown on the application for a permit.

- (a) The notice shall specify in what respects the operator has failed to comply with this chapter or the administrative regulations of the department.
 - (b) If the operator has not reached an agreement with the department or has not complied with the requirements set forth by it within forty-five (45) days after mailing of the notice, the bond shall be forfeited to the department.
- (23) A bond forfeited pursuant to the provisions of this chapter may be collected by an attorney for the department or by the Attorney General, after notice from the director of the Division of Oil and Gas ~~Conservation~~.
- (24) All sums received under this section or through the forfeiture of bonds shall be placed in the State Treasury and credited to a special agency account to be designated as the oil and gas well plugging fund, which shall be an interest-bearing account with the interest thereon payable to the fund. This fund shall be available to the department and shall be expended for the plugging of any abandoned wells coming within the authority of the department pursuant to this chapter. The plugging of any well pursuant to this subsection shall not be construed to relieve the operator or any other person from civil or criminal liability which would exist except for the plugging. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purpose of the fund until expended or until appropriated by subsequent legislative action.
- (25) Upon request by any person applying for a permit for a geological or structure test hole, the department shall keep the location and elevation of the hole confidential until the information is allowed to be released by the person obtaining the permit.
- (26) For the purpose of this chapter, "water supply well" shall not include:
- (a) Any well for a potable water supply for domestic use or for livestock; or
 - (b) Any water well used primarily for cooling purposes in an industrial process.
- (27) Notwithstanding the provisions of KRS Chapter 353 or this section, no operator shall be eligible to receive additional permits if that operator or any entity in which it has an ownership interest has:
- (a) Any outstanding, unabated violations of KRS Chapter 353 or the regulations adopted pursuant thereto, which have not been appealed;
 - (b) A forfeiture of a bond, whether an individual bond or portion of a blanket bond, on any permit where the operator has not entered into an agreed order with the department for the plugging and proper abandonment of the well or wells on the forfeited permit or permits; or
 - (c) A permit or permits upon which a bond or portion of a bond has been forfeited, and the proceeds therefrom having been spent by the department to plug or reclaim the permitted well, or wells, unless the operator has made restitution to the department for all costs associated with the forfeiture, plugging, and proper abandonment.

➔Section 1908. KRS 353.5901 is amended to read as follows:

- (1) In all cases where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed, a well operator shall submit to the department an operations and reclamation proposal at the time of filing an application for permit to drill, deepen, or reopen a well. The proposal shall be filed on forms provided by the department and shall include:
 - (a) A proposal to prevent erosion of and sedimentation from the well site and all disturbed areas, including roads;
 - (b) A narrative description of the location of all areas to be disturbed, including the location of roads, gathering lines, the well site, tanks and other storage facilities, and any other information that may be required by the department. Accompanying this narrative description shall be a plat depicting the location on the land of all of these disturbances or facilities;
 - (c) A signed agreement by the surface owners of all disturbed areas to the operations and reclamation proposal; and
 - (d) Any additional information that the department may require.
- (2) In all cases where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface and the surface owners of all disturbed areas have not signed agreements with the well operator

agreeing to the operations and reclamation proposal, at the time of filing the application the well operator shall cause to be delivered to the surface owners of all disturbed areas who have not agreed to the operations and reclamation proposal, by certified mail, return receipt requested:

- (a) A copy of the operations and reclamation proposal required by paragraph (a) of subsection (1) of this section, and the narrative description of land disturbances and plat required by paragraph (b) of subsection (1) of this section; and
- (b) A notice to read as follows: "If you do not agree with the proposed use of your land by the well operator, the well operator may request mediation of your dispute by the General Counsel's Office of the Department for Natural Resources. If mediation is requested, and you decide to participate, each party to the mediation will be charged one hundred dollars (\$100) to help cover the cost of mediation. You will be notified of the time and place for mediation, if the well operator chooses mediation, and of your right to participate."

The certified mail receipt, when returned, shall be filed by the well operator with the department and made part of the permit application.

- (3) If the well operator has been unable to reach agreement with the surface owners of all areas to be disturbed in all cases where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed, the permit required by this chapter shall not be issued until the dispute has been referred to mediation by the General Counsel's Office of the Department for Natural Resources, and mediation has been concluded either by agreement between the parties or by a report of the mediator, in accordance with subsection (4) of this section.
- (4) The well operator may request mediation any time after filing the permit application, and all parties participating in the mediation shall pay a nonrefundable fee of one hundred dollars (\$100) to the Kentucky State Treasurer, which shall be for the sole use of the department and shall be in addition to any money appropriated by the General Assembly for the use of the department. The department shall notify the well operator and all surface owners of areas to be disturbed by drilling who have not agreed to the operation and reclamation plan of the date and time mediation shall be conducted by certified mail, return receipt requested. The department shall conduct mediation at the site proposed to be disturbed within fifteen (15) days from the date requested, if practicable. At the mediation, the mediator will attempt to facilitate an agreement between the well operator and the surface owner. If an agreement is not forthcoming after mediation, the mediator shall, within five (5) days after mediation, issue a report to the director of the Division of Oil and Gas ~~Conservation~~ recommending that the director:
 - (a) Accept the proposal as submitted by the well operator; or
 - (b) Accept the proposal with modifications set forth by the mediator.
- (5) If an agreement between the well operator and the surface owners of all disturbed areas is not forthcoming after mediation, the mediator shall consider the following factors as to the reasonable use of the surface by the well operator in issuing a report to the director, which recommendations shall become permit conditions:
 - (a) The location of roads, gathering lines, and tank batteries;
 - (b) The timing of the operation, considering seasonal uses of the land by the surface owner and the need of the well operator to drill expeditiously;
 - (c) The impact on the other uses of the land by the surface owner, including the location of timber, houses, barns, ponds, crops, and other improvements;
 - (d) Whether the proposal includes a plan for timely, effective reclamation of all disturbed areas; and
 - (e) Any other information deemed appropriate by the mediator.
- (6) The director shall act upon the recommendation of the mediator within five (5) days of the receipt of the mediation report.

➔Section 1909. KRS 353.640 is amended to read as follows:

- (1) The operator shall provide a list to the department of all persons reasonably known to own an oil or gas interest in any tract, or portion thereof, proposed to be pooled in an application to the department for a pooling order. A pooling order shall be made only after the department provides notice to all persons reasonably known to

own an oil or gas interest in any tract, or a portion thereof, proposed to be pooled after a hearing has been held. In the event of the filing of an application for a pooling order under KRS 353.630(2) where unknown owners or nonlocatable owners exist, the operator shall cause to be published, at least twenty (20) days prior to the hearing on the application for the pooling order, one (1) notice in the newspaper of the largest circulation in each county in which any tract, or portion thereof, proposed to be pooled is located. The notice shall:

- (a) State that an application for a pooling order is being filed with the Division of Oil and Gas ~~Conservation~~ in the Department for Natural Resources;
 - (b) Describe any tract, or portion thereof, proposed to be pooled;
 - (c) In the case of an unknown owner, identify the name of the last known owner;
 - (d) In the case of a nonlocatable owner, identify the owner and the owner's last known address; and
 - (e) State that any party claiming an interest in any tract, or portion thereof, proposed to be pooled should contact the operator at the published address and provide a copy of the notification to the director of the Division of Oil and Gas ~~Conservation~~ in the Department for Natural Resources within twenty (20) days of the date of publication.
- (2) A pooling order shall authorize the drilling, deepening, or reopening, and the operation of a well for the production of oil or gas on the tracts or portions thereof pooled; shall designate the operator to drill and operate the well; shall prescribe the time and manner in which all owners of operating interests in the pooled tracts or portions thereof may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, deepening, or reopening, and the completing, operating, plugging, and abandoning the well shall be borne, and all production from the well shall be shared by all owners of operating interests in proportion to the net mineral acres in the pooled tracts owned or under lease to each owner; and shall make provision for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision, by all those who elect to participate therein.
- (3) A pooling order shall establish a procedure for the owner of an operating interest who does not decide to become a participating operator to elect to either:
- (a) Surrender, by means of sale or lease, the interest to a participating operator on a reasonable basis and for a reasonable consideration, which if not agreed upon shall be determined by the director of the Division of Oil and Gas ~~Conservation~~; or
 - (b) Share in the operation of the well as a nonparticipating operator on a carried basis after the proceeds allocable to his or her share equal two hundred percent (200%) of the share of the costs allocable to his or her interest.
- (4) An oil or gas owner whose identity and location remain unknown at the conclusion of a hearing concerning the entry of a pooling order for which public notice was given and whose interest is pooled pursuant to KRS 353.630(3) shall be deemed to have elected to lease the interest to the oil or gas operator, exclusive of one-eighth (1/8) of the production attributable to the unleased interest, and shall not be entitled to make the election established in subsection (3) of this section.
- (5) Except as provided in this subsection, an oil or gas owner who does not make an election under the pooling order within thirty (30) days of the entry of the order shall be deemed to have leased the oil or gas interest to the oil or gas well operator in the manner established in subsection (4) of this section. If the holder of an operating interest has obtained the interest by lease or other agreement granting the right to conduct operations to anyone other than the holder of the oil and gas estate, and if the owner of the operating interest does not make an election under the pooling order, the holder of the operating interest shall be deemed to have elected to share in the operation of the well as a nonparticipating operator on a carried basis after the proceeds allocable to his or her share equal two hundred percent (200%) of the share of the costs allocable to his or her interest.
- (6) A person whose interest is subject to an oil or gas lease or other agreement which grants to another the right to operate or conduct operations shall not own an operating interest for the purposes of subsection (3) of this section.
- (7) A certified copy of any pooling order entered under KRS 353.500 to 353.720 shall be entitled to be recorded in the office of the county clerk of the county or counties in which all or any portion of the pooled tract is located,

and the record of the order, from the time of lodging the order for record, shall be notice of the order to all persons.

➔Section 1910. KRS 353.650 is amended to read as follows:

- (1) If one (1) or more of the owners of any operating interest in any portion of the pooled tract shall drill, deepen or reopen and operate, or pay the costs of drilling, deepening or reopening and operating a well for the benefit of another owner of an opening interest, as provided in the pooling order, then such owner or owners shall be entitled to the proceeds from the share of production from the tracts or portions thereof pooled accruing to the interest of such other owner, exclusive of any royalty reserved in any lease or leases of such tracts or portions thereof or exclusive of one-eighth (1/8) of production attributable to all unleased tracts or portions thereof, until such proceeds equal the sums payable by or charged to the interest of the other owner plus a reasonable charge for interest on such sums.
- (2) If a dispute shall arise as to the costs of drilling, deepening or reopening, and operating a well, the director of the Division of Oil and Gas~~Conservation~~ shall determine and apportion the costs.

➔Section 1911. KRS 353.670 is amended to read as follows:

- (1) All rules, regulations and amendments promulgated under KRS 353.500 to 353.720 shall be promulgated by the department after notice and a hearing. At all hearings held to consider any rules, regulations or amendments thereto, any interested person shall be entitled to be heard.
- (2) All hearings held under this section shall be held at such time and place as is specified by the department, and according to rules and regulations promulgated under KRS 353.500 to 353.720. A written record of each hearing shall be kept, unless the keeping of a record shall be waived by all parties who participate therein. All interested persons shall be entitled to be heard at all hearings conducted under KRS 353.500 to 353.720.
- (3) The director of the Division of Oil and Gas~~Conservation~~, or his representatives, shall attend all hearings under this section conducted by the department.
- (4) All rules, regulations and orders promulgated or issued under KRS 353.500 to 353.720 shall be in writing, shall be entered in full and indexed in books to be kept by the department for that purpose, shall be public records open for inspection at all times during office hours, and shall be filed in accordance with the provisions of KRS Chapter 13A. A copy of any rule, regulation or order, certified by the commissioner of the Department for Natural Resources or the director of the Division of Oil and Gas~~Conservation~~, shall be received in evidence in all courts of this Commonwealth without any further authentication thereof.

➔Section 1912. KRS 353.739 is amended to read as follows:

- (1) Within ten (10) days of the drilling of the well, the well operator shall have performed, at its expense, a directional survey for any well drilled in an active mining area or an inclination survey for any well drilled through a workable coal bed that is not in an active mining area.
- (2) If, as a result of the as-drilled well location plat prepared pursuant to KRS 353.735 or the directional or inclination survey performed under subsection (1) of this section, it is determined that a well or any portion of a well has been drilled at either a surface location or a subsurface location at the base of the lowest workable coal bed that is not in compliance with the allowable distances established in KRS 353.737(2), as well as the spacing requirements of KRS 353.610, then the well operator shall promptly notify the Division of Oil and Gas~~Conservation~~ of the noncompliance. The division shall order the well operator to remediate the noncompliance to bring the well within the allowable distances that have been exceeded. If the division determines that the well's permit conditions cannot be satisfied by remediation or that the well operator is unable to satisfactorily meet the ordered remediation, then the division shall order the well to be plugged and abandoned.
- (3) No remediation shall be required under subsection (2) of this section if:
 - (a) A directional survey indicates that the well is not in compliance with the allowable distance established in KRS 353.737(2)(b), but the well is in compliance with the spacing requirements of KRS 353.610; and
 - (b) The well operator receives a waiver for the noncompliance from the coal operator or permittee.
- (4) No remediation shall be required under subsection (2) of this section if:

- (a) An inclination survey indicates that the well is not in compliance with the allowable distances established in KRS 353.737(2), but the well is in compliance with the spacing requirements of KRS 353.610; and
- (b) The well operator performs or causes to be performed a directional survey to identify the correct subsurface location of the wellbore.

➔Section 1913. KRS 353.743 is amended to read as follows:

A coal, oil, or gas operator that has a directional or inclination survey performed pursuant to KRS 353.737 and 353.739 shall provide a copy of the survey to the Division of Oil and Gas ~~Conservation~~. The division shall be responsible for reasonably maintaining and updating all information required by this chapter regarding oil and gas wells.

➔Section 1914. KRS 353.745 is amended to read as follows:

- (1) For gathering lines installed across terrain with a slope of greater than twenty degrees (20°), the well operator shall mark the location of the gathering lines with line markers at interval distances not to exceed two hundred fifty (250) feet.
- (2) The Division of Oil and Gas ~~Conservation~~ shall make available on its Web site maps or other relevant information showing the location of gathering lines, as filed by the well operator, within thirty (30) days of the information being filed.
- (3) Prior to the issuance of a permit to drill, the division shall determine whether the proposed well will intersect an active mining area by reviewing the pertinent mine maps filed with the Office of Mine Safety and Licensing. If the proposed well will intersect with an active mining area, the division shall:
 - (a) Determine whether the coal mine permittee has been properly notified pursuant to KRS 353.050; and
 - (b) Issue the permit to drill on the condition that a directional survey be performed pursuant to KRS 353.739(1).
- (4) In order to perform the duties under this section, the Division of Oil and Gas ~~Conservation~~ shall create and adequately staff the positions required to perform the duties. The division may charge an administrative fee not to exceed fifty dollars (\$50) per permit application to perform its duties under this section.

➔Section 1915. KRS 353.752 is amended to read as follows:

- (1) There is created and established within the Finance and Administration Cabinet a Kentucky Gas Pipeline Authority composed of the following nine (9) members:
 - (a) The secretary of the Finance and Administration Cabinet or his or her designee;
 - (b) The secretary of the Tourism, Arts and Heritage Cabinet or his or her designee;
 - (c) The secretary of the **Energy and Environment** ~~Environmental and Public Protection~~ Cabinet or his or her designee;
 - (d) A member designated by the Kentucky Oil and Gas Association;
 - (e) A member designated by the Kentucky Society of Professional Engineers who shall have experience in oil and gas pipeline construction;
 - (f) A member designated by the Kentucky Gas Association representing a natural gas distribution company with a minimum annual throughput of ten billion (10,000,000,000) cubic feet;
 - (g) A citizen member appointed by the Governor; and
 - (h) Two (2) nonvoting legislator members, one (1) appointed by the President of the Senate and one (1) by the Speaker of the House of Representatives.
- (2) Members described in paragraphs (d), (e), (f), and (g) of subsection (1) of this section shall begin their terms on August 1, 2005. The initial terms of the members described in paragraphs (d) and (e) shall be two (2) years. The initial terms of the members described in paragraphs (f) and (g) shall be three (3) years and four (4) years, respectively. All subsequent terms for those members shall be four (4) years.
- (3) Vacancies occurring during the term of any member shall be filled in the same manner as the original appointment.

- (4) The nine (9) members of the authority and their successors shall be a body corporate and politic, with perpetual succession, constituting a public corporation and a governmental agency and instrumentality of the Commonwealth. The authority shall have the power, in its corporate name, to contract and be contracted with, acquire and convey property, sue and be sued, have and use a corporate seal, and exercise all of the usual powers of corporations not inconsistent with the authority's specifically enumerated powers.
- (5) The members of the authority shall receive no compensation for their services, but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their duties under KRS 353.750 to 353.776.
- (6) The secretary of the Finance and Administration Cabinet shall serve as chair, and the members of the authority shall elect a vice chair from their membership and appoint a secretary.
- (7) The secretary of the Finance and Administration Cabinet shall designate an employee of his or her cabinet to serve as treasurer of the authority. The treasurer shall give bond to the authority for a faithful accounting for all funds coming into his or her custody, in the amount the authority may prescribe, drawn upon a surety company qualified to do business in the Commonwealth. The premium shall be paid by the Commonwealth.
- (8) The authority shall establish and maintain an office and keep accurate and complete records of the authority's actions and proceedings, which shall be available for public inspection in accordance with KRS 61.870 to 61.884. The Finance and Administration Cabinet shall provide the funds, staff, facilities, and materials required by the authority in the conduct of its duties and functions.

➔Section 1916. KRS 360.100 is amended to read as follows:

- (1) The following definitions apply for the purposes of this section:
 - (a) "High-cost home loan" means a loan other than an open-end credit plan or a reverse mortgage transaction in which:
 1. The principal amount of the loan is greater than fifteen thousand dollars (\$15,000) and does not exceed two hundred thousand dollars (\$200,000);
 2. The borrower is a natural person;
 3. The debt is incurred by the borrower primarily for personal, family, or household purposes;
 4. The loan is secured by a mortgage on residential real property or secured by collateral which has a mortgage lien interest in residential real property, which is or will be occupied by the borrower as the borrower's principal dwelling; and
 5. The terms of the loan exceed either or both of the following thresholds:
 - a. Without regard to whether the loan transaction is or may be a "residential mortgage transaction" as defined in 12 C.F.R. 226.2(a)(24), as amended from time to time, the loan at the time the loan is consummated is such that the loan is considered a "mortgage" under section 152 of the Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 15 U.S.C. sec. 1602(aa), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including 12 C.F.R. 226.32, as the same may be amended from time to time; or
 - b. The total points and fees payable by the borrower at or before the loan closing exceed the greater of three thousand dollars (\$3,000) or six percent (6%) of the total loan amount as shown as the amount financed on the final Truth-in-Lending Statement.
 - (b) "Lender" means any person who funds or negotiates the terms of a high-cost home loan or acts as a mortgage broker or lender, finance company, or retail installment seller with respect to a high-cost home loan. However, any person who purchases or is otherwise assigned a high-cost home loan shall be subject to an action for violation of this section only if the violation for which the action or proceeding is brought is apparent on the face of the disclosure or the underlying promissory note.
 - (c) "Material change" means any of the following:
 1. A change in the type of loan being offered, such as a fixed or variable rate loan or a loan with a balloon payment;

2. A change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made;
 3. An increase in the interest rate of more than one-quarter of one percent (0.25%), or an equivalent increase in the amount of discount points charged;
 4. A change regarding the requirement of escrow for taxes and insurance; and
 5. A change regarding the requirement or payment, or both, of private mortgage insurance.
- (d) 1. "Total points and fees payable by the consumer at or before the loan closing" means all amounts payable by a borrower at or before the closing of a home loan, excluding any interest or time-price differential due at closing on the loan proceeds and includes:
- a. All mortgage broker fees, including fees paid by the consumer directly to the broker, fees paid by the consumer to the creditor for delivery to the broker, and yield spread premiums paid by the creditor to the broker;
 - b. Any amount payable under an add-on or discount system of additional charges;
 - c. Service, transaction, activity, and carrying charges that exceed similar charges on a noncredit account;
 - d. Points, loan fees, assumption fees, finder's fees, and similar charges;
 - e. Appraisal, investigation, and credit report fees when service is provided by the lender or an affiliate and not by a third party;
 - f. Charges imposed on a creditor by another person for purchasing or accepting the borrower's obligation, if the borrower is required to pay the charges in cash, as an addition to the loan obligation, or as a deduction from loan proceeds;
 - g. Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage, whether or not the debt-cancellation coverage is insurance under applicable law; or
 - h. Closing agent fees charged by a third party, but only if the lender requires the particular services for which the borrower is charged and the lender requires the imposition of the charge or the lender retains a portion of the charge.
2. "Total points and fees payable by the consumer at or before the loan closing" does not include real estate related fees paid to third parties if the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor. Real estate related fees include:
- a. Fees for title examination, abstract of title, title insurance, property survey, and similar purposes;
 - b. Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents;
 - c. Notary and credit report fees;
 - d. Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest infestation and flood hazard determinations; and
 - e. Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.
- (2) A high-cost home loan shall be subject to the following limitations:
- (a) 1. No lender may make, provide, or arrange a high-cost home loan with a prepayment penalty unless the lender offers the borrower a loan without a prepayment penalty, the offer is in writing, and the borrower initials the offer to indicate that the borrower has declined the offer. The lender shall disclose the discount in rate received in consideration for a high-cost home loan with the prepayment penalty; and

2. If a borrower declines an offer required in paragraph (a)1. of this subsection, the lender may include a prepayment penalty schedule. No prepayment penalty shall be assessed against the borrower following the third anniversary date of the mortgage or sixty (60) days prior to the date of the first interest rate reset, whichever is less. No prepayment penalty shall exceed three percent (3%) for the first year, two percent (2%) for the second year, and one percent (1%) for the third year of the outstanding balance of the loan; but in no event shall a prepayment penalty be assessed against a borrower refinancing with the mortgage loan company that funded the mortgage;
- (b) A high-cost home loan may not contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule;
 - (c) A high-cost home loan may not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower;
 - (d) A high-cost home loan may not contain a payment schedule with regular periodic payments that cause the principal balance to increase;
 - (e) A high-cost home loan may not contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness;
 - (f) A high-cost home loan may not include terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;
 - (g) A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan, unless the fees are less than one-half (1/2) of any fees that would be charged for a refinance or unless the borrower is in default and it is in the borrower's best interest;
 - (h) A lender may not make a high-cost home loan unless the borrower has been provided the following notice or a substantially similar notice, in writing, not later than the time that notice provided by 12 C.F.R. 226.31(c), as amended from time to time, is required:

NOTICE TO BORROWER

IF YOU OBTAIN THIS LOAN, THE LENDER WILL HAVE A MORTGAGE ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN.

MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH LENDER OR BROKER YOU SELECT. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES.

YOU SHOULD ALSO CONSIDER CONSULTING A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES, AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. YOU SHOULD CONTACT THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR A LIST OF CREDIT COUNSELORS AVAILABLE IN YOUR AREA.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THESE DISCLOSURES OR HAVE SIGNED A LOAN APPLICATION.

REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL LENDERS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR LENDER ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS;

- (i) A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one (1) or more of the borrowers, when considered individually or collectively, will be able to make the scheduled payments to repay the loan based upon a consideration of their current and expected income, current obligations, current employment status, and other financial resources, other than the borrower's equity in the dwelling which secures repayment of the loan. A borrower shall be presumed to be able to make the scheduled payments to repay the loan if, at the time the loan is consummated:
 - 1. The borrower's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the borrower's monthly gross income as verified by the credit application, the borrower's financial statement, a credit report, financial information provided to the lender by or on behalf of the borrower, or any other reasonable means;
 - 2. The loan has been approved by an automated underwriting service offered by FNMA or Freddie MAC;
 - 3. The lender verifies and documents that the borrower has liquid assets equal to fifty percent (50%) of the principal loan amount; or
 - 4. The borrower has sufficient residual income as defined in the guidelines established in 38 C.F.R. 36.4337(e) and United States *Department of Veterans Affairs* ~~Administration~~ form 26-6393;
- (j) If the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder, the lender may not directly or indirectly finance:
 - 1. Any prepayment fees or penalties payable by the borrower; or
 - 2. Points and fees, excluding those provided for in 12 C.F.R. 226.4(c)(7), which in the aggregate are in excess of four percent (4%) of the total amount financed;
- (k) A lender or mortgage loan broker may not, within one (1) year of the consummation of a high-cost home loan, charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan on which points were charged. A lender may not, at any time, charge a borrower points and fees in addition to those allowed by 12 C.F.R. 226.4(c)(7) if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan, on which points were charged, held by the same lender as noteholder. However, points and fees in accordance with this section may be charged on any proceeds of a high-cost home loan which are in excess of the amount refinanced on the existing high-cost home loan;
- (l) A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than by an instrument payable to the borrower or jointly to the borrower and the contractor, or at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement;
- (m) A lender shall not refinance, replace, or consolidate a zero interest rate or low interest rate loan made by a governmental or nonprofit lender with a high-cost home loan. For purposes of this paragraph, a low interest rate loan is defined as a loan that carries a current interest rate that is two (2) percentage points or more below the current yield on United States Treasury securities with a comparable maturity;
- (n) A lender shall not finance single premium credit life, credit accident, credit health, credit disability, or credit loss of income insurance in connection with a high-cost home loan;
- (o) A lender shall not make a high-cost home loan unless the lender has made available to the borrower a videotape, or other similar audio-video media format such as DVD or CD, approved by the *Department* ~~Office~~ of Financial Institutions, which explains the borrower's rights and responsibilities

with regard to this section or high-cost home loans. A lender shall have available for viewing at least one (1) copy of the video in the principal office and each branch office of the lender;

- (p) A lender shall not make a high-cost home loan subject to a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers. Arbitration clauses that comply with the standards set forth in the Statement of Principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on June 24, 2003, shall be presumed not to violate this subsection;
- (q) A lender shall not charge a late payment fee on a high-cost home loan except in accordance with the following:
 1. The late payment fee may not be in excess of five percent (5%) of the amount of the payment past due or ten dollars (\$10), whichever is greater;
 2. The loan documents must specifically authorize the late payment fee;
 3. The late payment fee may only be assessed for a payment past due fifteen (15) days or more; and
 4. The late payment fee may only be charged once with respect to a single late payment;
- (r) A lender may not charge a borrower a fee for the first request of each calendar year for a written payoff calculation. Thereafter, for each subsequent request in a calendar year, the lender may charge a reasonable fee not to exceed in excess of ten dollars (\$10) or actual costs, whichever is greater, per request for a written payoff calculation on a high-cost home loan by a borrower in a calendar year;
- (s) A lender shall not initiate a foreclosure or other judicial process to terminate a borrower's interest in residential real property subject to a high-cost home loan without first providing the borrower, at least thirty (30) days prior to the initiation of any process, written notice of default and of the borrower's right to cure. The notice shall include a statement of the amount needed to be paid by the borrower in order to cure the default and the date by which the payment is due to cure the default. If the amount needed to be paid will change during the thirty (30) day notice period, the notice shall provide information sufficient to enable a calculation of the daily change;
- (t) A lender shall not recommend or encourage default on an existing loan or other debt in connection with the closing of a high-cost home loan that refinances all or a portion of the existing loan or debt;
- (u) A lender shall not make a high-cost home loan that does not require an escrow account for taxes and insurance;
- (v) A lender shall not process the application to make a high-cost home loan if the proceeds shall be used, in whole or in part, to repay the principal of an existing loan secured by the borrower's principal dwelling that is not a high-cost home loan, without first requiring the borrower to obtain housing counseling by a HUD-approved counselor;
- (w) A lender shall not make a high-cost home loan that allows the borrower, for any part or all of the term of the loan, to make payments that are applied only to interest and not to principal;
- (x) A lender shall provide timely notice to the borrower of any material change in the terms of a high-cost home loan if the change is made after an application has been taken but before the closing of the loan. Notice shall be deemed timely if given not later than three (3) days after the lender has learned of the change or twenty-four (24) hours before the high-cost home loan is closed, whichever is earlier. If the lender discloses a material change more than three (3) days after learning of the change but still twenty-four (24) hours before the high-cost home loan is closed, it will not be liable for penalties or forfeitures if the lender cures in time for the borrower to avoid any damage;
- (y) A lender shall not make a high-cost home loan without verifying the borrower's income and financial resources through tax returns, payroll receipts, bank records, or other similarly reliable documents, whether provided directly by the borrower or through a third party with the borrower's permission; and
- (z) A lender shall not make a high-cost home loan without verifying the borrower's reasonable ability to pay all scheduled payments of principal, interest, real estate taxes, homeowner's insurance, and mortgage insurance premiums, as applicable. For loans in which the interest rate may vary, the reasonable ability to repay shall be determined based upon the following:

1. In the case of a high-cost home loan in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement; or
 2. In the case of a high-cost home loan in which the rate may vary at any time during the term of the loan for any reason other than in accordance with an index, the interest charged on the loan at the maximum rate that may be charged during the term of the loan.
- (3) Except as provided in paragraph (e) of subsection (2) of this section, the making of a high-cost home loan which violates any provisions of subsection (2) of this section is usurious, subject to the penalties of this chapter, and unlawful as an unfair and deceptive act or practice in or affecting commerce in violation of the provisions of KRS 367.170. The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by:
- (a) The structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this section when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan; or
 - (b) Dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section; or
 - (c) Any other such subterfuge.

The Attorney General, the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Financial Institutions, or any party to a high-cost home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this chapter or KRS Chapter 367, but not both.

- (4) A lender of a high-cost home loan who, when acting in good faith, fails to comply with subsection (2) of this section, will not be deemed to have violated this section if the lender establishes that either:
- (a) Within thirty (30) days of the loan closing the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made, at the choice of the borrower, to the loan to either:
 1. Make the high-cost home loan satisfy the requirements of subsection (2) of this section; or
 2. Change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or
 - (b) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, and within sixty (60) days after the discovery of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, make the high-cost home loan satisfy the requirements of subsection (2) of this section or change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors.
 - (c) For purposes of this subsection, "appropriate restitution" means the reimbursement by the lender of any points, fees, interest, or other charges made by the lender and received from the borrower necessary to put the borrower in the same position as he or she would have been had the loan, as adjusted in accordance with paragraphs (a) and (b) of this subsection, been originally made in accordance therewith.
- (5) For purposes of this section, any extension of credit shall be deemed to have been made in the Commonwealth of Kentucky, and therefore subject to the provisions of this section, if the lender offers or agrees in Kentucky to lend money to a borrower, who is a resident of Kentucky, on real property located within the Commonwealth of Kentucky, or if such borrower accepts or makes the offer in Kentucky to borrow, regardless of the situs of the contract as specified therein. Any oral or written solicitation or communication to lend originating outside of Kentucky, but forwarded to and received in Kentucky by a borrower who is a resident of Kentucky, shall be deemed to be an offer or agreement to lend in Kentucky and, therefore, subject to this section. Any oral or written solicitation or communication to borrow originating within Kentucky, from a borrower who is a resident of Kentucky, but forwarded to and received by a lender outside of Kentucky, shall be deemed to be an

acceptance or offer to borrow in Kentucky. Any oral or written offer, acceptance, solicitation, or communication to lend or borrow, made in Kentucky to, or received in Kentucky from, a borrower who is not a resident of Kentucky, shall be subject to the provisions of this section, applicable federal law, law of the situs of the contract, or law of the residence of the borrower, as the parties may elect. The provisions of this section shall be severable and if any phrase, clause, sentence, or provision is declared to be invalid, the validity of the remainder of this section shall not be affected thereby.

➔Section 1917. KRS 367.160 is amended to read as follows:

- (1) All departments, agencies, officers, and employees of the Commonwealth shall fully cooperate with the Attorney General in carrying out the functions of KRS 367.120 to 367.300.
- (2) The persons designated by the Attorney General as utility consumer intervenors shall have the same access to material evidence and information of the Public Service Commission relating to any case before it as other parties to the case.
- (3) The persons designated by the Attorney General as health insurance consumer intervenors shall have the same access to material evidence and information of the *commissioner*~~{executive—director}~~ of the *Department*~~{Office}~~ of Insurance relating to any health insurance rate hearings before it as other parties to the hearing.

➔Section 1918. KRS 367.934 is amended to read as follows:

- (1) All payments of money made to any person, partnership, association, or corporation upon any agreement or contract, or any series or combination of agreements or contracts, but not including the furnishing of cemetery lots or mausoleums, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by the death of the person whose body is to be disposed of, are held to be trust funds. The person, partnership, association, or corporation receiving the payments is declared to be the agent thereof, and shall deposit all payments in a trust account with a bank or trust company or invest said payments in a savings and loan association or federally chartered credit union. The trustee shall be the financial institution holding said funds. All of the interest, dividends, increases, or accretions of whatever nature earned by the funds deposited in a trust account shall remain with the principal of such account and become a part thereof, subject to all of the regulations concerning the principal of said fund herein contained. The agent shall have the authority at any time to transfer or redesignate the trustee of said funds in his or her discretion upon notification to the Attorney General. In case of any transfer, the former trustee shall transfer funds directly to and payable to the newly designated trustee or its representative.
- (2) All payments made to the agent under the agreement, contract, or plan are and shall remain trust funds with the financial institution until the death of the person for whose service the funds were paid and until the delivery of all merchandise and full performance of all services called for by the agreement, contract, or plan, except where payment is made pursuant to a request for refund.
- (3) The funds shall not be paid by the financial institution until a certified statement is furnished to the financial institution by the agent setting forth that all of the terms and conditions of the agreement have been fully performed by the person, association, partnership, firm, or corporation. Any balance remaining in the fund after payment for the merchandise and services as set forth in the agreement, contract, or plan shall be paid to the estate of the beneficiary of the agreement, contract, or plan.
- (4) The funds shall not be paid by the financial institution until the agent has proven the death of the person for whose service the funds were paid by furnishing the financial institution with a verified or certified copy of a record verifying the death, issued by the state registrar of the Vital Statistics Branch or its successor agency as authorized by KRS Chapter 213, or a provisional certificate of death as described in KRS 213.076.
- (5) No provision of KRS 367.932 to 367.974 shall be construed to apply to contracts for funeral service or merchandise sold as preneed and burial insurance policies which are regulated by the *Department*~~{Office}~~ of Insurance of this state.

➔Section 1919. KRS 386.510 is amended to read as follows:

As used in KRS 386.510 to 386.590, the following terms shall be construed to have the meaning set forth by this section, unless a contrary meaning clearly appears from the context:

- (1) The term "trust institution" means any of the following corporations having trust powers and authorized to act in a fiduciary capacity under the laws of Kentucky: Any state bank or trust company incorporated under the laws of Kentucky and any national banking association incorporated under the laws of the United States and having its principal office in Kentucky.
- (2) The term "investment adviser" of a fiduciary investment company means (a) any trust institution which, pursuant to contract with a fiduciary investment company possessing the qualifications provided by KRS 386.510 to 386.590, regularly furnishes advice to such investment company with respect to the desirability of investing in, purchasing or selling securities or other property or is empowered to determine what securities or other property shall be purchased or sold by such investment company, and (b) any person other than a trust institution, who, pursuant to contract with such trust institution, regularly performs substantially all of the duties undertaken by such trust institution.
- (3) The term "fiduciary investment company" means a corporation which is an investment company as defined by the Act of Congress entitled "Investment Company Act of 1940" approved August 22, 1940, as amended, and is incorporated in accordance with the "Kentucky Business Corporation Act" as to constitute a medium for the investment of funds held by trust institutions and foreign trust institutions in a fiduciary capacity, either alone or with one (1) or more cofiduciaries.
- (4) The term "supervisory agency" means (a) the comptroller of the currency of the United States with respect to any fiduciary investment company having a national banking association as an investment adviser, and (b) the ~~commissioner~~~~executive director~~ of financial institutions of the Commonwealth of Kentucky with respect to any fiduciary investment company having a state bank as an investment adviser. The term shall mean the ~~commissioner~~~~executive director~~ of financial institutions of the Commonwealth of Kentucky with respect to any fiduciary investment company which does not have an investment adviser.
- (5) The term "foreign trust institution" means any state bank or trust company organized under the laws of any state other than Kentucky or any national banking association incorporated under the laws of the United States and having its principal office in some state other than Kentucky, which has trust powers and is authorized to act in a fiduciary capacity under the laws under which it was incorporated.

➔Section 1920. KRS 386.570 is amended to read as follows:

The ~~commissioner~~~~executive director~~ of financial institutions shall have authority to adopt and issue reasonable and uniform rules and regulations to govern the conduct and management of all fiduciary investment companies having investment advisers other than national banks. The ~~commissioner~~~~executive director~~ of financial institutions may, whenever he may deem it necessary or expedient, examine every fiduciary investment company contemplated by KRS 386.510 to 386.590 having an investment adviser which is not a national bank. In every such examination, the ~~commissioner~~~~executive director~~ of financial institutions shall make inquiry as to its financial condition, the policies of its management, whether it is complying with the laws of Kentucky, and such other matters as the ~~commissioner~~~~executive director~~ of financial institutions may reasonably prescribe. In the enforcement of KRS 386.510 to 386.590 and the restrictions and limitations imposed by their articles of incorporation and bylaws, the ~~commissioner~~~~executive director~~ of financial institutions shall have the same powers and authority with respect to fiduciary investment companies having investment advisers other than a national bank as are conferred upon him by the laws of this state with respect to state banks and trust companies to the same extent and in the same manner as if fiduciary investment companies were expressly named in Subtitle 3 of Chapter 286 of the Kentucky Revised Statutes.

➔Section 1921. KRS 393.082 is amended to read as follows:

- (1) Unclaimed sums delivered to the Kentucky State Treasurer pursuant to KRS 393.080(3) shall be placed in a special expendable trust fund established by the Kentucky Workers' Compensation Funding Commission. The Kentucky Workers' Compensation Funding Commission shall establish a separate trust account with respect to each final determination or order providing for a refund that the Attorney General determines to have a reasonable relationship to the workers' compensation liability of a bankrupt employer.
- (2) The ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims shall be the administrator of the resulting trust fund established pursuant to this section. The ~~commissioner~~~~executive director~~ or his or her designee shall be authorized to determine the value of all workers' compensation claims against the bankrupt employer and to prepare a comprehensive distribution plan. Eligible claimants may elect to participate in a comprehensive distribution plan in exchange for the release of all related claims against the Commonwealth and all of its cabinets, departments, offices, bureaus, agencies, officers, agents, and employees, with the exception of the special fund in the ~~Department of~~ Labor *Cabinet*. A claimant shall agree as part of a

release under this section not to file any future motions to reopen the named workers' compensation claim or claims, and not to file new claims with respect to the same injury or occupational disease.

- (3) A comprehensive distribution plan for unclaimed utility refunds placed in a trust account pursuant to this section shall consist of the full payment of workers' compensation income benefits for eligible claimants until the fund is exhausted, subject to the exceptions noted in KRS 393.080 and this section, and may include lump-sum settlements in addition to biweekly payment plans. An initial distribution shall be made to eligible claimants after the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workers' Claims, or the **commissioner's**~~{executive director's}~~ designee, has made an initial determination of the number of eligible claimants, the amount of income benefits due, and the amount to be retained as a reserve for pending claims. The initial distribution shall include payment of all past due income benefits, without interest, for eligible claimants.
- (4) Neither the special fund nor the uninsured employers' fund shall be considered to be claimants for the purposes of this section. Medical and related benefits shall not be considered in the valuation of the claims unless the amount available in the trust fund clearly exceeds the estimated value of income benefits for all claims. If a workers' compensation surety bond, letter of credit, or other form of security for the payment of the workers' compensation liabilities of a bankrupt employer has been collected by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workers' Claims or the Workers' Compensation Board for distribution to claimants in a manner to be determined by court order, it may be assumed in the valuation of the claims in a comprehensive distribution plan that the security will be distributed by the court on a pro rata basis and an appropriate deduction may be taken.
- (5) In preparing the valuation of claims for inclusion in a comprehensive distribution plan, the **commissioner**~~{executive director}~~ or the **commissioner's**~~{executive director's}~~ designee shall deduct special fund payments. Settlement of a workers' compensation claim as part of a comprehensive distribution plan under this section shall not accelerate the date on which the special fund's liability becomes due.
- (6) If the bankrupt employer ceased business operations at least three (3) years prior to establishment of a trust account pursuant to this section, only claimants who file workers' compensation claims within sixty (60) days of the establishment of the trust account or before shall be eligible to receive payments from the trust fund.
- (7) All claimants shall cooperate with information requests from the **Department**~~{Office}~~ of Workers' Claims concerning prior payments of workers' compensation benefits. The **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workers' Claims or his or her designee may subpoena witnesses, including present or past managers and officers of the bankrupt employer, and may conduct evidentiary hearings under oath relating to the past and present workers' compensation liabilities of the bankrupt employer or information relevant to unpaid workers' compensation benefits. Administrative subpoenas issued under the authority of the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workers' Claims for this purpose may be enforced in the Franklin Circuit Court.
- (8) The Attorney General shall provide representation of the comprehensive distribution plan as a named defendant in the event the establishment of the trust fund is challenged.
- (9) The provisions of KRS 393.080(3) or this section shall not be construed to constitute an admission of the validity of any workers' compensation claims, nor shall these provisions be interpreted in a manner that would transfer or create liability on behalf of the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workers' Claims, any agency, or employee, beyond that expressly set forth in a comprehensive distribution plan.
- (10) The special fund shall issue trust fund checks in the amounts and to the claimants or claimants' representatives as directed by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workers' Claims.
- (11) The personnel and other costs of administering a trust fund established pursuant to this section shall be paid out of the investment income of the trust fund.
- (12) Attorney fees shall be subject to the limitations and maximum amounts for the payment of attorney's fees established by KRS 342.320, as well as the approval of the **commissioner**~~{executive director}~~ or his or her designee.
- (13) If a workers' compensation claimant elects not to participate in a comprehensive distribution plan proposed by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workers' Claims or the

commissioner's~~{executive director's}~~ designee, that claimant shall not be entitled to any portion of the utility refund for the payment of the workers' compensation benefits. A claimant shall have sixty (60) days following issuance of a comprehensive distribution plan in which to make an election to participate or not.

➔Section 1922. KRS 393.280 is amended to read as follows:

- (1) The department, through its employees or authorized representatives, may at reasonable times and upon reasonable notice examine all relevant records of any person except any banking organization or financial organization where there is reason to believe that there has been or is a failure to report property that should be reported under this chapter during the preceding reporting period. Records shall be considered relevant to the examination of the preceding reporting period if they document the period necessary, for that type of property, to establish presumed abandonment. The department may avail itself of enforcement technologies and programs designed to increase compliance among businesses with Kentucky's unclaimed property law.
- (2) The *Department*~~{Office}~~ of Financial Institutions may at reasonable times and upon reasonable notice examine all relevant records of any banking organization or financial organization if there is reason to believe that there has been or is a failure to report property that should be reported under this chapter during the preceding reporting period.
- (3) Documents and working papers obtained or compiled by the department or the *Department*~~{Office}~~ of Financial Institutions in the course of conducting an examination are confidential and are not open records under KRS 61.870 to 61.884.
- (4) The State Treasurer may promulgate administrative regulations pursuant to KRS Chapter 13A and any reasonable and necessary rules for the enforcement of this chapter, and govern hearings held before him. He may delegate in writing to any employee of the department authority to perform any of the duties imposed on him by this chapter, except the promulgation of rules.

➔Section 1923. KRS 393.300 is amended to read as follows:

No person shall institute proceedings to escheat real property the title to which was acquired by any lending corporation in satisfaction of debts previously contracted in the course of its business, or that it purchases under a judgment for any such debt in its favor, if such lending corporation is under the supervision of the *Department*~~{Office}~~ of Financial Institutions of this state, comptroller of currency of the United States or any other duly constituted supervising banking authority, state or Federal, without first obtaining the consent of the supervising authority having supervision over that corporation.

➔Section 1924. KRS 411.493 is amended to read as follows:

- (1) Notwithstanding any other provision of law, except as provided in subsection (2) of this section, a person is not liable for removal costs or damages which result from actions taken, or not taken, in the course of rendering care, assistance, or advice consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or by the secretary of the *Energy and Environment*~~{Environmental and Public Protection}~~ Cabinet, or his designee.
- (2) Subsection (1) of this section does not apply:
 - (a) To a responsible party;
 - (b) To any person who is grossly negligent or who engages in willful misconduct; or
 - (c) With respect to personal injury or wrongful death.
- (3) A responsible party is liable for any removal costs and damages that another person is relieved of under subsection (1) of this section.
- (4) Nothing in this section affects the liability of a responsible party for oil spill response under Kentucky law.

➔Section 1925. KRS 438.310 is amended to read as follows:

- (1) No person shall sell or cause to be sold any tobacco product at retail to any person under the age of eighteen (18), or solicit any person under the age of eighteen (18) to purchase any tobacco product at retail.
- (2) Any person who sells tobacco products at retail shall cause to be posted in a conspicuous place in his establishment a notice stating that it is illegal to sell tobacco products to persons under age eighteen (18).

- (3) Any person selling tobacco products shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective buyer or recipient is under the age of eighteen (18).
- (4) A person who violates subsection (1) or (2) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for a first violation and a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for any subsequent violation. The fine shall be administered by the *Department*~~{Office}~~ of Alcoholic Beverage Control using a civil enforcement procedure.

➔Section 1926. KRS 438.311 is amended to read as follows:

- (1) Except for the provisions of KRS 438.330, it shall be unlawful for a person who has not attained the age of eighteen (18) years to purchase or accept receipt of or to attempt to purchase or accept receipt of a tobacco product, or to present or offer to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product. It shall not be unlawful for such a person to accept receipt of a tobacco product from a family member, except if the child has been committed to the custody of the state under KRS Chapters 600 to 645, or from an employer when required in the performance of the person's duties.
- (2) Violation of this section shall be punishable by a fine of fifty dollars (\$50) and twenty (20) hours of community service work for a first offense within a one (1) year period, and a fine of two hundred dollars (\$200) and forty (40) hours of community service work for a second or subsequent offense within a one (1) year period.
- (3) This offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.
- (4) All peace officers with general law enforcement authority and employees of the *Department*~~{Office}~~ of Alcoholic Beverage Control may issue a uniform citation, but not make an arrest or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to the section, the court may compel the attendance of the defendant in the manner specified by law.

➔Section 1927. KRS 438.313 is amended to read as follows:

- (1) No wholesaler, retailer, or manufacturer of cigarettes or tobacco products may distribute cigarettes or tobacco products, including samples thereof, free of charge or otherwise, to any person under the age of eighteen (18).
- (2) Any person who distributes cigarettes or tobacco products, including samples thereof, free of charge or otherwise shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of eighteen (18).
- (3) Any person who violates the provisions of this section shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500) for each offense. The fine shall be administered by the *Department*~~{Office}~~ of Alcoholic Beverage Control using a civil enforcement procedure for persons eighteen (18) years of age or older. For persons under the age of eighteen (18) years, the offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.
- (4) All peace officers with general law enforcement authority and employees of the *Department*~~{Office}~~ of Alcoholic Beverage Control may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.

➔Section 1928. KRS 438.315 is amended to read as follows:

- (1) The sale of tobacco products dispensed through a vending machine is prohibited to any person under the age of eighteen (18) years.
- (2) The purchase of tobacco products dispensed through a vending machine is prohibited to any person under the age of eighteen (18) years.
- (3) Except for vending machines located in factories or vending machines located in bars or taverns to which minors are not permitted access, beginning one (1) year after July 15, 1994, any vending machine from which tobacco products are dispensed shall be located in the line of sight of the cashier for the retail establishment.

- (4) Any owner of a retail establishment violating this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the **Department**~~{Office}~~ of Alcoholic Beverage Control using a civil enforcement procedure for persons eighteen (18) years of age or older. For persons under the age of eighteen (18) years, the offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.
- (5) All peace officers with general law enforcement authority and employees of the **Department**~~{Office}~~ of Alcoholic Beverage Control may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.

➔Section 1929. KRS 438.317 is amended to read as follows:

- (1) No person shall sell or cause to be sold at retail cigarettes packaged in units of fewer than twenty (20) cigarettes.
- (2) No resident wholesaler, nonresident wholesaler, or subjobber shall make available to a retail establishment cigarettes packaged for retail sale in units of less than twenty (20) cigarettes.
- (3) Any person violating subsection (1) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Any person violating subsection (2) of this section shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500). These penalties shall be enforced by the **Department**~~{Office}~~ of Alcoholic Beverage Control through civil enforcement procedures.

➔Section 1930. KRS 438.320 is amended to read as follows:

Each resident wholesaler, nonresident wholesaler, or subjobber making tobacco products available to a retail establishment for sale or distribution shall report the name and address of the owner of the retail establishment to the **Department**~~{Office}~~ of Alcoholic Beverage Control in a manner specified by administrative regulations promulgated pursuant to KRS Chapter 13A.

➔Section 1931. KRS 438.325 is amended to read as follows:

- (1) Each owner of a retail establishment selling or distributing tobacco products shall notify each individual employed in the retail establishment as a retail sales clerk that the sale of tobacco products to any person under the age of eighteen (18) years and the purchase of tobacco products by any person under the age of eighteen (18) years are prohibited.
- (2) Each owner of a retail establishment selling or distributing tobacco products shall notify each individual employed in the retail establishment as a retail sales clerk that proof of age is required from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of eighteen (18).
- (3) The notice to employees that is required in subsection (1) of this section shall be provided before the person commences work as a retail sales clerk, or, in the case of a person employed as a retail sales clerk on July 15, 1994, within thirty (30) days of that date. The employee shall signify receipt of the notice required by this section by signing a form that states as follows:

"I understand that under the law of the Commonwealth of Kentucky it is illegal to sell or distribute tobacco products to persons under the age of eighteen (18) years and that it is illegal for persons under the age of eighteen (18) years to purchase tobacco products."

- (4) The owner of the retail establishment shall maintain the signed notice that is required pursuant to subsection (3) of this section in a place and in a manner so as to be easily accessible to any employee of the **Department**~~{Office}~~ of Alcoholic Beverage Control or the Department of Agriculture conducting an inspection of the retail establishment for the purpose of monitoring compliance in limiting the sale or distribution of tobacco products to persons under the age of eighteen (18) as provided in KRS 438.305 to 438.340.
- (5) Any owner of the retail establishment violating subsections (1) to (4) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the **Department**~~{Office}~~ of Alcoholic Beverage Control in a civil enforcement procedure.

➔Section 1932. KRS 438.330 is amended to read as follows:

- (1) The ~~*Department*~~~~{Office}~~ of Alcoholic Beverage Control and the Department of Agriculture shall carry out annually-conducted random, unannounced inspections of retail establishments where tobacco products are sold or distributed for the purpose of enforcing the provisions of KRS 438.305 to 438.340. The inspections shall be conducted to the extent necessary to assure that the Commonwealth remains in compliance with Public Law 102-321 and applicable federal regulations. The ~~*Department of Alcoholic Beverage Control*~~~~{Office}~~ and the ~~*Department of Agriculture*~~~~{Department}~~ shall also ensure that targeted inspections are conducted at those retail establishments where, and at those times when, persons under the age of eighteen (18) years are most likely to purchase tobacco products. Persons under the age of eighteen (18) years may be used to test compliance with the provisions of KRS 438.305 to 438.340 only if the testing is conducted under the direct supervision of the ~~*Department*~~~~{Office}~~ of Alcoholic Beverage Control, sheriff, or chief of police, or their employees, and written parental consent has been obtained. The ~~*Department*~~~~{Office}~~ of Alcoholic Beverage Control shall prepare annually, for submission by the Governor to the Secretary of the United States Department of Health and Human Services, the report required by Section 1926 of Subpart 1 of Part B of Title XIX of the Federal Public Health Service Act.
- (2) The ~~*Department*~~~~{Office}~~ of Alcoholic Beverage Control shall develop and implement the survey sampling methodologies to carry out the inspections as described in this section.

➔Section 1933. KRS 438.337 is amended to read as follows:

- (1) Except for violations of the provisions of KRS 438.311, 438.313, and 438.315 by a juvenile, which shall be under the jurisdiction of the juvenile session of the District Court, the ~~*Department*~~~~{Office}~~ of Alcoholic Beverage Control shall carry out the enforcement provisions of KRS 438.305 to 438.340.
- (2) The ~~*Department*~~~~{Office}~~ of Alcoholic Beverage Control shall be entitled to the revenue produced by one-twentieth of one cent (\$0.0005) of the three-cent (\$0.03) per pack revenue collected by the Finance and Administration Cabinet from the state excise tax on the sale of cigarettes as imposed by KRS 138.140 to be deposited in a trust and agency account created in the State Treasury, and to keep fifty percent (50%) of any fines collected under KRS 438.305 to 438.340 to offset the costs of enforcement of KRS 438.305 to 438.340.
- (3) The ~~*Department*~~~~{Office}~~ of Alcoholic Beverage Control shall be responsible for maintaining statistics for compilation of required reports to be submitted to the United States Department of Health and Human Services.
- (4) The ~~*Department*~~~~{Office}~~ of Alcoholic Beverage Control shall devise a plan and time frame for enforcement to determine by random inspection if the percentage of retailers or distributors making illegal sales to minors does or does not exceed federal guidelines preventing tobacco sales to minors.

➔Section 1934. KRS 438.340 is amended to read as follows:

The ~~*Department*~~~~{Office}~~ of Alcoholic Beverage Control and the Department of Agriculture are authorized to promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to implement and carry out the provisions of KRS 438.305 to 438.340.

➔Section 1935. KRS 528.110 is amended to read as follows:

- (1) Any person who, either for himself or as agent or employee of another, wagers money or anything of value on a horse race run or about to be run or advertised, posted or reported as being run at any race track in or out of this state, or who engages in the occupation of receiving, making, transmitting or negotiating, either in person or by messenger, telephone or telegraph, wagers on horse races run or about to be run or advertised, posted or reported as being run or about to be run at any race track in or out of the state, shall, except in the case of wagers made within the enclosure of a race track licensed by the Kentucky Horse Racing ~~*Commission*~~~~{Authority}~~ during an authorized race meeting at that track, or an enclosure during regular meetings in which running, trotting or pacing races are being conducted by associations regularly organized for that purpose, be guilty of a Class A misdemeanor.
- (2) In any prosecution under subsection (1) of this section, the state need not prove that the horse race upon which the wager was placed was actually run. Proof that the wager was made upon what purported to be or what was advertised, reported or understood to be a horse race shall be sufficient to establish a prima facie case for the state.

➔Section 1936. The following KRS sections are repealed:

- 56.790 Energy Policy Advisory Council -- Membership -- Meetings.
- 152.725 Reports of findings and legislative recommendations.
- 216A.045 Board placed in Division of Occupations and Professions.
- 224.10-025 Office of Inspector General -- Executive Director -- Responsibilities -- Secretary's power to organize office.
- 224.10-103 Powers and duties of Environmental and Public Protection Cabinet.
- 342.495 Kentucky Employee's Insurance Association created -- Attached to Department of Labor for administrative purposes.
- 342.500 Board of directors -- Selection -- Term.
- 342.505 Board officers elected annually.
- 342.510 Quorum of board -- Vacancies.
- 342.515 Representation of subscribers.
- 342.520 Subscriptions required to issue first policy.
- 342.525 Procedure required before first policy issued.
- 342.530 Board to group subscribers -- Amount of premiums.
- 342.535 Association to fix contingent liability -- Limit.
- 342.540 Assessments.
- 342.545 Dividends -- All funds available for contingent liability.
- 342.550 Executive director of insurance to approve premiums, etc.
- 342.555 Board to make safety regulations -- Inspections -- Review of regulation.

➔Section 1937. Notwithstanding KRS 12.028, the General Assembly confirms Executive Order 2009-535, dated June 12, 2009, relating to the abolition of the Environmental and Public Protection Cabinet and the establishment of the Public Protection Cabinet; Executive Order 2009-537, dated June 12, 2009, relating to the establishment of the Labor Cabinet; Executive Order 2009-538, dated June 12, 2009, relating to the establishment of the Energy and Environment Cabinet; and Executive Order 2009-1086, dated November 6, 2009, relating to the reorganization of the Public Protection Cabinet, to the extent these executive orders are not otherwise confirmed or superseded by this Act.

➔Section 1938. In order to reflect the reorganization effectuated by this Act, the reviser of statutes shall replace references in the Kentucky Revised Statutes to the agencies, subagencies, and officers affected by this Act with references to the appropriate successor agencies, subagencies, and officers established by this Act. The reviser of statutes shall base these actions on the functions assigned to the new entities in this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

Signed by the Governor March 25, 2010.