

CHAPTER 161**(SB 4)**

AN ACT relating to anatomical gifts.

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

➔ **SECTION 1.** A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 25 of this Act:

- (1) *"Adult" means an individual who is at least eighteen (18) years of age;*
- (2) *"Agent" means an individual:*
 - (a) *Authorized to make health-care decisions on the principal's behalf by a power of attorney for health care; or*
 - (b) *Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal;*
- (3) *"Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education;*
- (4) *"Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than Sections 1 to 25 of this Act, a fetus, however, the term "fetus" does not include a blastocyst, embryo, or fetus that was the subject of an induced abortion;*
- (5) *"Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under Section 10 of this Act;*
- (6) *"Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry;*
- (7) *"Donor" means an individual whose body or part is the subject of an anatomical gift;*
- (8) *"Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts;*
- (9) *"Drivers license" means a license or permit issued by the Transportation Cabinet to operate a vehicle, whether or not conditions are attached to the license or permit;*
- (10) *"Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes;*
- (11) *"Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem;*
- (12) *"Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state;*
- (13) *"Identification card" means an identification card issued by the Transportation Cabinet;*
- (14) *"Know" means to have actual knowledge;*
- (15) *"Minor" means an individual who is under eighteen (18) years of age;*
- (16) *"Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization;*
- (17) *"Parent" means a parent whose parental rights have not been terminated;*
- (18) *"Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body;*

- (19) *"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;*
- (20) *"Physician" means an individual authorized to practice medicine or osteopathy under the law of any state;*
- (21) *"Procurement organization" means an eye bank, organ procurement organization, or tissue bank;*
- (22) *"Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal;*
- (23) *"Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift;*
- (24) *"Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted;*
- (25) *"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;*
- (26) *"Refusal" means a record created under Section 6 of this Act that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part;*
- (27) *"Sign" means, with the present intent to authenticate or adopt a record:*
- (a) *To execute or adopt a tangible symbol; or*
 - (b) *To attach to or logically associate with the record an electronic symbol, sound, or process;*
- (28) *"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;*
- (29) *"Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an ocular enucleator;*
- (30) *"Tissue" means a portion of the human body other than an organ or an eye. The term does not include:*
- (a) *Blood unless the blood is donated for the purpose of research or education; or*
 - (b) *An ovum or sperm for the purpose of creating an embryo to be used in therapy, research, or education;*
- (31) *"Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue; and*
- (32) *"Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 25 of this Act apply to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

Subject to Section 7 of this Act, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 4 of this Act by:

- (1) *The donor, if the donor is an adult or if the donor is a minor and is:*
 - (a) *Emancipated; or*
 - (b) *Authorized under state law to apply for a driver's license because the donor is at least sixteen (16) years of age;*
- (2) *An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;*

- (3) *A parent of the donor, if the donor is an unemancipated minor; or*
- (4) *The donor's guardian.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A donor may make an anatomical gift:*
 - (a) *By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;*
 - (b) *In a will;*
 - (c) *During a terminal illness or injury of the donor, by any form of communication addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness; or*
 - (d) *As provided in subsection (2) of this section.*
- (2) *A donor or other person authorized to make an anatomical gift under Section 3 of this Act may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall:*
 - (a) *Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and*
 - (b) *State that it has been signed and witnessed as provided in paragraph (a) of this subsection.*
- (3) *Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.*
- (4) *An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.*
- (5) *The making of an anatomical gift shall not under any circumstances be construed to authorize or direct the denial of health care or hydration and nourishment when the withholding or withdrawal of health care or hydration and nourishment will result in or hasten death.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to Section 7 of this Act, a donor or other person authorized to make an anatomical gift under Section 3 of this Act may amend or revoke an anatomical gift by:*
 - (a) *A record signed by:*
 - 1. *The donor;*
 - 2. *The other person; or*
 - 3. *Subject to subsection (2) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or*
 - (b) *A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.*
- (2) *A record signed pursuant to subsection (1)(a)3. of this section shall:*
 - (a) *Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and*
 - (b) *State that it has been signed and witnessed as provided in paragraph (a) of this subsection.*
- (3) *Subject to Section 7 of this Act, a donor or other person authorized to make an anatomical gift under Section 3 of this Act may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.*

- (4) *A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.*
- (5) *A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (1) of this section.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *An individual may refuse to make an anatomical gift of the individual's body or part by:*
- (a) *A record signed by:*
1. *The individual; or*
 2. *Subject to subsection (2) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;*
- (b) *The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or*
- (c) *Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.*
- (2) *A record signed pursuant to subsection (1)(a)2. of this section shall:*
- (a) *Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the individual; and*
- (b) *State that it has been signed and witnessed as provided in paragraph (a) of this subsection.*
- (3) *An individual who has made a refusal may amend or revoke the refusal:*
- (a) *In the manner provided in subsection (1) of this section for making a refusal;*
- (b) *By subsequently making an anatomical gift pursuant to Section 4 of this Act that is inconsistent with the refusal; or*
- (c) *By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.*
- (4) *Except as otherwise provided in subsection (8) of Section 7 of this Act, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (7) of this section and subject to subsection (6) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 4 of this Act or an amendment to an anatomical gift of the donor's body or part under Section 5 of this Act.*
- (2) *A donor's revocation of an anatomical gift of the donor's body or part under Section 5 of this Act is not a refusal and does not bar another person specified in Section 3 or 8 of this Act from making an anatomical gift of the donor's body or part under Section 4 or 9 of this Act.*
- (3) *If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 4 of this Act or an amendment to an anatomical gift of the donor's body or part under Section 5 of this Act, another person may not make, amend, or revoke the gift of the donor's body or part under Section 9 of this Act.*
- (4) *A revocation of an anatomical gift of a donor's body or part under Section 5 of this Act by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 4 or 9 of this Act.*
- (5) *In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 3 of this Act, an anatomical gift of a part is neither a refusal to give another*

part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

- (6) *In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 3 of this Act, an anatomical gift of a part for one (1) or more of the purposes set forth in Section 3 of this Act is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under Section 4 or 9 of this Act.*
- (7) *If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.*
- (8) *If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to subsections (2) and (3) of this section and unless barred by Section 6 or 7 of this Act, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:*
 - (a) *An agent of the decedent at the time of death who could have made an anatomical gift under subsection (2) of Section 3 of this Act immediately before the decedent's death;*
 - (b) *The spouse of the decedent;*
 - (c) *Adult children of the decedent;*
 - (d) *Parents of the decedent;*
 - (e) *Adult siblings of the decedent;*
 - (f) *Adult grandchildren of the decedent;*
 - (g) *Grandparents of the decedent; and*
 - (h) *The persons who were acting as the guardians of the person of the decedent at the time of death.*
- (2) *If there is more than one (1) member of a class listed in paragraph (a), (c), (d), (e), (f), (g), or (h) of subsection (1) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 10 of this Act knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.*
- (3) *A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (1) of this section is reasonably available to make or to object to the making of an anatomical gift.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A person authorized to make an anatomical gift under Section 8 of this Act may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.*
- (2) *Subject to subsection (3) of this section, an anatomical gift by a person authorized under Section 8 of this Act may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one (1) member of the prior class is reasonably available, the gift made by a person authorized under Section 8 of this Act may be:*
 - (a) *Amended only if a majority of the reasonably available members agree to the amending of the gift; or*
 - (b) *Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.*

- (3) *A revocation under subsection (2) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *An anatomical gift may be made to the following persons named in the document of gift:*
- (a) *A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;*
 - (b) *Subject to subsection (2) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or*
 - (c) *An eye bank or tissue bank.*
- (2) *If an anatomical gift to an individual under paragraph (b) of subsection (1) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (7) of this section in the absence of an express, contrary indication by the person making the anatomical gift.*
- (3) *If an anatomical gift of one (1) or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:*
- (a) *If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank;*
 - (b) *If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank;*
 - (c) *If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ; or*
 - (d) *If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.*
- (4) *For the purpose of subsection (3) of this section, if there is more than one (1) purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.*
- (5) *If an anatomical gift of one (1) or more specific parts is made in a document of gift that does not name a person described in subsection (1) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.*
- (6) *If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor", or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.*
- (7) *For purposes of subsections (2), (5), and (6) of this section the following rules apply:*
- (a) *If the part is an eye, the gift passes to the appropriate eye bank;*
 - (b) *If the part is tissue, the gift passes to the appropriate tissue bank, except that a tissue bank shall not receive an ovum or sperm for the purpose of creating an embryo to be used in therapy, research, or education; or*
 - (c) *If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.*
- (8) *An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under paragraph (b) of subsection (1) of this section, passes to the organ procurement organization as custodian of the organ.*
- (9) *If an anatomical gift does not pass pursuant to subsections (1) to (8) of this section or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.*

- (10) *A person may not accept an anatomical gift if the person knows that the gift was not effectively made under Section 4 or 9 of this Act or if the person knows that the decedent made a refusal under Section 6 of this Act that was not revoked. For purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.*
- (11) *Except as otherwise provided in paragraph (b) of subsection (1) of this section, nothing in Sections 1 to 25 of this Act affects the allocation of organs for transplantation or therapy.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:*
- (a) *A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and*
- (b) *If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.*
- (2) *If a document of gift or a refusal to make an anatomical gift is located by the search required by paragraph (a) of subsection (1) of this section, and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.*
- (3) *A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A document of gift need not be delivered during the donor's lifetime to be effective.*
- (2) *Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 10 of this Act.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Transportation Cabinet, the registry created under Section 19 of this Act, and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.*
- (2) *A procurement organization shall be allowed reasonable access to information in the records of the registries listed in subsection (1) of this section to ascertain whether an individual at or near death is a donor.*
- (3) *When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination of records necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent. Measures necessary to ensure the medical suitability of the part from a prospective donor may be administered unless it is determined that the administration of those measures would not provide the prospective donor with appropriate end-of-life care, or it can be anticipated by reasonable medical judgment that such measures would result in or hasten the prospective donor's death.*
- (4) *Unless prohibited by law other than Sections 1 to 25 of this Act, at any time after a donor's death, the person to which a part passes under Section 10 of this Act may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.*

- (5) *Unless prohibited by law other than Sections 1 to 25 of this Act, an examination under subsection (3) or (4) of this section may include an examination of all medical and dental records of the donor or prospective donor.*
- (6) *Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.*
- (7) *Upon referral by a hospital under subsection (1) of this section, a procurement organization shall make a reasonable search for any person listed in Section 8 of this Act having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.*
- (8) *Subject to subsection (9) of Section 10 of this Act and Section 22 of this Act, the rights of the person to which a part passes under Section 10 of this Act are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and Sections 1 to 25 of this Act, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 10 of this act, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.*
- (9) *Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.*
- (10) *A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, a person that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death shall be imprisoned in the penitentiary for not less than one (1) nor more than five (5) years or be fined not more than fifty thousand dollars (\$50,000), or both.*
- (2) *A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal shall be imprisoned in the penitentiary for not less than one (1) nor more than five (5) years or be fined not more than fifty thousand dollars (\$50,000), or both.

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A person that acts in accordance with Sections 1 to 25 of this Act or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.*
- (2) *Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.*
- (3) *In determining whether an anatomical gift has been made, amended, or revoked under Sections 1 to 25 of this Act, a person may rely upon representations of an individual listed in paragraph (b), (c), (d), (e), (f), or (g) of subsection (1) of Section 8 of this Act relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.*

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A document of gift is valid if executed in accordance with:*
 - (a) *Sections 1 to 25 of this Act;*
 - (b) *The laws of the state or country where it was executed; or*
 - (c) *The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.*
- (2) *If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.*
- (3) *A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.*

➔Section 19. KRS 194A.750 is repealed and reenacted as a new section of KRS Chapter 311 to read as follows:

- (1) Contingent upon the availability of funding, the Cabinet for Health and Family Services shall facilitate the establishment of a statewide electronic registry for organ and tissue donation for transplantation purposes. The cabinet may contract with a public or private nonprofit entity to perform gatekeeper functions of the registry that include but are not limited to the operation, maintenance, privacy, and security of the registry.
- (2) An ongoing collaboration shall be established among the Transportation Cabinet, the Cabinet for Health and Family Services, the Kentucky Circuit Court Clerks Trust for Life, the Kentucky Hospital Association, the Kentucky Medical Association, and the federally certified organ and tissue procurement organizations that operate in Kentucky to develop strategies for the operation of the registry. Strategies shall include but not be limited to:
 - (a) Donor designation at the time of application or renewal of a driver's license;
 - (b) Online registration as a donor;
 - (c) Removal or exit from the registry;
 - (d) Timely access to the registry by relevant parties in accordance with federal laws and regulations relating to organ and tissue donation and procurement for transplantation purposes; and
 - (e) Evaluation of the effectiveness of the registry.
- (3) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the provisions of this section.

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
 - (a) *"Advance health-care directive" means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health-care decision for the prospective donor;*
 - (b) *"Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor; and*
 - (c) *"Health-care decision" means any decision regarding the health care of the prospective donor.*
- (2) *If a prospective donor has a declaration or advance health-care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than Sections 1 to 25 of this Act to make health-care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 8 of this Act. Before the resolution of the conflict, measures necessary to ensure the medical suitability of the part from a*

prospective donor may be administered unless it is determined that the administration of those measures would not provide the prospective donor appropriate end-of-life care, or it can be anticipated by reasonable medical judgment that such measures would result in or hasten the prospective donor's death. If the conflict is not resolved expeditiously, the direction of the declaration or advance directive controls.

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A medical examiner, coroner, and organ and tissue procurement organizations shall cooperate with each other to maximize the opportunity to recover anatomical gifts for the purpose of transplantation and therapy.*
- (2) *If a medical examiner or coroner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the medical examiner or coroner and a postmortem examination is going to be performed, unless the medical examiner or coroner denies recovery in accordance with Section 22 of this Act, the medical examiner or coroner or designee shall conduct, when practicable, a postmortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.*
- (3) *A part may not be removed from the body of a decedent under the jurisdiction of a medical examiner or coroner for transplantation and therapy unless the part is the subject of an anatomical gift of organs or tissues for transplantation.*

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon request of a procurement organization, a medical examiner or coroner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the medical examiner or coroner. If the decedent's body or part is medically suitable for transplantation or therapy, the medical examiner or coroner may release relevant postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the medical examiner or coroner only if relevant to transplantation or therapy.*
- (2) *The medical examiner or coroner may conduct a medicolegal investigation by reviewing all medical records, laboratory test results, X-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner or coroner that the medical examiner or coroner determines may be relevant to the investigation.*
- (3) *A person that has any information requested by a medical examiner or coroner pursuant to subsection (2) of this section shall provide that information as expeditiously as possible to allow the medical examiner or coroner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation or therapy.*
- (4) *If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the medical examiner or coroner and a postmortem examination is not required, or the medical examiner or coroner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the medical examiner or coroner and the procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation or therapy.*
- (5) *The medical examiner and procurement organizations shall enter into an agreement setting forth protocols and procedures to govern relations between the parties when an anatomical gift of a part from a decedent under the jurisdiction of the medical examiner has been or might be made, but the medical examiner believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death. Decisions regarding the recovery of organs, tissue, and eyes from such a decedent shall be made in accordance with the agreement. In the event that the medical examiner or coroner denies recovery of an anatomical gift, the procurement organization may request the chief medical examiner to reconsider the denial and to permit the recovery to proceed. The parties shall evaluate the effectiveness of the protocols and procedures at regular intervals.*
- (6) *If the medical examiner or coroner or designee allows recovery of a part under subsection (4) or (5) of this section, the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the medical examiner or coroner with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the postmortem examination.*

- (7) *If the chief medical examiner or coroner determines that a medical examiner or designee is required to be present at a removal procedure under subsection (5) of this section, upon request the procurement organization requesting the recovery of the part shall reimburse the medical examiner, or coroner, or designee for the additional cost incurred in complying with subsection (5) of this section.*

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

In applying and construing the Revised Uniform Anatomical Gift Act, Sections 1 to 25 of this Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

The Revised Uniform Anatomical Gift Act, Sections 1 to 25 of this Act, modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. secs. 7001 et seq., but does not modify, limit, or supersede sec. 101(a) of that act, 15 U.S.C. sec. 7001, or authorize electronic delivery of any of the notices described in sec. 103(b) of that act, 15 U.S.C. sec. 7003(b).

➔SECTION 25. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 25 of this Act may be cited as the Revised Uniform Anatomical Gift Act.

➔Section 26. KRS 311.187 is repealed, reenacted, and amended as a new section of KRS Chapter 311 to read as follows:

- (1) In any case in which a patient is in need of a cornea or corneal tissue for a transplant, the coroner, medical examiner, or his appropriately qualified designee with training in ophthalmologic techniques may, upon the request of any person authorized under *Section 10 of this Act*~~[KRS 311.185]~~, provide or authorize the removal of the cornea or corneal tissue by a qualified physician under the following conditions:
 - (a) The decedent has been defined as a "coroner's case" as set forth by KRS 72.405(2), an autopsy has been ordered pursuant to KRS 72.410, and the cornea or corneal tissue are suitable for transplant;
 - (b) No objection by the next of kin is known by the coroner or medical examiner; and
 - (c) The removal of the cornea or corneal tissue will not interfere with the subsequent course of an investigation or autopsy or alter the postmortem facial appearance.
- (2) The medical examiner, coroner, or his appropriately qualified designee or any persons authorized under *Section 10 of this Act*~~[KRS 311.185]~~ shall not be held liable in any civil or criminal action for failure to obtain consent of the next of kin.
- (3) An individual certified by a department of ophthalmology in an accredited school of medicine as having received competent training, may remove corneas for gift after proper certification of death by a physician and in compliance with the provisions of *Sections 3, 8, 10, and 13 of this Act*~~[KRS 311.175]~~.

➔Section 27. KRS 311.243 is repealed and reenacted as a new section of KRS Chapter 311 to read as follows:

The family of any individual whose organ is donated for transplantation shall not be financially liable for any cost related to the evaluation of donor organ suitability and any cost of retrieval of the organ.

➔Section 28. KRS 194A.030 is amended to read as follows:

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

- (1) Office of the Secretary. Within the Office of the Secretary, there shall be an Office of Legislative and Public Affairs, an Office of Legal Services, and an Office of Inspector General.
 - (a) The Office of Legislative and Public Affairs shall be responsible for the development and implementation of the major legislative and policy initiatives of the cabinet, and shall include oversight of administrative hearings, legislative affairs, and communications with internal and external audiences of the cabinet. The Office of Legislative and Public Affairs shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.
 - (b) The Office of Legal Services shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of Legal Services shall employ all attorneys of the

cabinet who serve the cabinet in the capacity of attorney, giving legal advice and opinions concerning the operation of all programs in the cabinet. The Office of Legal Services shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.

(c) The Office of Inspector General shall be responsible for:

1. The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the cabinet into matters related to the cabinet or its programs;
2. Licensing and regulatory functions as the secretary may delegate;
3. Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of **Sections 1 to 25, 26, and 27 of this Act** ~~KRS 311.165 to 311.235, 311.241, 311.243, 311.245, and 311.247~~; and
4. The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary;

- (2) Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for Medicaid services, who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for Medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for Medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (3) Department for Public Health. The Department for Public Health shall develop and operate all programs of the cabinet that provide health services and all programs for assessing the health status of the population for the promotion of health and the prevention of disease, injury, disability, and premature death. This shall include but not be limited to oversight of the Division of Women's Physical and Mental Health. The Department for Public Health shall be headed by a commissioner for public health who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for public health shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for public health shall exercise authority over the Department for Public Health under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (4) Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental Retardation Services shall develop and administer programs for the prevention of mental illness, mental retardation, brain injury, developmental disabilities, and substance abuse disorders and shall develop and administer an array of services and support for the treatment, habilitation, and rehabilitation of persons who have a mental illness or emotional disability, or who have mental retardation, brain injury, developmental disability, or a substance abuse disorder. The Department for Mental Health and Mental Retardation Services shall be headed by a commissioner for mental health and mental retardation who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;

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

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

➔Section 29. KRS 216.267 is amended to read as follows:

- (1) The duties and responsibilities of the board shall be to implement and oversee the operation of an electronic health network in this Commonwealth, to be known as the Ke-HN.
- (2) The board shall:
- (a) Exercise all of the administrative functions of the board;
 - (b) Appoint an advisory group that shall meet at least quarterly for the purpose of collaborating with health-care providers and payors, computer technology companies, telecommunication companies, and other affected entities to ensure input into the implementation of the Ke-HN;
 - (c) Review models for an electronic health network;
 - (d) Oversee the development of comparative business cases for the models reviewed and choose a model to be implemented in this Commonwealth. In selecting a model for implementation, the board shall consider the following elements:
 1. Various models and configurations for Ke-HN, either as developed from the board's research or as recommended by public and private experts. Each model or configuration shall be capable of supporting administrative and clinical functions listed in subsection (4) of this section, including

- the capability to integrate with an electronic Medicaid management information system, provide immediate health alerts to health-care providers across the state, support health-care provider education related to the identification and treatment of rare and unusual diseases, serve as a registry of the existence and location of advance directives related to health care or mental health treatment, and serve as a registry of organ donations. The model chosen may be implemented in phases, as determined by the board;
2. Projected costs of the network, indicating those which would be allocated to state government, health-care providers, insurers, or others;
 3. Options for financing the start-up, administrative, and maintenance costs, projected returns on investments, a timetable for realizing those returns, and any proposed subscription or transaction fees associated with the Ke-HN;
 4. Procedures intended to secure protected health information in accordance with HIPAA;
 5. Timetables for implementation of the Ke-HN, whether as a fully established network, in phases, or through the use of a pilot project or regional approach to the Ke-HN;
 6. Suggested incentives to promote the use of Ke-HN by health care providers and payors, and the Medicaid program; and
 7. Incentives, including but not limited to tax credits, low-interest loans, and grants, under Subchapters 22, 23, 24, 26, and 28 of KRS Chapter 154 for a company that develops or manufactures software necessary for the development of the Ke-HN, if the company meets all the eligibility requirements under the respective subchapter in KRS Chapter 154;
- (e) Receive comments from the advisory group created in paragraph (b) of this subsection;
 - (f) Submit a description of the model chosen for implementation to the Legislative Research Commission for the opportunity for any comments;
 - (g) If state funds are required for implementation of the model chosen, seek funding through the appropriations process;
 - (h) Oversee the implementation of the model chosen subject to the appropriation of funds. Oversight shall include the following:
 1. Developing any central interchange, including any central server and software;
 2. Developing the Ke-HN of providers and payors who participate in the network, which shall be on a voluntary basis;
 3. Making recommendations regarding the features and functions which shall be included in the distributed components of the network; and
 4. Performing an outcomes assessment of the benefits achieved by the network;
 - (i) Identify and adopt standards for all computer systems communicating with the Ke-HN, including but not limited to:
 1. The HIPAA standards for electronic transactions as the federal regulations become final, or more stringent standards for content and networking as determined by the board;
 2. Medical lexicon for administrative billing and clinical purposes;
 3. Procedure and billing codes; and
 4. Prevalent health care industry standards for software and networking that ensure that applications work on all types of computer systems and equipment;
 - (j) Establish procedures to ensure that Ke-HN transactions are in compliance with HIPAA guidelines;
 - (k) Facilitate the implementation of the federal HIPAA guidelines, and identify any additional variables specific to Kentucky that are required to be in transactions within the HIPAA guidelines;

- (l) Oversee the operations of the Ke-HN, including but not limited to making recommendations for financing the central interchange for the network and making recommendations to organizations about implementing the network in their respective organizations;
 - (m) Oversee the development of the central interchange that supports communication between components of the Medicaid management information system;
 - (n) Implement educational efforts about the Ke-HN;
 - (o) Develop incentives for providers and payors to use the Ke-HN;
 - (p) Identify options for, adopt, and implement approaches to various aspects of the Ke-HN necessary for its creation and operation, including but not limited to technology architecture, governance and oversight, development and implementation plans, and other areas identified by the board relating to its charge;
 - (q) Facilitate the development of private and public partnerships to build the Ke-HN;
 - (r) Assign priority in phasing in the network to geographical locations that are critical to homeland security and protection of the Commonwealth's energy production;
 - (s) Collaborate with federal agencies in the development and implementation of the Ke-HN as a demonstration model for the nation;
 - (t) Collaborate with the Kentucky Health Care Infrastructure Authority created under KRS 216.261;
 - (u) Assist with the securing of state, federal, or private funding for the Kentucky Health Care Infrastructure Authority created under KRS 216.261;
 - (v) Stimulate the development of state and local population health information capacities;
 - (w) Promulgate administrative regulations in accordance with KRS Chapter 13A necessary to carry out the responsibilities of the board;
 - (x) Receive and dispense funds appropriated for its use by the General Assembly or may solicit, apply for, and receive any funds, property, or services from any person, governmental agency, or organization to carry out its statutory responsibilities;
 - (y) Report to the Governor, secretary of the Cabinet for Health and Family Services, commissioner of the Department of Commercialization and Innovation, Legislative Research Commission, Interim Joint Committee on Health and Welfare, and Interim Joint Committee on Banking and Insurance annually on the development of the Ke-HN and the impact on quality and cost of health care; and
 - (z) Collaborate with the Telehealth Board to link functions of the telehealth network to the Ke-HN, as determined by the Telehealth Board.
- (3) The board may:
- (a) Use any software program or expand any Medicaid management information system or electronic provider and payor network developed by the Medicaid program to support electronic health transactions between payors, insurers, health-care providers, and patients that are not Medicaid-related, unless prohibited by federal law or regulation;
 - (b) Contract, in accordance with KRS Chapter 45A, with an independent third party or a public or nonprofit e-health corporation for any service necessary to carry out the responsibilities of the board subject to the appropriation of funds;
 - (c) Award grants to health-care providers and payors to implement projects related to health informatics, with highest priority given to health-care providers and payors that serve rural and inner-city areas of this Commonwealth;
 - (d) Enter into an agreement with the University of Kentucky or the University of Louisville to develop comparative business models or implement any phase of the Ke-HN, using private or federal funds received by the university for the purpose designated in the agreement;
 - (e) Create a public or nonprofit e-health corporation to facilitate public-private collaboration in development and implementation of the Ke-HN.

1. A public or nonprofit e-health organization may receive and expend funds appropriated by the General Assembly and may solicit, apply for, and receive any funds, grants, contracts, contributions, property, or services from any person, governmental agency, or other organization to carry out the responsibilities given to it by the Ke-HN Board.
 2. Funds appropriated to a public or nonprofit e-health corporation shall not lapse at the end of a state fiscal year and shall be used solely for the purposes for which the funds were appropriated.
 3. A public or nonprofit e-health corporation created under this paragraph shall:
 - a. Follow standard accounting practices;
 - b. Submit to an annual financial audit by an independent auditor;
 - c. Submit a quarterly report of receipts and expenditures to the secretary of the Cabinet for Health and Family Services and the Ke-HN Board no later than sixty (60) days after the end of a quarter; and
 - d. Submit an annual financial and progress report to the Governor, the secretary of the Finance and Administration Cabinet, and the Interim Joint Committees on Appropriations and Revenue and Health and Welfare by September 30 following the end of each state fiscal year. The annual report shall include a report of receipts and expenditures, the financial audit, and a report on the status and progress of the corporation's initiatives; and
 - (f) Promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provisions of paragraph (e) of this subsection.
- (4) In its fully implemented form, the Kentucky e-Health Network is envisioned to support or encourage the following types of electronic transactions or activities that would be phased in over time:
- (a) Automatic drug-drug interaction and allergy alerts;
 - (b) Automatic preventive medicine alerts;
 - (c) Electronic access to the results of laboratory, X-ray, or other diagnostic examinations;
 - (d) Disease management;
 - (e) Disease surveillance and reporting;
 - (f) Educational offerings for health-care providers;
 - (g) Health alert system and other applications related to homeland security;
 - (h) Links to drug formularies and cost information;
 - (i) Links to evidence-based medical practice;
 - (j) Links to patient educational materials;
 - (k) Medical record information transfer to other providers with the patient's consent;
 - (l) Physician order entry;
 - (m) Prescription drug tracking;
 - (n) Registries for vital statistics, cancer, case management, immunizations, and other public health registries;
 - (o) Registry of the existence and location of advance directives related to health care and mental health treatment;
 - (p) Registry of organ donations executed under *Sections 1 to 25 of this Act* [KRS 311.165 to 311.235];
 - (q) Secured electronic consultations between providers and patients;
 - (r) A single-source insurance credentialing system for health care providers; and
 - (s) The following transactions covered by HIPAA:

1. Electronic health-care claims submission;
2. Electronic payment;
3. Coordination of benefits;
4. Health-care claim status;
5. Enrollment and disenrollment in a health plan;
6. Eligibility for a health plan;
7. Health plan premium payments;
8. Referral certification and authorization;
9. First report of injury; and
10. Health claims attachments.

➔Section 30. KRS 311.623 is amended to read as follows:

- (1) An adult with decisional capacity may make a written living will directive that does any or all of the following:
 - (a) Directs the withholding or withdrawal of life-prolonging treatment; or
 - (b) Directs the withholding or withdrawal of artificially provided nutrition or hydration; or
 - (c) Designates one (1) or more adults as a surrogate or successor surrogate to make health care decisions on behalf of the grantor. During any period in which two (2) or more surrogates are serving, all decisions shall be by unanimous consent of all the acting surrogates unless the advance directive provides otherwise; or
 - (d) Directs the giving of all or any part of the adult's body upon death for any purpose specified in *Section 10 of this Act*~~{KRS 311.185}~~.
- (2) Except as provided in KRS 311.633, a living will directive made pursuant to this section shall be honored by a grantor's family, regular family physician or attending physician, and any health care facility of or in which the grantor is a patient.
- (3) For purposes of KRS 311.621 to 311.643, notification to any emergency medical responder as defined by KRS Chapter 211 or any paramedic as defined by KRS Chapter 311, of a person's authentic wish not to be resuscitated shall be recognized only if on a standard form or identification approved by the Kentucky Board of Medical Licensure, in consultation with the Cabinet for Health and Family Services.

➔Section 31. KRS 311.625 is amended to read as follows:

- (1) A living will directive made pursuant to KRS 311.623 shall be substantially in the following form, and may include other specific directions which are in accordance with accepted medical practice and not specifically prohibited by any other statute. If any other specific directions are held by a court of appropriate jurisdiction to be invalid, that invalidity shall not affect the directive.

"Living Will Directive

My wishes regarding life-prolonging treatment and artificially provided nutrition and hydration to be provided to me if I no longer have decisional capacity, have a terminal condition, or become permanently unconscious have been indicated by checking and initialing the appropriate lines below. By checking and initialing the appropriate lines, I specifically:

Designate as my health care surrogate(s) to make health care decisions for me in accordance with this directive when I no longer have decisional capacity. If refuses or is not able to act for me, I designate as my health care surrogate(s).

Any prior designation is revoked.

If I do not designate a surrogate, the following are my directions to my attending physician. If I have designated a surrogate, my surrogate shall comply with my wishes as indicated below:

Direct that treatment be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical treatment deemed necessary to alleviate pain.

DO NOT authorize that life-prolonging treatment be withheld or withdrawn.

Authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids.

DO NOT authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids.

Authorize my surrogate, designated above, to withhold or withdraw artificially provided nourishment or fluids, or other treatment if the surrogate determines that withholding or withdrawing is in my best interest; but I do not mandate that withholding or withdrawing.

Authorize the giving of all or any part of my body upon death for any purpose specified in *Section 10 of this Act* ~~[KRS 311.185]~~.

DO NOT authorize the giving of all or any part of my body upon death.

In the absence of my ability to give directions regarding the use of life-prolonging treatment and artificially provided nutrition and hydration, it is my intention that this directive shall be honored by my attending physician, my family, and any surrogate designated pursuant to this directive as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences of the refusal.

If I have been diagnosed as pregnant and that diagnosis is known to my attending physician, this directive shall have no force or effect during the course of my pregnancy.

I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed this day of, 19...

Signature and address of the grantor.

In our joint presence, the grantor, who is of sound mind and eighteen (18) years of age, or older, voluntarily dated and signed this writing or directed it to be dated and signed for the grantor.

Signature and address of witness.

Signature and address of witness.

OR

STATE OF KENTUCKY)

County)

Before me, the undersigned authority, came the grantor who is of sound mind and eighteen (18) years of age, or older, and acknowledged that he voluntarily dated and signed this writing or directed it to be signed and dated as above.

Done this day of, 19...

Signature of Notary Public or other officer.

Date commission expires:.....

Execution of this document restricts withholding and withdrawing of some medical procedures. Consult Kentucky Revised Statutes or your attorney."

- (2) An advance directive shall be in writing, dated, and signed by the grantor, or at the grantor's direction, and either witnessed by two (2) or more adults in the presence of the grantor and in the presence of each other, or acknowledged before a notary public or other person authorized to administer oaths. None of the following shall be a witness to or serve as a notary public or other person authorized to administer oaths in regard to any advance directive made under this section:
- (a) A blood relative of the grantor;
 - (b) A beneficiary of the grantor under descent and distribution statutes of the Commonwealth;

- (c) An employee of a health care facility in which the grantor is a patient, unless the employee serves as a notary public;
 - (d) An attending physician of the grantor; or
 - (e) Any person directly financially responsible for the grantor's health care.
- (3) A person designated as a surrogate pursuant to an advance directive may resign at any time by giving written notice to the grantor; to the immediate successor surrogate, if any; to the attending physician; and to any health care facility which is then waiting for the surrogate to make a health care decision.
- (4) An employee, owner, director, or officer of a health care facility where the grantor is a resident or patient shall not be designated or act as surrogate unless related to the grantor within the fourth degree of consanguinity or affinity or a member of the same religious order.

➔Section 32. KRS 186.412 is amended to read as follows:

- (1) (a) A person who was under the age of eighteen (18) years at the time of application for an instruction permit and is eighteen (18) years of age or older may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least one hundred eighty (180) days and has completed a driver training program under KRS 186.410(4).
- (b) A person who has attained the age of eighteen (18) years and is under the age of twenty-one (21) at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least one hundred eighty (180) days.
- (c) A person who is at least twenty-one (21) years of age at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least thirty (30) days.
- (2) Except as provided in subsection (4) of this section, a person shall apply for an operator's license in the office of the circuit clerk of the county where the person lives. The application form shall require the person's:
- (a) Full legal name and signature;
 - (b) Date of birth;
 - (c) Social Security number, federal tax identification number, a letter from the Social Security Administration declining to issue a Social Security number, or a notarized affidavit from the applicant to the Transportation Cabinet swearing that the person either does not have a Social Security number, or refuses to divulge his or her Social Security number, based upon religious convictions;
 - (d) Sex;
 - (e) Present Kentucky resident address, exclusive of a post office box address alone;
 - (f) Other information necessary to permit the application of United States citizens to also serve as an application for voter registration;
 - (g) A brief physical description of the applicant;
 - (h) A statement if the person has previously been licensed as an operator in another state;
 - (i) Proof of the person's Kentucky residency, including but not limited to a deed or property tax bill, utility agreement or utility bill, or rental housing agreement; and
 - (j) Other information the cabinet may require by administrative regulation promulgated under KRS Chapter 13A.
- (3) A permanent resident shall present one (1) of the following documents issued by the United States Department of Justice, Immigration and Naturalization Service:
- (a) An I-551 card with a photograph of the applicant; or
 - (b) A form with the photograph of the applicant or a passport with a photograph of the applicant on which the United States Department of Justice, Immigration and Naturalization Service has stamped the following: "Processed for I-551. Temporary evidence of lawful admission for permanent residence. Valid until -----. Employment authorized."

- (4) If the person is not a United States citizen and has not been granted status as a permanent resident of the United States, the person's application for an original operator's license shall be submitted to either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
- (a) The application form shall be accompanied by the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, authorizing the person to be in the United States and, if applicable, the person's international driving permit. The application form of a special status individual with a K-1 status shall be accompanied by an original or certified copy of the person's completed marriage license signed by the official who presided over the marriage ceremony and two (2) witnesses. The application form of a special status individual with a K-1 status shall also include the person's petition to enter the United States for the purpose of marriage that contains the name of the prospective spouse. If the name of the prospective spouse on the petition does not match the name of the spouse on the marriage license, the Transportation Cabinet shall not be required to issue an operator's license.
 - (b) The Transportation Cabinet shall, within fifteen (15) days of receipt of the application, review the person's documentation and determine if the person will be issued a Kentucky operator's license. If the review of an application will take longer than fifteen (15) days, the cabinet shall continue the review, but the cabinet shall be required to make a determination in all cases within thirty (30) days of receipt of the application.
 - (c) If the cabinet determines the person may be issued an operator's license, the cabinet shall issue the person an official form that the person shall take to the office of the circuit clerk of the county where the person resides. The circuit clerk shall review the person's documentation and the official form issued by the Transportation Cabinet. If the documentation is verified as accurate, and if the person successfully completes the examinations required under KRS 186.480, the circuit clerk shall issue the person a Kentucky operator's license.
 - (d) Except as provided in paragraphs (e) and (f) of this subsection, a person who is not a United States citizen and who has not been granted status as a permanent resident of the United States shall apply to renew an operator's license, or obtain a duplicate operator's license, in the office of the circuit clerk in the county in which the person resides.
 - (e) If a person is renewing an operator's license or is applying for a duplicate license after July 15, 2002, and the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, has not been reviewed by either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office under the provisions of this subsection, the person shall be required to apply for the renewal or duplicate with either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
 - (f) If a person has any type of change in the person's immigration status, the person shall apply to renew an operator's license with either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
- (5) The circuit clerk shall issue an operator's license bearing a color photograph of the applicant and other information the cabinet may deem appropriate. The photograph shall be taken by the circuit clerk so that one (1) exposure will photograph the applicant and the application simultaneously. When taking the photograph, the applicant shall be prohibited from wearing sunglasses or any other attire that obscures any features of the applicant's face as determined by the clerk. The clerk shall require an applicant to remove sunglasses or other obscuring attire before taking the photograph required by this subsection. Any person who refuses to remove sunglasses or other attire prohibited by this section as directed by the clerk shall be prohibited from receiving an operator's license. The operator's license issued by the cabinet shall not contain the applicant's Social Security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develop a numbering system that uses an identification system other than Social Security numbers. If an applicant does not have a Social Security number, or the applicant has submitted a notarized affidavit refusing to divulge his or her Social Security number based upon religious convictions, the Transportation Cabinet shall assign the applicant a unique identifying number. The license shall also designate by color coding and use the phrase "under 21" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under the age of twenty-one (21).

- (6) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.
- (7)
 - (a) Except as provided in subsection (8) of this section, the circuit clerk shall issue a color photo personal identification card to any person who is a Kentucky resident and who resides in the county who complies with the provisions of this section and who applies in person in the office of the circuit clerk. An application for a personal identification card shall be accompanied by the same information as is required for an operator's license under subsection (2) of this section, except if a person does not have a fixed, permanent address, the person may use as proof of residency a signed letter from a homeless shelter, health care facility, or social service agency currently providing the person treatment or services and attesting that the person is a resident of Kentucky.
 - (b) It shall be permissible for the application form for a personal identification card to include as a person's most current resident address a mailing address, post office box, or an address provided on a voter registration card.
 - (c) Every applicant for a personal identification card shall make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal owner or possessor of the address provided on the application form, the applicant shall swear that he or she has permission from the legal owner, authorized agent for the legal owner or possessor to use the address for purposes of obtaining the personal identification card. The personal identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).
 - (d) A personal identification card shall be valid for a period of four (4) years from the date of issuance. Except as provided in this subsection, an initial or renewal personal identification card issued to a person who is not a United States citizen and who has not been granted status as a permanent resident of the United States and who is not a special status individual, but who is a Kentucky resident, shall be valid for a period equal to the length of time the person's documentation from the United States Department of Justice, Immigration and Naturalization Service is issued, or four (4) years, whichever time period is shorter. An initial or renewal personal identification card shall be valid for a period of two (2) years if the person is not a special status individual and the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, is issued for an indefinite period of time and does not have an expiration date. The fee shall be the same as for a regular personal identification card.
 - (e) A personal identification card may be suspended or revoked if the person who was issued the card presents false or misleading information to the cabinet when applying for the card.
- (8) A person may be issued a personal identification card if the person currently holds a valid Kentucky instruction permit or operator's license. If a person's instruction permit or operator's license has been suspended or revoked, the person may be issued a temporary personal identification card. A temporary personal identification shall be renewed annually and may be surrendered when the person applies to have his or her instruction permit or operator's license reinstated.
- (9) The Transportation Cabinet shall implement a voluntary statewide child identification program. The program shall issue a color photo personal identification card to a child two (2) to fifteen (15) years of age. Application for a child identification card shall be accompanied by a Social Security card and a birth certificate for the child or other proof of the child's date of birth as provided under subsection (2) of this section. The card shall contain the child's name and the toll-free number of the Kentucky Missing Persons Clearinghouse, Department of Kentucky State Police. The card shall not contain the child's Social Security number. The cabinet shall set a four dollar (\$4) fee for the child identification card. Two dollars (\$2) of the fee shall be used to cover the cabinet's cost for equipment and supplies. Two dollars (\$2) of the fee shall be an administrative fee of the circuit clerk for issuing the card which shall be deposited by the Administrative Office of the Courts into a trust and agency account for the circuit clerks and used for the purposes of hiring additional deputy clerks and providing salary adjustments to deputy clerks. The card shall expire every four (4) years on the child's birthday. Within the time period that the child identification card is valid, the card may be updated with a new photograph and information. The fee for an updated card shall be four dollars (\$4), with two dollars (\$2) of the fee going to the cabinet and two dollars (\$2) going to the Administrative Office of the Courts in the same manner as the fee for an initial card as described in this subsection. The descriptive data and a photo image of the child shall be stored in the Kentucky Driver's License Information System and may be retrieved and used

by public agencies subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. sec. 2721, and may also be used by the Kentucky Missing Persons Clearinghouse.

- (10) If a citizen of the Commonwealth currently serving in the United States military is stationed or assigned to a base or other location outside the boundaries of the Commonwealth, the citizen may renew a Class D operator's license issued under this section by mail. If the citizen was issued an "under 21" operator's license, upon the date of his or her twenty-first birthday, the "under 21" operator's license may be renewed for an operator's license that no longer contains the outdated reference to being "under 21."
- (11) A citizen of the Commonwealth renewing an operator's license by mail under subsection (10) of this section may have a personal designee apply to the circuit clerk on behalf of the citizen to renew the citizen's operator's license. An operator's license being renewed by mail under subsection (10) of this section shall be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature."
- (12)
 - (a) If a citizen of the Commonwealth has been serving in the United States military stationed or assigned to a base or other location outside the boundaries of the Commonwealth and has allowed his or her operator's license to expire, he or she shall, within ninety (90) days of returning to the Commonwealth, be permitted to renew his or her license without having to take a written test or road test.
 - (b) A citizen who meets the criteria in paragraph (a) of this subsection shall not be convicted or cited for driving on an expired license prior to license renewal during the ninety (90) days after the person's return to the Commonwealth if the person can provide proof of his or her out-of-state service and dates of assignment.
 - (c) A citizen who meets the criteria in paragraph (a) of this subsection and who does not renew his or her license within ninety (90) days of returning to the Commonwealth shall be required to comply with the provisions of this chapter governing renewal of a license that has expired.
 - (d) If a citizen of the Commonwealth has been issued an "under 21" or "under 21 CDL" operator's license and the person is unable to renew the license on the date of his twenty-first birthday, the "under 21" or "under 21 CDL" operator's license shall be valid for ninety (90) days beyond the date of the person's twenty-first birthday.
- (13) The cabinet shall provide on each license to operate motor vehicles, motorcycles, and mopeds a space for the licensed driver's:
 - (a) Blood type;
 - (b) Medical insignia if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and
 - (c) A statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under *Section 4 of this Act* ~~[KRS 311.195]~~.
- (14) If the motor vehicle operator denotes a physical ailment or drug allergy on the operator's license, he may apply for and shall receive, for a fee of one dollar (\$1) paid to the circuit clerk, a medical insignia decal that may be affixed to the lower left side of the front windshield of a motor vehicle.
- (15) An operator's license pursuant to this section shall be designated a Class D license.
- (16) A person shall not have more than one (1) license.
- (17) Upon marriage, a woman applying for an operator's license or a color photo personal identification card shall provide the circuit clerk with her marriage license and complete an affidavit form provided by the circuit court clerk. She shall have the following choices in regard to her full legal name as required in subsections (2) and (7) of this section:
 - (a) Use her husband's last name;
 - (b) Retain her maiden name;
 - (c) Use her maiden name hyphenated with her husband's last name;
 - (d) Use her maiden name as a middle name and her husband's last name as her last name; or

(e) In the case of a previous marriage, retain that husband's last name.

- (18) Upon issuing an operator's license or personal identification card, the clerk shall draw the recipient's attention to the location on the license relating to anatomical gifts under subsection (13)(c) of this section and offer to allow personnel in the clerk's office to serve as the witnesses to the recipient's certification of willingness to make an anatomical gift if the recipient is the person to whom the license is issued.

➔Section 33. KRS 216B.300 is amended to read as follows:

As used in KRS 216B.300 to 216B.320 and KRS 216B.990~~(5)~~~~(7)~~, unless the context requires otherwise:

- (1) "Cabinet" means the Cabinet for Health and Family Services or its designee. "Designee" means any agency established under KRS Chapter 211 or KRS 147A.050 whose duties related to this chapter shall be set forth in administrative regulation;
- (2) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (3) "Boarder" means a person who does not require supervision or assistance related to medication, activities of daily living, or a supervised plan of care; and
- (4) "Boarding home" means any home, facility, institution, lodging, or other establishment, however named, which accommodates three (3) or more adults not related by blood or marriage to the owner, operator, or manager, and which offers or holds itself out to offer room and board on a twenty-four (24) hour basis for hire or compensation. It shall not include any facility which is otherwise licensed and regulated by the cabinet or any hotel as defined in KRS 219.011(3).

➔Section 34. KRS 216B.990 is amended to read as follows:

- (1) Any person who, in willful violation of this chapter, operates a health facility or abortion facility without first obtaining a license or continues to operate a health facility or abortion facility after a final decision suspending or revoking a license shall be fined not less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000) for each violation.
- (2) Any person who, in willful violation of this chapter, acquires major medical equipment, establishes a health facility, or obligates a capital expenditure without first obtaining a certificate of need, or after the applicable certificate of need has been withdrawn, shall be fined one percent (1%) of the capital expenditure involved but not less than five hundred dollars (\$500) for each violation.
- (3) Any hospital acting by or through its agents or employees which violates any provision of KRS 216B.400 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- ~~{(4) Any hospital acting by or through its agents or employees which violates any provision of KRS 311.241 to 311.245 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).}~~
- ~~{(5) Any hospital violating the provisions of KRS 311.241 may be denied a license to operate under the provisions of this chapter.}~~
- ~~{(4)}{(6)}~~ Any health facility which willfully violates KRS 216B.250 shall be fined one hundred dollars (\$100) per day for failure to post required notices and one hundred dollars (\$100) per instance for willfully failing to provide an itemized statement within the required time frames.
- ~~{(5)}{(7)}~~ In addition to the civil penalties established under KRS 216B.306(1) and (4), any person who advertises, solicits boarders, or operates a boarding home without first obtaining a registration as required by KRS 216B.305 and any person who aids or abets the operation of a boarding home that is not registered shall be imprisoned for no more than twelve (12) months.
- ~~{(6)}{(8)}~~ Any person or entity establishing, managing, or operating an abortion facility or conducting the business of an abortion facility which otherwise violates any provision of this chapter or any administrative regulation promulgated thereunder regarding abortion facilities shall be subject to revocation or suspension of the license of the abortion facility. In addition, any violation of any provision of this chapter regarding abortion facilities or any administrative regulation related thereto by intent, fraud, deceit, unlawful design, willful and deliberate misrepresentation, or by careless, negligent, or incautious disregard for the statute or administrative regulation, either by persons acting individually or in concert with others, shall constitute a violation and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) for each offense. Each day of continuing

violation shall be considered a separate offense. The venue for prosecution of the violation shall be in any county of the state in which the violation, or any portion thereof, occurred.

~~(7)(9)~~ Any hospital acting by or through its agents or employees that violates any provision of KRS 216B.150 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation.

➔ Section 35. KRS 311.992 is amended to read as follows:

~~(1) Any hospital acting by or through its agents or employees which violates any provision of KRS 311.241 to 311.245 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).~~

~~(2) Any hospital violating the provisions of KRS 311.241 may be denied a license to operate under the provisions of KRS Chapter 216B.~~

~~(3) Any person who intentionally or recklessly violates KRS 311.715 shall be guilty of a Class A misdemeanor.~~

➔ Section 36. The following KRS sections are repealed:

311.165 Definitions for KRS 311.165 to 311.235.

311.171 Prohibitions and restrictions relating to transplantable organs.

311.175 Persons who may execute an anatomical gift.

311.185 Persons who may become donees -- Purposes for which anatomical gifts may be made.

311.195 Manner of executing anatomical gifts.

311.205 Delivery of document of gift.

311.215 Amendment or revocation of the gift.

311.225 Rights and duties at death.

311.235 Uniformity of interpretation.

311.236 Disposition of organs given as anatomical gifts for which no donee is specified -- Reciprocal agreements among organ procurement organizations -- Restrictions upon out-of-state organ transfers.

311.237 Requirement to honor donor's wishes unless revoked.

311.241 Hospitals to establish organ-procurement protocol -- Notification to federally certified organ-procurement organization of potential availability of organ and identity of potential donor -- Reporting of information on sale, purchase, or brokering of transplantable organs.

311.245 Duty of hospital and allied health personnel to make known patient's intent to donate organ.

311.247 Duty of law enforcement and medical personnel in accident and coroners' cases.

Signed by Governor April 26, 2010.