

CHAPTER 110**(HB 415)**

AN ACT relating to public safety.

WHEREAS, the certification of personal services agencies is critical to the safety and well-being of the clients and the professionalism of personal service agency employees; and

WHEREAS, Senate Bill 22 was passed by the 2009 Regular Session of the General Assembly to require certification of personal services agencies; and

WHEREAS, the safety of disabled veterans and others in the disabled community is enhanced when personal service agencies have a policy addressing the acceptance of personal gifts, gratuities, or loans from the clients they serve;

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

➔Section 1. KRS 216.712 is amended to read as follows:

- (1) No personal services agency shall be operated, maintained, or advertised without obtaining a certificate as provided in this section. Entities that operate personal services agencies, as defined in KRS 216.710, in Kentucky on June 25, 2009, shall have until December 31, 2009, to file an application for certification pursuant to this section. All other agencies shall be required to obtain certification prior to providing personal services. A parent personal services agency with one (1) or more branch offices in Kentucky shall not be required to obtain separate certificates for each of its branch offices.
- (2) Each personal services agency providing direct services to clients as defined in KRS 216.710 shall perform a criminal background check on any applicant for employment prior to employing the applicant. Each application provided by the personal services agency to the applicant for initial employment shall state in a conspicuous manner on the application "For This Type of Employment State Law Requires a Criminal Background Check as Condition of Employment."
- (3) No personal services agency shall employ a person in a position which involves providing direct services to a client if the employee has been convicted of a crime as defined by KRS 216.710.
- (4) The secretary shall promulgate administrative regulations to implement this section and KRS 216.714 and 216.716. The administrative regulations at a minimum shall establish:
 - (a) An initial and annual certification review process for personal services agencies that does not require an on-site visit;
 - (b) Procedures related to applying for, reviewing, approving, denying, and revoking certification;
 - (c) Fees for application and reapplication in an amount sufficient to offset the cost to administer KRS 216.712 and 216.714;
 - (d) Procedures for complaint investigations;
 - (e) Procedures for the imposition and collection of fines as provided by KRS 216.714;
 - (f) Policies and procedures for the personal services agencies;
 - (g) Procedures for criminal background checks;
 - (h) Procedures to ensure the competency of the individuals providing personal services, the requirements of written service agreements between the personal services agencies and clients or designated representatives, and the requirements of personal service plans for the clients; and
 - (i) Procedures to be utilized in the conduct of hearings upon appeals in accordance with KRS Chapter 13B.
- (5) Only those personal services agencies meeting the standards prescribed for certification shall be granted a certificate.
- (6) All fees collected under the provisions of this section shall be paid into the State Treasury and credited to the Kentucky personal services agency fund created by KRS 216.716.

- (7) *Each personal services agency providing direct care to clients shall have a policy that addresses the acceptance of personal gifts, gratuities, or loans from a client by the agency and by any employee, agent, or contractor of the personal services agency. The policy shall not be required to apply to personal gifts, gratuities, or loans to the agency made by family members or friends of the client. The policy shall, at a minimum:*
- (a) *Prohibit the solicitation of personal gifts, gratuities, or loans from a client; and*
 - (b) *Specify the conditions under which gifts, gratuities, or loans from a client may be accepted by the agency and by any employee, agent, or contractor of the personal services agency.*

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

- (1) *As used in this section, "personal communication device" means a device capable of two (2) way audio or text communication that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers communication to the possessor, including but not limited to a paging device and a cellular telephone.*
- (2) *Except as provided in subsection (3) of this section, no person shall, while operating a motor vehicle that is in motion on the traveled portion of a roadway, write, send, or read text-based communication using a personal communication device to manually communicate with any person using text-based communication, including but not limited to communications referred to as a text message, instant message, or electronic mail.*
- (3) *Subsection (2) of this section shall not apply to:*
 - (a) *The use of a global positioning system feature of a personal communication device;*
 - (b) *The reading, selecting, or entering of a telephone number or name in a personal communication device for the purpose of making a phone call;*
 - (c) *An operator of an emergency or public safety vehicle, when the use of a personal communication device is an essential function of the operator's official duties; or*
 - (d) *The operator of a motor vehicle who writes a text message on a personal communication device to:*
 - 1. *Report illegal activity;*
 - 2. *Summon medical help;*
 - 3. *Summon a law enforcement or public safety agency; or*
 - 4. *Prevent injury to a person or property.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 189 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "personal communication device" shall have the same meaning as defined in Section 2 of this Act.*
- (2) *Any person under the age of eighteen (18) who has been issued an instruction permit, intermediate license, or operator's license shall not operate a motor vehicle, motorcycle, or moped that is in motion on the traveled portion of a roadway while using a personal communication device, except to summon medical help or a law enforcement or public safety agency in an emergency situation.*
- (3) *Use of a personal communication device does not include a stand-alone global positioning system or an in-vehicle security, diagnostics, and communications system, but does include manually entering information into the global positioning system feature of a personal communication device.*
- (4) *This section shall not apply to the use of a citizens band radio or an amateur radio by a motor vehicle operator.*

➔Section 4. KRS 189.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsection (1) or (4) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.285, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, KRS 189.450 to 189.458, KRS 189.4595 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.590, except subsection (1)(b) or (6)(b) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars (\$20)

nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1)(a) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both, unless the accident involved death or serious physical injury and the person knew or should have known of the death or serious physical injury, in which case the person shall be guilty of a Class D felony. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

- (2)
 - (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, or 189.270 shall be fined two cents (\$0.02) per pound for each pound of excess load when the excess is five thousand (5,000) pounds or less. When the excess exceeds five thousand (5,000) pounds the fine shall be two cents (\$0.02) per pound for each pound of excess load, but the fine levied shall not be less than one hundred dollars (\$100) and shall not be more than five hundred dollars (\$500).
 - (b) Any person who violates the provisions of KRS 189.271 and is operating on a route designated on the permit shall be fined one hundred dollars (\$100); otherwise, the penalties in paragraph (a) of this subsection shall apply.
 - (c) Any person who violates any provision of subsection (2) or (3) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
 - (d) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
- (3)
 - (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
 - (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).
- (4)
 - (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
 - (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
 - (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
- (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
- (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
- (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
- (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).

- (9) (a) Any person who violates KRS 189.530(1) shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
 - (b) Any person who violates KRS 189.530(2) shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100) and, upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17)
 - (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
 - (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.
- (19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who operates a bicycle in violation of the administrative regulations promulgated pursuant to KRS 189.287 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100).
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3)(a) shall be fined fifty dollars (\$50). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional court costs pursuant to KRS 24A.176, the fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs.
- (25) Any person who violates the provisions of KRS 189.125(3)(b) shall not be issued a uniform citation, but shall instead receive a courtesy warning up until July 1, 2009. For a violation on or after July 1, 2009, the person shall be fined thirty dollars (\$30). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional court costs pursuant to KRS

24A.176, a fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs. A person who has not been previously charged with a violation of KRS 189.125(3)(b) may elect to acquire a booster seat meeting the requirements of KRS 189.125. Upon presentation of sufficient proof of the acquisition, the charge shall be dismissed and no fees or costs shall be imposed.

- (26) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional court costs pursuant to KRS 24A.176, the fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs.
- (27) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.
- (28) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:
 - (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
 - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.
- (29) A person who violates the provisions of subsection (2) or (3) of KRS 189.459 shall be fined two hundred fifty dollars (\$250). The fines and costs for a violation of subsection (2) or (3) of KRS 189.459 shall be collected and disposed of in accordance with KRS 24A.180. Once deposited into the State Treasury, ninety percent (90%) of the fine collected under this subsection shall immediately be forwarded to the personal care assistance program under KRS 205.900 to 205.920. Ten percent (10%) of the fine collected under this subsection shall annually be returned to the county where the violation occurred and distributed equally to all law enforcement agencies within the county.
- (30) (a) *Prior to January 1, 2011, any person who violates Section 2 or 3 of this Act shall not be issued a uniform citation, but shall instead receive a courtesy warning.*
 (b) *On or after January 1, 2011, any person who violates Section 2 or 3 of this Act shall be fined twenty-five dollars (\$25) for the first offense and fifty dollars (\$50) for each subsequent offense.*

➔Section 5. KRS 186.452 is amended to read as follows:

- (1) Except as provided in KRS 186.415, a person who is under eighteen (18) years of age may apply for an intermediate license to operate a motor vehicle if the person has:
 - (a) Held an instruction permit a minimum of one hundred eighty (180) days without a violation under KRS 186.450(4), (5), or (6), **a conviction for a violation of Section 2 or 3 of this Act**, a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1); and
 - (b) Presented a statement to the Department of Kentucky State Police signed by a parent or guardian of the applicant attesting that the applicant has completed at least sixty (60) hours of supervised driving experience, including at least ten (10) hours at night, while accompanied by a person who has attained the age of twenty-one (21) years and holds a valid operator's license occupying the seat beside the applicant.
- (2) If an applicant for an intermediate license successfully completes the examinations required under KRS 186.480, the Department of Kentucky State Police shall affix an intermediate license sticker to the instruction permit and report the applicant's new status to the Transportation Cabinet. The Transportation Cabinet shall update the information in its computer system to reflect that the applicant has been granted an intermediate license. An intermediate license shall be valid for two (2) years and may be renewed.
- (3) A person shall have the intermediate license in his or her possession at all times when operating a motor vehicle.

- (4) A person with an intermediate license who is under the age of eighteen (18) years shall not operate a motor vehicle, motorcycle, or moped between the hours of 12 midnight and 6 a.m. unless the person can demonstrate good cause for driving, including emergencies, involvement in school-related activities, or involvement in work-related activities.
- (5) Except when accompanied by a driver training instructor affiliated with a driver training school licensed under KRS Chapter 332 or a public or nonpublic secondary school, a person with an intermediate license who is under the age of eighteen (18) years shall not operate a motor vehicle at any time when accompanied by more than one (1) unrelated person who is under the age of twenty (20) years. A peace officer shall not stop or seize a person nor issue a uniform citation for a violation of this subsection if the officer has no other cause to stop or seize the person other than a violation of this subsection. This subsection shall not apply to any operator of a vehicle registered under the provisions of KRS 186.050(4) who is engaged in agricultural activities.
- (6) A violation under subsection (3), (4), or (5) of this section, a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1) shall add an additional minimum of one hundred eighty (180) days from the date of the violation before a person who is under the age of eighteen (18) years may apply for an operator's license.

➔Section 6. KRS 186.454 is amended to read as follows:

- (1) Except as provided in KRS 186.415, a person with an intermediate license who is under the age of eighteen (18) years may apply for an operator's license to operate a motor vehicle if the person has:
 - (a) Held an intermediate license for a minimum of one hundred eighty (180) days without a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, ***a conviction for a violation of Section 2 or 3 of this Act***, a conviction for a violation of KRS 189A.010(1), or a conviction under KRS 186.452(3), (4), or (5); and
 - (b) Completed a driver training program under KRS 186.410(4).
- (2) A person with an intermediate license who is eighteen (18) years of age or older may apply for an operator's license to operate a motor vehicle if the person has completed a driver training program under KRS 186.410(4).

➔Section 7. Section 1 of this Act shall be known and may be cited as, "The Kentucky Adult Protection Act" in honor of the disabled veterans who revealed the need for this legislation.

Signed by Governor April 12, 2010.