

Table of Contents

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Volume I

Chapters 1 - 106

| | |
|--|------------|
| Foreword | i |
| Attorney General's Opinion, OAG 11-002 | iii |
| CHAPTER 1 (SB 110, Pendleton and others) | 1 |
| CHAPTER 2 (HB 463, Damron and others) | 4 |
| CHAPTER 3 (SB 73, Harris) | 70 |
| CHAPTER 4 (HB 1, Nesler and others) | 71 |
| CHAPTER 5 (HB 197, Collins and others) | 72 |
| CHAPTER 6 (HB 200, Richards and others) | 76 |
| CHAPTER 7 (HB 330, Stacy) | 77 |
| CHAPTER 8 (HB 242, Riner and others) | 78 |
| CHAPTER 9 (HB 427, Riner and others) | 81 |
| CHAPTER 10 (HB 187, Richards and others) | 81 |
| CHAPTER 11 (HB 122, Miller and others) | 86 |
| CHAPTER 12 (HB 173, Richards and others) | 88 |
| CHAPTER 13 (SCR 110, Givens) | 89 |
| CHAPTER 14 (SB 76, Jones II) | 90 |
| CHAPTER 15 (HB 362, Henderson) | 90 |
| CHAPTER 16 (HCR 13, DeWeese and others) | 92 |
| CHAPTER 17 (HB 41, Lee and Hall) | 93 |
| CHAPTER 18 (HB 74, Denham) | 95 |
| CHAPTER 19 (HB 166, Riner and others) | 96 |
| CHAPTER 20 (HB 202, Nesler and others) | 97 |
| CHAPTER 21 (HB 221, McKee and Stone) | 99 |
| CHAPTER 22 (HB 244, Ford and others) | 101 |
| CHAPTER 23 (HB 256, Palumbo and others) | 103 |
| CHAPTER 24 (HB 259, Gooch Jr. and others) | 109 |
| CHAPTER 25 (HB 272, Riner and others) | 112 |
| CHAPTER 26 (HB 302, Richards and Pullin) | 113 |
| CHAPTER 27 (HB 303, Pullin) | 114 |
| CHAPTER 28 (HB 317, Denham and others) | 114 |
| CHAPTER 29 (HB 331, Kerr) | 115 |
| CHAPTER 30 (HB 339, Horlander) | 128 |

| | |
|---|-----|
| CHAPTER 31 (HB 416, Lee and others) | 128 |
| CHAPTER 32 (HB 428, Cherry and others) | 132 |
| CHAPTER 33 (HB 429, Rand) | 133 |
| CHAPTER 34 (HB 433, Napier and others) | 146 |
| CHAPTER 35 (HB 442, DeWeese and others) | 149 |
| CHAPTER 36 (HB 460, Hoover and others) | 156 |
| CHAPTER 37 (HJR 19, Henderson) | 156 |
| CHAPTER 38 (HCR 37, Wuchner and others) | 159 |
| CHAPTER 39 (HCR 114, Adams and others) | 160 |
| CHAPTER 40 (HCR 138, Butler and others) | 161 |
| CHAPTER 41 (HB 12, Kerr and Webb-Edgington) | 162 |
| CHAPTER 42 (HB 33, Richards and others) | 162 |
| CHAPTER 43 (HB 52, Wayne and others) | 163 |
| CHAPTER 44 (HB 119, Rollins II) | 166 |
| CHAPTER 45 (HB 121, Riner and others) | 171 |
| CHAPTER 46 (HB 129, Horlander) | 181 |
| CHAPTER 47 (HB 164, Wayne and others) | 184 |
| CHAPTER 48 (HB 167, Damron and Yonts) | 191 |
| CHAPTER 49 (HB 183, Pullin) | 212 |
| CHAPTER 50 (HB 192, Koenig and others) | 212 |
| CHAPTER 51 (HB 228, Cherry) | 213 |
| CHAPTER 52 (HB 229, Yonts and others) | 216 |
| CHAPTER 53 (HB 245, Ford) | 231 |
| CHAPTER 54 (HB 255, Lee and others) | 232 |
| CHAPTER 55 (HB 264, Lee and Miller) | 240 |
| CHAPTER 56 (HB 269, Riner and others) | 241 |
| CHAPTER 57 (HB 278, Marzian) | 241 |
| CHAPTER 58 (HB 288, Westrom and Webb-Edgington) | 242 |
| CHAPTER 59 (HB 289, Collins and others) | 249 |
| CHAPTER 60 (HB 308, Damron and others) | 256 |
| CHAPTER 61 (HB 309, Damron) | 257 |
| CHAPTER 62 (HB 310, Riggs and others) | 259 |
| CHAPTER 63 (HB 311, Damron and Yonts) | 271 |
| CHAPTER 64 (HB 313, Gooch Jr. and others) | 272 |
| CHAPTER 65 (HB 320, Gooch Jr. and others) | 274 |
| CHAPTER 66 (HB 333, Kerr and others) | 275 |
| CHAPTER 67 (HB 342, Combs and Stumbo) | 282 |
| CHAPTER 68 (HB 358, Ford and others) | 287 |
| CHAPTER 69 (HB 382, Gooch Jr. and others) | 292 |

| | |
|---|------------|
| CHAPTER 70 (HB 387, Clark) | 293 |
| CHAPTER 71 (HB 470, Burch and others)..... | 296 |
| CHAPTER 72 (HB 464, Osborne)..... | 298 |
| CHAPTER 73 (HB 478, Rand) | 298 |
| CHAPTER 74 (HB 247, Riggs and others)..... | 310 |
| CHAPTER 75 (SB 8, Givens and others) | 321 |
| CHAPTER 76 (SB 12, Winters) | 323 |
| CHAPTER 77 (SB 24, Thayer)..... | 328 |
| CHAPTER 78 (SB 25, Kerr)..... | 336 |
| CHAPTER 79 (SB 26, Buford) | 337 |
| CHAPTER 80 (SB 39, McGaha) | 343 |
| CHAPTER 81 (SB 40, Denton and Harper Angel)..... | 345 |
| CHAPTER 82 (SB 50, Jensen)..... | 348 |
| CHAPTER 83 (SB 63, Buford and others)..... | 355 |
| CHAPTER 84 (SB 64, Neal and Williams)..... | 356 |
| CHAPTER 85 (SB 66, Jones II) | 358 |
| CHAPTER 86 (SB 70, Leeper) | 358 |
| CHAPTER 87 (SB 71, Kerr and Clark) | 359 |
| CHAPTER 88 (SB 79, Pendleton and others)..... | 362 |
| CHAPTER 89 (SB 82, Pendleton) | 369 |
| CHAPTER 90 (SB 103, Winters) | 369 |
| CHAPTER 91 (SB 108, Higdon) | 371 |
| CHAPTER 92 (SB 112, Buford)..... | 372 |
| CHAPTER 93 (SB 114, Denton and Gibson) | 372 |
| CHAPTER 94 (SB 130, Givens and Wilson) | 373 |
| CHAPTER 95 (SB 135, Westwood) | 374 |
| CHAPTER 96 (SB 139, Stivers II) | 379 |
| CHAPTER 97 (SB 150, McGaha) | 380 |
| CHAPTER 98 (HB 26, Belcher) | 381 |
| CHAPTER 99 (HB 34, Richards and others)..... | 396 |
| CHAPTER 100 (HB 250, Simpson and others)..... | 399 |
| CHAPTER 101 (HB 301, Butler and others) | 414 |
| CHAPTER 102 (HB 385, Gooch Jr. and Steele) | 415 |
| CHAPTER 103 (HB 425, Rollins II) | 419 |
| CHAPTER 104 (HJR 5, Clark and others) | 419 |
| CHAPTER 105 (SB 7, Thayer and Wilson) | 421 |
| CHAPTER 106 (SB 119, Buford)..... | 425 |

Tables and Indexes

| | |
|---|-----|
| Members and Officers of the General Assembly | A-1 |
| Chapter and Page Assignments of Bills and Resolutions | B-1 |
| Acts Disposition Table..... | C-1 |
| Table of KRS Sections Affected | D-1 |
| Legislation with Special Effective Dates | E-1 |
| Subject Index..... | F-1 |

CHAPTER 1

(SB 110)

AN ACT relating to optometry.

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

➔Section 1. KRS 320.210 is amended to read as follows:

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

- (1) "Board" means the Kentucky Board of Optometric Examiners;
- (2) "Practice of optometry" means:
 - (a) *The evaluation, diagnosis, prevention, or surgical, nonsurgical, or related treatment of diseases, disorders, or conditions of the eye and its appendages and their impact on the human body provided by an optometrist within the scope of his or her education, training, and experience and in accordance with this chapter, the ethics of the profession, and applicable law. The practice of optometry includes the examination, diagnosis, and treatment of the human eye and its appendages to correct and relieve ocular abnormalities and to determine eye health, the visual efficiency of the human eye, or the powers or defects of vision in any authorized manner including but not limited to:*
 1. *Prescribing and adapting lenses, contact lenses, spectacles, eyeglasses, prisms, ocular devices, and all routes of administration of pharmaceutical agents, except controlled substances classified in Schedules I and II, as authorized by Section 2 of this Act; or*
 2. *Employing vision therapy or orthoptics, low vision rehabilitation, and laser surgery procedures, excluding retina, LASIK, and PRK.*

The practice of optometry includes the correction and relief of ocular abnormalities by surgical procedures not excluded in paragraph (b) of this subsection~~[The employment of any means including the administration of pharmaceutical agents, except controlled substances classified in Schedules I and II, as authorized in KRS 320.240, except surgery in examination, diagnosis, and treatment of the human eye and its appendages, to determine the visual efficiency of the human eye, or to determine the powers or defects of vision, provided that superficial foreign bodies may be removed from the eye and its appendages];~~
 - (b) *The following procedures are excluded from the scope of practice of optometry, except for the pre-operative and post-operative care of these procedures:*
 1. *Retina laser procedures, LASIK, and PRK;*
 2. *Nonlaser surgery related to removal of the eye from a living human being;*
 3. *Nonlaser surgery requiring full thickness incision or excision of the cornea or sclera other than paracentesis in an emergency situation requiring immediate reduction of the pressure inside the eye;*
 4. *Penetrating keratoplasty (corneal transplant), or lamellar keratoplasty;*
 5. *Nonlaser surgery requiring incision of the iris and ciliary body, including iris diathermy or cryotherapy;*
 6. *Nonlaser surgery requiring incision of the vitreous;*
 7. *Nonlaser surgery requiring incision of the retina;*
 8. *Nonlaser surgical extraction of the crystalline lens;*
 9. *Nonlaser surgical intraocular implants;*
 10. *Incisional or excisional nonlaser surgery of the extraocular muscles;*
 11. *Nonlaser surgery of the eyelid for eyelid malignancies or for incisional cosmetic or mechanical repair of blepharochalasis, ptosis, and tarsorrhaphy;*
 12. *Nonlaser surgery of the bony orbit, including orbital implants;*

13. *Incisional or excisional nonlaser surgery of the lacrimal system other than lacrimal probing or related procedures;*
14. *Nonlaser surgery requiring full thickness conjunctivoplasty with graft or flap;*
15. *Any nonlaser surgical procedure that does not provide for the correction and relief of ocular abnormalities;*
16. *Laser or nonlaser injection into the posterior chamber of the eye to treat any macular or retinal disease; and*
17. *The administration of general anesthesia;*~~[The prescribing, providing, furnishing, adapting, using, or employing lenses, prisms, contact lenses, visual training, orthoptics, ocular exercise, autorefraction, or any other means or device including pharmaceutical agents, except controlled substances classified in Schedules I and II, as authorized in KRS 320.240, excluding the use of surgery for the aid, relief, or correction of the human eye and its appendages; and]~~

(c) *Any person shall be regarded as practicing optometry if he or she:*

1. *Performs or advertises to perform, optometric operations of any kind, including diagnosing or treating diseases of the eye or visual system or deficiencies of the eye and its appendages, or attempts to correct the vision thereof;*
2. *Prescribes, provides, furnishes, adapts, uses, or employs lenses, prisms, contact lenses, visual therapy, orthoptics, ocular exercise, autorefraction, or any other means or device for the aid, relief, or correction of the human eye and its appendages, except upon the written prescription of a licensed optometrist; or*
3. *Uses the words "optometrist," "doctor of optometry," the letters "O.D.," or other letters or title in connection with his or her name, which in any way represents him or her as being engaged in the practice of optometry; and*

(d) Low vision rehabilitation;

- (3) "Appendages" means the eyelids, the eyebrows, the conjunctiva, and the lacrimal apparatus;
- (4) "Visual aid glasses" means eyeglasses, spectacles, or lenses designed or used to correct visual defects; provided, however, that nothing in the provisions of this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of sunglasses designed and used solely to filter out light; and further provided that nothing in this chapter relating to the practice of optometry shall be construed to limit or restrict, in any respect, the sale of completely assembled eyeglasses or spectacles designed and used solely to magnify;
- (5) "Orthoptic technician" means a person who trains and directs individuals to engage in ocular exercises designed to correct visual defects, and shall not be required to be licensed under the provisions of this chapter if such training and directions are done pursuant to and under the instructions of a duly-licensed physician, osteopath, or optometrist and consists solely of visual training, orthoptics, or ocular exercises; and
- (6) "Low vision rehabilitation" means the evaluation, diagnosis, and management of the low vision patient, including but not limited to, prescription, low vision rehabilitation therapy, education, and interdisciplinary consultation when indicated. Any person who prescribes or provides comprehensive low vision care for the rehabilitation and treatment of the visually impaired or legally blind patient; prescribes corrective eyeglasses, contact lenses, prisms, or filters; employs any means for the adaptation of lenses, low vision devices, prisms, or filters; evaluates the need for, recommends, or prescribes optical, electronic, or other low vision devices; or recommends or provides low vision rehabilitation services independent of a clinical treatment plan prescribed by an optometrist, physician, or osteopath is engaged in the practice of optometry.

➔Section 2. KRS 320.240 is amended to read as follows:

- (1) The board shall meet at least once each year at which time it shall choose from among its members the president, vice president, and secretary-treasurer. In addition, the board, upon call of its officers, may hold meetings at any time as it deems necessary. A full record of the board's proceedings shall be kept in the office of the board and shall be open to inspection at all reasonable times.
- (2) The board shall keep a register containing the name, address, and license number of every person licensed to practice optometry in this state.

- (3) The Attorney General shall render to the board legal services as it may require in carrying out and enforcing the provisions of this chapter.
- (4) Subject to and consistent with the provisions of this chapter, the board shall promulgate reasonable administrative regulations and do any and all things that it may deem necessary or proper for the effective enforcement of this chapter and for the full and efficient performance of its duties hereunder and the reasonable regulation of the profession of optometry and the practice thereof by licensed optometrists. ***The administrative regulations shall include the classification and licensure of optometrists by examination or credentials, retirement of a license, and reinstatement of a license.***
- (5) ***An optometrist shall not administer drugs, prescribe drugs, or perform laser or nonlaser surgery procedures until he or she is licensed by the board. Any therapeutically licensed optometrist authorized to practice under this section shall meet the educational and competence criteria set forth by the board in order to perform expanded therapeutic procedures. Evidence of proof of continuing competency shall be determined by the board.***
- (6) ***Nothing in this chapter shall be construed as allowing any agency, board, or other entity of this state other than the Kentucky Board of Optometric Examiners to determine what constitutes the practice of optometry.***
- (7) ***The board shall have the sole authority to determine what constitutes the practice of optometry and sole jurisdiction to exercise any other powers and duties under this chapter. The board may issue advisory opinions and declaratory rulings related to this chapter and the administrative regulations promulgated under this chapter.***
- ~~(8)(5)~~ The board shall have:
 - (a) A common seal;
 - (b) ***The right to determine what acts on the part of any person licensed as an optometrist in this state shall constitute unprofessional conduct under this chapter; and***
 - (c) ***Other powers and duties as authorized by this chapter.***
- ~~(9)(6)~~ The board may administer oaths and require the attendance of witnesses, the production of books, records, and papers pertinent to any matters coming before the board by the issuance of process that shall be served and returned in the same manner as in civil actions and for the disobedience of which the board shall have the power to invoke the same rights as are provided for disobedience of a subpoena or subpoena duces tecum in a civil action.
- ~~{(7) The board shall promulgate administrative regulations necessary to regulate and control all matters set forth in this chapter.~~
- ~~(8) The board shall have the right to determine what acts on the part of any person licensed as an optometrist in this state shall constitute unprofessional conduct under this chapter.}~~
- ~~(10)(9)~~ The board may assist in the prosecution of any violation of this chapter and in the enforcement of any of the provisions of this chapter.
- ~~{(10) The board shall have other powers and duties as may be provided in the provisions of this chapter.}~~
- (11) The board shall report its proceedings to the Governor on or about January 1 of each year, including an accounting of all moneys received and disbursed.
- (12) The board may permit persons engaging in the practice of optometry under the provisions of this chapter to administer diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics applied topically only, but excluding any drug classified as a controlled substance pursuant to KRS Chapter 218A. These pharmaceutical agents shall be applied in diagnostic procedures only as part of an eye examination. The application of the diagnostic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or courses in general and ocular pharmacology, with particular emphasis on diagnostic pharmaceutical agents applied topically to the eye, from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education.
- (13) The board may authorize only those persons who have qualified for use of diagnostic pharmaceutical agents as set out in subsection (12) of this section to utilize and prescribe therapeutic pharmaceutical agents in the

examination or treatment of any condition of the eye or its appendages. Any therapeutically certified optometrist licensed under the provisions of this subsection shall be authorized to prescribe oral medications except controlled substances classified in Schedules I and II for any condition which an optometrist is authorized to treat under the provisions of this chapter. ~~The [and to] use of injections for other than treatment of the human eye and its appendages shall be limited to the administration of~~ benadryl, epinephrine, or equivalent medication to counteract anaphylaxis or anaphylactic reaction. ***In a public health emergency, the Commissioner of Health may authorize therapeutically licensed optometrists to administer inoculation for systemic health reasons.*** The authority to prescribe a Schedule III, IV, or V controlled substance shall be limited to prescriptions for a quantity sufficient to provide treatment for up to seventy-two (72) hours. No refills of prescriptions for controlled substances shall be allowed. The utilization or prescribing of therapeutic pharmaceutical agents shall be limited to those persons who have sufficient education and professional competence as determined by the board and who have earned transcript credits of at least six (6) semester hours in a course or courses in general and ocular pathology and therapy, with particular emphasis on utilization of therapeutic pharmaceutical agents from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education. These six (6) semester hours are in addition to the six (6) semester hours required by subsection (12) of this section, making a total of twelve (12) semester hours.

- (14) Any optometrist authorized by the board to utilize diagnostic pharmaceutical agents shall be permitted to purchase for use in the practice of optometry diagnostic pharmaceutical agents limited to miotics for emergency use only, mydriatics, cycloplegics, and anesthetics ~~[to be applied topically only]~~. Any optometrist authorized by the board to utilize therapeutic pharmaceutical agents shall be permitted to prescribe in the practice of optometry therapeutic pharmaceutical agents. Optometrists so authorized by the board to purchase pharmaceutical agents shall obtain them from licensed drug suppliers or pharmacists on written orders placed in the same or similar manner as any physician or other practitioner authorized by KRS Chapter 217. Purchases shall be limited to those pharmaceutical agents specified in this subsection and in subsection (12) of this section, based upon the authority conferred upon the optometrist by the board consistent with the educational qualifications of the optometrist as set out herein.

➔Section 3. KRS 320.220 is amended to read as follows:

- (1) No person shall practice optometry in this Commonwealth or hold himself or herself out as being able to do so unless he or she is the holder of a license duly issued to him or her by the board and registered in the manner provided by KRS 320.290.
- (2) A license to practice optometry shall not be required by physicians or osteopaths currently licensed to practice medicine or osteopathy at any place in the Commonwealth of Kentucky.
- (3) Nothing in this chapter shall be construed to prohibit persons from fitting, adjusting, or dispensing visual aid glasses or other lenses or appurtenances if the fitting, adjusting, or dispensing is done upon the written prescription of a currently licensed optometrist, physician, or osteopath, nor shall this chapter be construed as requiring these persons to be licensed under this chapter.
- (4) ***Nothing in this chapter or in the administrative regulations promulgated by the board pursuant to this chapter shall be interpreted to limit or restrict a licensed health care practitioner or provider from engaging in the full scope of practice authorized by the license for that person's profession, training, or services.***

➔Section 4. Sections 1 and 2 of this Act shall be known and may be cited as the "Better Access to Quality Eye Care Act."

Signed by Governor February 24, 2011.

CHAPTER 2

(HB 463)

AN ACT relating to the criminal justice system, making an appropriation therefor, and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

It is the sentencing policy of the Commonwealth of Kentucky that:

- (1) *The primary objective of sentencing shall be to maintain public safety and hold offenders accountable while reducing recidivism and criminal behavior and improving outcomes for those offenders who are sentenced;*
- (2) *Reduction of recidivism and criminal behavior is a key measure of the performance of the criminal justice system;*
- (3) *Sentencing judges shall consider:*
 - (a) *Beginning July 1, 2013, the results of a defendant's risk and needs assessment included in the presentence investigation; and*
 - (b) *The likely impact of a potential sentence on the reduction of the defendant's potential future criminal behavior;*
- (4) *All supervision and treatment programs provided for defendants shall utilize evidence-based practices to reduce the likelihood of future criminal behavior; and*
- (5) *All supervision and treatment programs shall be evaluated at regular intervals to measure and ensure reduction of criminal behavior by defendants in the criminal justice system.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

The primary objectives of the department shall be to maintain public safety and hold offenders accountable while reducing recidivism and criminal behavior and improving outcomes for offenders under its supervision. The department shall create and implement policies and programs to achieve these objectives.

➔Section 3. KRS 446.010 is amended to read as follows:

As used in the statute laws of this state, unless the context requires otherwise:

- (1) "Action" includes all proceedings in any court of this state;
- (2) "Animal" includes every warm-blooded living creature except a human being;
- (3) "Attorney" means attorney-at-law;
- (4) "Bequeath" and "devise" mean the same thing;
- (5) "Bequest" and "legacy" mean the same thing, and embrace either real or personal estate, or both;
- (6) *"Case plan" means an individualized accountability and behavior change strategy for supervised individuals that:*
 - (a) *Targets and prioritizes the specific criminal risk factors of the individual based upon his or her assessment results;*
 - (b) *Matches the type and intensity of supervision and treatment conditions to the individual's level of risk, criminal risk factors, and individual characteristics, such as gender, culture, motivational stage, developmental stage, and learning style;*
 - (c) *Establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations; and*
 - (d) *Specifies positive and negative actions that will be taken in response to the supervised individual's behaviors;*
- (7) "Cattle" includes horse, mule, ass, cow, ox, sheep, hog, or goat of any age or sex;
- (8)~~(7)~~ "Company" may extend and be applied to any corporation, company, person, partnership, joint stock company, or association;
- (9)~~(8)~~ "Corporation" may extend and be applied to any corporation, company, partnership, joint stock company, or association;
- (10)~~(9)~~ *"Criminal risk factors" are characteristics and behaviors that, when addressed or changed, affect a person's risk for committing crimes. The characteristics may include but are not limited to the following*

risk and criminogenic need factors: antisocial behavior; antisocial personality; criminal thinking; criminal associates; dysfunctional family; low levels of employment or education; poor use of leisure and recreation; and substance abuse;

- (11) "Cruelty" as applied to animals includes every act or omission whereby unjustifiable physical pain, suffering, or death is caused or permitted;
- (12)~~(10)~~ "Directors," when applied to corporations, includes managers or trustees;
- (13)~~(11)~~ "Domestic," when applied to a corporation, partnership, business trust, or limited liability company, means all those incorporated or formed by authority of this state;
- (14)~~(12)~~ "Domestic animal" means any animal converted to domestic habitat;
- (15)~~(13)~~ *"Evidence-based practices" means policies, procedures, programs and practices proven by scientific research to reliably produce reductions in recidivism when implemented competently;*
- (16) "Federal" refers to the United States;
- (17)~~(14)~~ "Foreign," when applied to a corporation, partnership, business trust, or limited liability company, includes all those incorporated or formed by authority of any other state;
- (18)~~(15)~~ "Generally accepted accounting principles" are those uniform minimum standards of and guidelines to financial accounting and reporting as adopted by the National Council on Governmental Accounting, under the auspices of the Municipal Finance Officers Association and by the Financial Accounting Standards Board, under the auspices of the American Institute of Certified Public Accountants;
- (19)~~(16)~~ *"Graduated sanction" means any of a wide range of accountability measures and programs for supervised individuals, including but not limited to electronic monitoring; drug and alcohol testing or monitoring; day or evening reporting centers; restitution centers; disallowance of future earned compliance credits; rehabilitative interventions such as substance abuse or mental health treatment; reporting requirements to probation and parole officers; community service or work crews; secure or unsecure residential treatment facilities or halfway houses; and short-term or intermittent incarceration;*
- (20) "Humane society," "society," or "Society for the Prevention of Cruelty to Animals," means any nonprofit corporation, organized under the laws of this state and having as its primary purpose the prevention of cruelty to animals;
- (21)~~(17)~~ "Issue," as applied to the descent of real estate, includes all the lawful lineal descendants of the ancestors;
- (22)~~(18)~~ "Land" or "real estate" includes lands, tenements, and hereditaments and all rights thereto and interest therein, other than a chattel interest;
- (23)~~(19)~~ "Legatee" and "devisee" convey the same idea;
- (24)~~(20)~~ "May" is permissive;
- (25)~~(21)~~ "Month" means calendar month;
- (26)~~(22)~~ "Oath" includes "affirmation" in all cases in which an affirmation may be substituted for an oath;
- (27)~~(23)~~ "Owner" when applied to any animal, means any person having a property interest in such animal;
- (28)~~(24)~~ "Partnership" includes both general and limited partnerships;
- (29)~~(25)~~ "Peace officer" includes sheriffs, constables, coroners, jailers, metropolitan and urban-county government correctional officers, marshals, policemen, and other persons with similar authority to make arrests;
- (30)~~(26)~~ "Penitentiary" includes all of the state penal institutions except the houses of reform;
- (31)~~(27)~~ "Person" may extend and be applied to bodies-politic and corporate, societies, communities, the public generally, individuals, partnerships, joint stock companies, and limited liability companies;
- (32)~~(28)~~ "Personal estate" includes chattels, real and other estate that passes to the personal representative upon the owner dying intestate;

- (33) ***"Pretrial risk assessment" means an objective, research based, validated assessment tool that measures a defendant's risk of flight and risk of anticipated criminal conduct while on pretrial release pending adjudication;***
- (34)~~(29)~~ "Regular election" means the election in even-numbered years at which members of Congress are elected and the election in odd-numbered years at which state officers are elected;
- (35)~~(30)~~ ***"Risk and needs assessment" or "validated risk and needs assessment" means an actuarial tool scientifically proven to determine a person's risk to reoffend and criminal risk factors, that when properly addressed, can reduce that person's likelihood of committing future criminal behavior;***
- (36) "Shall" is mandatory;
- (37)~~(31)~~ "State" when applied to a part of the United States, includes territories, outlying possessions, and the District of Columbia; "any other state" includes any state, territory, outlying possession, the District of Columbia, and any foreign government or country;
- (38)~~(32)~~ "State funds" or "public funds" means sums actually received in cash or negotiable instruments from all sources unless otherwise described by any state agency, state-owned corporation, university, department, cabinet, fiduciary for the benefit of any form of state organization, authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization whether or not the money has ever been paid into the Treasury and whether or not the money is still in the Treasury if the money is controlled by any form of state organization, except for those funds the management of which is to be reported to the Legislative Research Commission pursuant to KRS 42.600, 42.605, and 42.615;
- (39) ***"Supervised individual" means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail;***
- (40)~~(33)~~ "Sworn" includes "affirmed" in all cases in which an affirmation may be substituted for an oath;
- (41) ***"Treatment" when used in a criminal justice context, means targeted interventions that focus on criminal risk factors in order to reduce the likelihood of criminal behavior. Treatment options may include, but shall not be limited to, community-based programs that are consistent with evidence-based practices; cognitive-behavioral programs; faith-based programs; inpatient and outpatient substance abuse or mental health programs; and other available prevention and intervention programs that have been scientifically proven to produce reductions in recidivism when implemented competently. "Treatment" does not include medical services;***
- (42)~~(34)~~ "United States" includes territories, outlying possessions, and the District of Columbia;
- (43)~~(35)~~ "Vacancy in office," or any equivalent phrase, means such as exists when there is an unexpired part of a term of office without a lawful incumbent therein, or when the person elected or appointed to an office fails to qualify according to law, or when there has been no election to fill the office at the time appointed by law; it applies whether the vacancy is occasioned by death, resignation, removal from the state, county or district, or otherwise;
- (44)~~(36)~~ "Violate" includes failure to comply with;
- (45)~~(37)~~ "Will" includes codicils; "last will" means last will and testament;
- (46)~~(38)~~ "Year" means calendar year;
- (47)~~(39)~~ "City" includes town;
- (48)~~(40)~~ Appropriation-related terms are defined as follows:
- (a) "Appropriation" means an authorization by the General Assembly to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in KRS Chapter 48;
 - (b) "Appropriation provision" means a section of any enactment by the General Assembly which is not provided for by KRS Chapter 48 and which authorizes the expenditure of public funds other than by a general appropriation bill;
 - (c) "General appropriation bill" means an enactment by the General Assembly that authorizes the expenditure of public funds in a branch budget bill as provided for in KRS Chapter 48;

- (49)~~((41))~~ "Mediation" means a nonadversarial process in which a neutral third party encourages and helps disputing parties reach a mutually acceptable agreement. Recommendations by mediators are not binding on the parties unless the parties enter into a settlement agreement incorporating the recommendations;
- (50)~~((42))~~ "Biennium" means the two (2) year period commencing on July 1 in each even-numbered year and ending on June 30 in the ensuing even-numbered year;
- (51)~~((43))~~ "Branch budget bill" or "branch budget" means an enactment by the General Assembly which provides appropriations and establishes fiscal policies and conditions for the biennial financial plan for the judicial branch, the legislative branch, and the executive branch, which shall include a separate budget bill for the Transportation Cabinet; and
- (52)~~((44))~~ "AVIS" means the automated vehicle information system established and maintained by the Transportation Cabinet to collect titling and registration information on vehicles and boats and information on holders of motor vehicle operator's licenses and personal identification cards.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

The General Assembly hereby finds, determines, and declares that:

- (1) *The regulation of controlled substances in this Commonwealth is important and necessary for the preservation of public safety and public health; and*
- (2) *Successful, community-based treatment can be used as an effective tool in the effort to reduce criminal risk factors. Therapeutic intervention and ongoing individualized treatment plans prepared through the use of meaningful and validated research-based assessment tools and professional evaluations offer a potential alternative to incarceration in appropriate circumstances and shall be used accordingly.*

➔Section 5. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
 - (a) A practitioner or by his *or her* authorized agent under his *or her* immediate supervision and pursuant to his *or her* order; or
 - (b) The patient or research subject at the direction and in the presence of the practitioner;
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;
- (4) "Child" means any person under the age of majority as specified in KRS 2.015;
- (5) *"Cocaine" means a substance containing any quantity of cocaine, its salts, optical and geometric isomers, and salts of isomers;*
- (6) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;
- (7)~~((6))~~ (a) "Controlled substance analogue," except as provided in *paragraph*~~[subparagraph]~~ (b) of this subsection, means a substance:
 1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
 2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
 3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
- (b) Such term does not include:

1. Any substance for which there is an approved new drug application;
 2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
 3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance;
- (8)~~(7)~~ "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance;
- (9)~~(8)~~ "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (10)~~(9)~~ "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user;
- (11)~~(10)~~ "Distribute" means to deliver other than by administering or dispensing a controlled substance;
- (12)~~(11)~~ ***"Dosage unit" means a single pill, capsule, ampule, liquid, or other form of administration available as a single unit;***
- (13) "Drug" means:
- (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
 - (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;
 - (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
 - (d) Substances intended for use as a component of any article specified in this subsection.
- It does not include devices or their components, parts, or accessories;
- (14)~~(12)~~ "Good faith prior examination," as used in KRS Chapter 218A and for criminal prosecution only, means an in-person medical examination of the patient conducted by the prescribing practitioner or other health-care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. "In-person" includes telehealth examinations. This subsection shall not be applicable to hospice providers licensed pursuant to KRS Chapter 216B;
- (15)~~(13)~~ "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:
- (a) Poses an explosion hazard;
 - (b) Poses a fire hazard; or
 - (c) Is poisonous or injurious if handled, swallowed, or inhaled;
- (16) ***"Heroin" means a substance containing any quantity of heroin, or any of its salts, isomers, or salts of isomers;***
- (17)~~(14)~~ "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture;
- (18)~~(15)~~ "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to

statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine;

- ~~(19)~~~~(16)~~ "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer;
- ~~(20)~~~~(17)~~ "Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:
- (a) By a practitioner as an incident to his *or her* administering or dispensing of a controlled substance in the course of his *or her* professional practice;
 - (b) By a practitioner, or by his *or her* authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
 - (c) By a pharmacist as an incident to his *or her* dispensing of a controlled substance in the course of his *or her* professional practice;
- ~~(21)~~~~(18)~~ "Marijuana" means all parts of the plant *Cannabis* sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances;
- ~~(22)~~~~(19)~~ "Medical history," as used in KRS Chapter 218A and for criminal prosecution only, means an accounting of a patient's medical background, including but not limited to prior medical conditions, prescriptions, and family background;
- ~~(23)~~~~(20)~~ "Medical order," as used in KRS Chapter 218A and for criminal prosecution only, means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health-care needs. "Medical order" may or may not include a prescription drug order;
- ~~(24)~~~~(21)~~ "Medical record," as used in KRS Chapter 218A and for criminal prosecution only, means a record, other than for financial or billing purposes, relating to a patient, kept by a practitioner as a result of the practitioner-patient relationship;
- ~~(25)~~~~(22)~~ "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;
- ~~(26)~~~~(23)~~ "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
 - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
 - (c) Opium poppy and poppy straw;
 - (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
 - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection;
- ~~(27)~~~~(24)~~ "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the

dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;

- (28)~~(25)~~ "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds;
- (29)~~(26)~~ "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (30)~~(27)~~ "Physical injury" has the same meaning it has in KRS 500.080;
- (31)~~(28)~~ "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (32)~~(29)~~ "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (33)~~(30)~~ "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, advanced practice registered nurse as authorized under KRS 314.011, or other person licensed, registered, or otherwise permitted by state or federal law to acquire, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced practice registered nurse authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;
- (34)~~(31)~~ "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal prosecution only, means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his *or her* designee has conducted at least one (1) good faith prior examination;
- (35)~~(32)~~ "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, optometric practitioner, or advanced practice registered nurse, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (36)~~(33)~~ "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;
- (37)~~(34)~~ ***"Presumptive probation" means a sentence of probation not to exceed the maximum term specified for the offense, subject to conditions otherwise authorized by law, that is presumed to be the appropriate sentence for certain offenses designated in this chapter, notwithstanding contrary provisions of KRS Chapter 533. That presumption shall only be overcome by a finding on the record by the sentencing court of substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety;***
- (38) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (39) ***"Recovery program" means an evidence-based, nonclinical service that assists individuals and families working toward sustained recovery from substance use and other criminal risk factors. This can be done through an array of support programs and services that are delivered through residential and nonresidential means;***
- (40)~~(35)~~ "Salvia" means *Salvia divinorum* or Salvinorin A and includes all parts of the plant presently classified botanically as *Salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of that plant, and every compound, manufacture, derivative, mixture, or preparation of that plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation of that plant, its seeds, or extracts. The term shall not include any other species in the genus *salvia*;
- (41)~~(36)~~ "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his *or her* conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;

- (42)~~((37))~~ "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;
- (43)~~((38))~~ "Serious physical injury" has the same meaning it has in KRS 500.080;
- (44)~~((39))~~ "Synthetic cannabinoid agonists or piperazines" means any chemical compound that contains Benzylpiperazine; Trifluoromethylphenylpiperazine; 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexamabinol; or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term shall not include synthetic cannabinoids that require a prescription, are approved by the United States Food and Drug Administration, and are dispensed in accordance with state and federal law;
- (45)~~((40))~~ "Telehealth" has the same meaning it has in KRS 311.550;
- (46)~~((41))~~ "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
- (47)~~((42))~~ "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance;
- (48)~~((43))~~ "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and
- (49)~~((44))~~ "Ultimate user" means a person who lawfully possesses a controlled substance for his *or her* own use or for the use of a member of his *or her* household or for administering to an animal owned by him *or her* or by a member of his *or her* household.

➔Section 6. KRS 218A.140 is amended to read as follows:

- (1) (a) No person shall obtain or attempt to obtain a prescription for a controlled substance by knowingly misrepresenting to, or knowingly withholding information from, a practitioner.
- (b) No person shall procure or attempt to procure the administration of a controlled substance by knowingly misrepresenting to, or withholding information from, a practitioner.
- (c) No person shall obtain or attempt to obtain a controlled substance or procure or attempt to procure the administration of a controlled substance by the use of a false name or the giving of a false address.
- (d) No person shall knowingly make a false statement regarding any prescription, order, report, or record required by this chapter.
- (e) No person shall, for the purpose of obtaining a controlled substance, falsely assume the title of or represent himself *or herself* to be a manufacturer, wholesaler, distributor, repacker, pharmacist, practitioner, or other authorized person.
- (f) In order to obtain a controlled substance, no person shall present a prescription for a controlled substance that was obtained in violation of this chapter.
- (g) No person shall affix any false or forged label to a package or receptacle containing any controlled substance.
- (2) No person shall possess, manufacture, sell, dispense, prescribe, distribute, or administer any counterfeit substance.
- (3) No person shall knowingly obtain or attempt to obtain a prescription for a controlled substance without having formed a valid practitioner-patient relationship with the practitioner or his or her designee from whom the person seeks to obtain the prescription.
- (4) No person shall knowingly assist a person in obtaining or attempting to obtain a prescription in violation of this chapter.
- (5) Any person who violates any subsection of this section shall be guilty of a Class D felony~~[for a first offense and a Class C felony for subsequent offenses]~~.

➔Section 7. KRS 218A.1404 is amended to read as follows:

- (1) No person shall traffic in any controlled substance except as authorized by law.
- (2) No person shall possess any controlled substance except as authorized by law.
- (3) No person shall dispense, prescribe, distribute, or administer any controlled substance except as authorized by law.
- (4) Unless another specific penalty is provided in this chapter, any person who violates the provisions of subsection (1) or (3) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for subsequent offenses and any person who violates the provisions of subsection (2) of this section shall be guilty of a Class A misdemeanor ~~for the first offense and a Class D felony for subsequent offenses~~.

➔Section 8. KRS 218A.1411 is amended to read as follows:

- (1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) ~~feet~~~~yards~~ of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.
- (2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to synthetic cannabinoid agonists or piperazines or salvia.

➔Section 9. KRS 218A.1412 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the first degree when he *or she* knowingly and unlawfully traffics in:
 - (a) *Four (4) grams or more of cocaine;*
 - (b) *Two (2) grams or more of heroin or methamphetamine;*
 - (c) *Ten (10) or more dosage units of* a controlled substance~~;~~ that is classified in Schedules I or II ~~and~~~~which~~ is a narcotic drug, ~~or~~~~;~~ a controlled substance analogue;
 - (d) *Any quantity of* lysergic acid diethylamide; phencyclidine; ~~a controlled substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;~~ gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or flunitrazepam, including its salts, isomers, and salts of isomers; *or*
 - (e) *Any quantity of a controlled substance specified in paragraph (a), (b), or (c) of this subsection in an amount less than the amounts specified in those paragraphs.*
- (2) *The amounts specified in subsection (1) of this section may occur in a single transaction or may occur in a series of transactions over a period of time not to exceed ninety (90) days that cumulatively result in the quantities specified in this section.*
- (3)
 - (a) *Except as provided in paragraph (b) of this subsection,* any person who violates the provisions of ~~subsection (1) of~~ this section shall *be guilty of a Class C felony for the first offense and a Class B felony for a second or subsequent offense.*
 - (b) *Any person who violates the provisions of subsection (1)(e) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second offense or subsequent offense*~~;~~
 - (a) ~~For the first offense be guilty of a Class C felony.~~
 - (b) ~~For a second or subsequent offense be guilty of a Class B felony.~~

➔Section 10. KRS 218A.1413 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:
 - (a) He *or she* knowingly and unlawfully traffics in:
 1. *Ten (10) or more dosage units of* a controlled substance classified in Schedules I and II ~~that~~~~which~~ is not a narcotic drug; or specified in KRS 218A.1412; or

2. ***Twenty (20) or more dosage units of*** a controlled substance classified in Schedule III; but not ~~lysergic acid diethylamide, phencyclidine,~~ synthetic cannabinoid agonists or piperazines, salvia, or marijuana; ~~or~~
 - (b) He ***or she*** knowingly and unlawfully prescribes ~~or orders~~, distributes, supplies, or sells an anabolic steroid for:
 1. Enhancing ***human*** performance in an exercise, sport, or game; or
 2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity; ***or***
 - (c) ***Any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amounts specified in that paragraph.***
- (2) (a) ***Except as provided in paragraph (b) of this subsection, any person who violates the provisions of subsection (1) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.***
 - (b) ***Any person who violates the provisions of subsection (1)(c) of this section shall be guilty of:***
 1. ***A Class D felony for the first offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years; and***
 2. ***A Class D felony for a second offense or subsequent offense*** ~~or~~
 - ~~(a) For the first offense be guilty of a Class D felony.~~
 - ~~(b) For a second or subsequent offense be guilty of a Class C felony.~~
- ➔Section 11. KRS 218A.1414 is amended to read as follows:
- (1) A person is guilty of trafficking in a controlled substance in the third degree when he ***or she*** knowingly and unlawfully traffics in:
 - (a) ***Twenty (20) or more dosage units of*** a controlled substance classified in Schedules IV or V; ***or***
 - (b) ***Any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amount specified in that paragraph.***
 - (2) (a) Any person who violates the provisions of subsection (1)(a) of this section shall ***be guilty of a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense.***
 - (b) ***Any person who violates the provisions of subsection (1)(b) of this section shall be guilty of:***
 1. ***A Class A misdemeanor for the first offense, subject to the imposition of presumptive probation; and***
 2. ***A Class D felony for a second or subsequent offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years*** ~~or~~
 - ~~(a) For the first offense be guilty of a Class A misdemeanor.~~
 - ~~(b) For a second or subsequent offense be guilty of a Class D felony.~~
- ➔Section 12. KRS 218A.1415 is amended to read as follows:
- (1) A person is guilty of possession of a controlled substance in the first degree when he ***or she*** knowingly and unlawfully possesses:
 - (a) A controlled substance ~~that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or,~~ that is classified in Schedules I or II ***and*** ~~which~~ is a narcotic drug;
 - (b) A controlled substance analogue;
 - (c) ***Methamphetamine;***
 - (d) Lysergic acid diethylamide;
 - (e) Phencyclidine;

- (f) Gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or
 - (g) Flunitrazepam, including its salts, isomers, and salts of isomers.
- (2) Possession of a controlled substance in the first degree is~~[-~~
- ~~(a) — For a first offense —~~ a Class D felony ***subject to the following provisions:***
 - (a) ***The maximum term of incarceration shall be no greater than three (3) years, notwithstanding KRS Chapter 532;***
 - (b) ***For a person's first or second offense under this section, he or she may be subject to a period of:***
 - 1. ***Deferred prosecution pursuant to Section 20 of this Act; or***
 - 2. ***Presumptive probation;***
 - (c) ***Deferred prosecution under paragraph (b) of this subsection shall be the preferred alternative for a first offense; and***
 - (d) ***If a person does not enter a deferred prosecution program for his or her first or second offense, he or she shall be subject to a period of presumptive probation, unless a court determines the defendant is not eligible for presumptive probation as defined in Section 5 of this Act.***
 - ~~(b) — For a second or subsequent offense —~~ a Class C felony.

➔Section 13. KRS 218A.1416 is amended to read as follows:

- (1) A person is guilty of possession of a controlled substance in the second degree when he ***or she*** knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not~~[-~~ lysergic acid diethylamide, phenethylamine,~~]~~ synthetic cannabinoid agonists or piperazines, salvia, or marijuana.
- (2) Possession of a controlled substance in the second degree is~~[-~~

 - ~~(a) — For a first offense —~~ a Class A misdemeanor.
 - ~~(b) — For a second or subsequent offense —~~ a Class D felony.

➔Section 14. KRS 218A.1417 is amended to read as follows:

- (1) A person is guilty of possession of a controlled substance in the third degree when he ***or she*** knowingly and unlawfully possesses a controlled substance classified in Schedules IV or V.
- (2) Possession of a controlled substance in the third degree is~~[-~~

 - ~~(a) — For a first offense —~~ a Class A misdemeanor.
 - ~~(b) — For a second or subsequent offense —~~ a Class D felony.

➔Section 15. KRS 218A.1418 is amended to read as follows:

- (1) A person is guilty of theft of a controlled substance when he ***or she*** unlawfully takes or exercises control over a controlled substance belonging to another person with the intent to deprive him thereof.
- (2) Theft of a controlled substance is~~[-~~

 - ~~(a) — for a first offense —~~ a Class D felony~~[-~~ if the controlled substance has a value of three hundred dollars (\$300) or less.
 - ~~(b) — For a second or subsequent offense, or value greater than three hundred dollars (\$300), a Class C felony.~~

- (3) ***The acts specified in this section shall not constitute theft under KRS Chapter 514.***

➔Section 16. KRS 218A.1422 is amended to read as follows:

- (1) A person is guilty of possession of marijuana when he ***or she*** knowingly and unlawfully possesses marijuana.
- (2) Possession of marijuana is a Class ***B[A]*** misdemeanor, ***except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than forty-five (45) days.***

➔Section 17. KRS 218A.1427 is amended to read as follows:

- (1) A person is guilty of possession of synthetic cannabinoid agonists or piperazines when he or she knowingly and unlawfully possesses synthetic cannabinoid agonists or piperazines.
- (2) Possession of synthetic cannabinoid agonists or piperazines is a Class B misdemeanor, *except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.*

➔Section 18. KRS 218A.1451 is amended to read as follows:

- (1) A person is guilty of possession of salvia when he or she knowingly and unlawfully possesses salvia for human consumption.
- (2) Possession of salvia is a Class B misdemeanor, *except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.*

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *Any statute to the contrary notwithstanding, a defendant charged with an offense under this chapter for which a conviction may result in presumptive probation shall be placed on pretrial release on his or her own recognizance or on unsecured bond by the court subject to any conditions, other than bail, specified in KRS 431.515 to 431.550.*
- (2) *The provisions of this section shall not apply to a defendant who is found by the court to present a flight risk, or to be a danger to himself or herself or a danger to others.*
- (3) *If a court determines that a defendant shall not be released pursuant to subsection (2) of this section, the court shall document the reasons for denying the release in a written order.*

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A defendant charged with his or her first or second offense under Section 12 of this Act may enter a deferred prosecution program subject to the following provisions:*
 - (a) *The defendant requests deferred prosecution in writing on an application created under Section 100 of this Act, and the prosecutor agrees;*
 - (b) *The defendant shall not be required to plead guilty or enter an Alford plea as a condition of applying for participation in the deferred prosecution program;*
 - (c) *The defendant agrees to the terms and conditions set forth by the Commonwealth's attorney and approved by the court, which may include any provision authorized for pretrial diversion pursuant to KRS 533.250(1)(h) and (2); and*
 - (d) *The maximum length of participation in the program shall be two (2) years.*
- (2) *If a prosecutor denies a defendant's request to enter a deferred prosecution program, the prosecutor shall state on the record the substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety.*
- (3) *If the defendant successfully completes the deferred prosecution program, the charges against the defendant shall be dismissed, and all records relating to the case, including but not limited to arrest records and records relating to the charges, shall be sealed, except as provided in Section 100 of this Act. The offense shall be deemed never to have occurred, except for the purposes of determining the defendant's eligibility for deferred prosecution, and the defendant shall not be required to disclose the arrest or other information relating to the charges or participation in the program unless required to do so by state or federal law.*
- (4) *If the defendant is charged with violating the conditions of the program, the court, upon motion of the Commonwealth's attorney, shall hold a hearing to determine whether the defendant violated the conditions of the program.*
- (5) *If the court finds that the defendant violated the conditions of the program, the court may, with the approval of the prosecutor:*
 - (a) *Continue the defendant's participation in the program;*
 - (b) *Change the terms and conditions of the defendant's participation in the program; or*

- (c) *Order the defendant removed from the program and proceed with ordinary prosecution for the offense charged.*

➔Section 21. KRS 218A.275 is amended to read as follows:

- (1) *A court may request the Division of Probation and Parole to perform a risk and needs assessment for any person found guilty of possession of a controlled substance pursuant to Section 12, 13, or 14 of this Act. The assessor shall make a recommendation to the court as to whether treatment is indicated by the assessment, and, if so, the most appropriate treatment or recovery program environment. If treatment is indicated for the person, the court may order him or her*~~[KRS 218A.1416 or 218A.1417 may for a first offense, be ordered]~~ *to the appropriate treatment or recovery program that will effectively respond to the person's level of risk, criminal risk factors, and individual characteristics as*~~[a facility]~~ *designated by the secretary of the Cabinet for Health and Family Services where a program of treatment or recovery*~~[and rehabilitation]~~ *not to exceed one (1) year in duration may be prescribed. The person ordered to the designated treatment or recovery program*~~[facility]~~ *shall present himself or herself for registration and initiation of the*~~[a]~~ *treatment or recovery program within five (5) days of the date of sentencing. If, without good cause, the person fails to appear at the designated treatment or recovery program*~~[facility]~~ *within the specified time, or if at any time during the program of treatment or recovery prescribed, the authorized*~~[clinical]~~ *director of the treatment or recovery program*~~[facility]~~ *finds that the person is unwilling to participate in his or her treatment*~~[and rehabilitation]~~*, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment*~~[and rehabilitation]~~*, or may rescind the treatment order and impose a sentence for the possession offense* ~~[order confinement in the county jail for not more than one (1) year or a fine of not more than five hundred dollars (\$500), or both]. Upon discharge of the person from the treatment or recovery program~~~~[facility]~~ *by the secretary of the Cabinet for Health and Family Services, or his or her designee, prior to the expiration of the one (1) year period or upon satisfactory completion of one (1) year of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his or her designee, shall notify the sentencing court of the date of such discharge from the treatment or recovery program*~~[facility]~~*.*
- (2) The secretary of the Cabinet for Health and Family Services, or his *or her* designee, shall inform each court of the identity and location of the *treatment or recovery program*~~[facility]~~ to which ~~the~~~~[such]~~ person is sentenced.
- (3) Transportation to *an inpatient*~~[the]~~ facility shall be provided by order of the court when the court finds the person unable to convey himself *or herself* to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated *treatment or recovery program*~~[facility]~~ of the sentence and its effective date.
- (5) The secretary for health and family services, or his *or her* designee, may authorize transfer of the person from the initially designated *treatment or recovery program*~~[facility]~~ to another *treatment or recovery program*~~[facility]~~ for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating *treatment or recovery program and shall be notified by the secretary of the new treatment or recovery program to which the person was transferred*~~[facility]~~.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment of patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the *treatment or recovery program*~~[facility]~~ shall arrange otherwise.
- (7) ~~[Prior to the imposition of sentence upon conviction of a second or subsequent offense, the court shall obtain a report of case progress and recommendations regarding further treatment from any facility at which the person was treated following his first conviction. If such material is not available, the court shall notify the secretary of the Cabinet for Health and Family Services, and the secretary shall cause the person to be examined by a psychiatrist employed by the cabinet to evaluate his mental condition and to make recommendations regarding treatment and rehabilitation. The psychiatrist making the examination shall submit a written report of his findings and recommendations regarding treatment and rehabilitation to the court which shall make the report available to the prosecuting attorney and the attorney for the defendant. The court shall take such reports into consideration in determining sentence. The secretary may decline to cause such examination to be made if the number of psychiatrists on duty in the cabinet is insufficient to spare one from his regular duties or if no such service may be purchased at regular cabinet rates; in such event the secretary shall notify the clerk of the court to that effect within three (3) days after receipt of notification by the court.]~~

~~(8)~~—None of the provisions of this section shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.

~~(8)(9)~~ In the case of any person who has been convicted for the first time of **a misdemeanor** possession of controlled substances, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Voiding of a conviction under ~~this~~~~the~~ subsection and dismissal may occur only once with respect to any person.

(9) ***If the court voids a conviction under this section, the court shall order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, except as provided in Section 100 of this Act. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the order that the required sealing action has been completed.***

(10) ***After the sealing of the record, the proceedings in the matter shall not be used against the defendant except for the purposes of determining the person's eligibility to have his or her conviction voided under subsection (8) of this section. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record has been sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.***

(11) ***Inspection of the sealed records may thereafter be permitted by the court pursuant to Section 100 of this Act or upon a motion by the person who is the subject of the records and only to those persons named in the motion or upon a motion of the prosecutor to verify a defendant's eligibility to have his or her conviction voided under subsection (8) of this section.***

➔Section 22. KRS 218A.276 is amended to read as follows:

(1) ***A court may request the Division of Probation and Parole to perform a risk and needs assessment for any person found guilty of possession of marijuana pursuant to KRS 218A.1422 or possession of synthetic cannabinoid agonists or piperazines pursuant to KRS 218A.1427 or salvia pursuant to KRS 218A.1451. The assessor shall make a recommendation to the court as to whether treatment is indicated by the assessment, and, if so, the most appropriate treatment or recovery program environment. If treatment is indicated for the person, the court may order him or her ~~may be ordered to~~ the appropriate treatment or recovery program as indicated by the assessment that will effectively respond to the person's level of risk, criminal risk factors, and individual characteristics as a facility*** designated by the secretary of the Cabinet for Health and Family Services where a program of ~~education~~ treatment ***or recovery***~~, and rehabilitation~~ not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated ***treatment or recovery program***~~facility~~ shall present himself ***or herself*** for registration and initiation of ~~the~~~~a~~ treatment ***or recovery*** program within five (5) days of the date of sentencing. If without good cause, the person fails to appear at the designated ***treatment or recovery program***~~facility~~ within the specified time, or if any time during the program of treatment ***or recovery*** prescribed, the authorized~~clinical~~ director of the ***treatment or recovery program***~~facility~~ finds that the person is unwilling to participate in his ***or her*** treatment~~and rehabilitation~~, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment~~and rehabilitation~~, or may ***rescind the treatment order and impose a sentence for the possession offense***~~order confinement in the county jail for not more than ninety (90) days or a fine of not more than two hundred fifty dollars (\$250), or both~~. Upon discharge of the person from the ***treatment or recovery program***~~facility~~ by the secretary of the Cabinet for Health and Family Services, or his ***or her*** designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his ***or her*** designee, shall notify the sentencing court of the date of such discharge from the ***treatment or recovery program***~~facility~~.

(2) The secretary of the Cabinet for Health and Family Services, or his ***or her*** designee, shall inform each court of the identity and location of the ***treatment or recovery program***~~facility~~ to which a person sentenced by that court under this chapter shall be initially ordered.

(3) In the case of a person ordered to ***an inpatient***~~a~~ facility for treatment~~and rehabilitation~~ pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself ***or herself*** to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.

- (4) The sentencing court shall immediately notify the designated ***treatment or recovery program***~~[facility]~~ of the sentence and its effective date.
- (5) The secretary of the Cabinet for Health and Family Services, or his ***or her*** designee, may authorize transfer of the person from the initially designated ***treatment or recovery program***~~[facility]~~ to another ***treatment or recovery program***~~[facility]~~ for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating ***treatment or recovery program and shall be notified by the secretary or his or her designee of the new treatment or recovery program to which the person was transferred***~~[facility]~~.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the ***treatment or recovery program***~~[facility]~~ shall arrange otherwise.
- (7) None of the provisions of this ***section***~~[chapter]~~ shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation, ***presumptive probation***, or conditional discharge.
- (8) In the case of any person who has been convicted of possession of marijuana or possession of synthetic cannabinoid agonists or piperazines or salvia, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.
- (9) *If the court voids a conviction under this section, the court shall order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, except as provided in Section 100 of this Act. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the order that the required sealing action has been completed.*
- (10) *After the sealing of the record, the proceedings in the matter shall not be used against the defendant. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.*
- (11) *Inspection of the sealed records may thereafter be permitted by the court or upon a motion by the person who is the subject of the records and only to those persons named in the motion.*

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall measure and document cost savings resulting from amendments to or creation of statutes in KRS Chapter 218A contained in Sections 5 to 22 of this Act. Measured and documented savings shall be reinvested or distributed as provided in this section.*
- (2) *The Department of Corrections shall establish a baseline for measurement using the average number of inmates incarcerated at each type of penitentiary as defined in KRS 197.010 and at local jails in fiscal year 2010-2011.*
- (3) *The department shall determine the average cost of incarceration for each type of penitentiary as defined in KRS 197.010 and for local jails, including health care costs, transportation costs, and other related costs, for one (1) inmate for one (1) year for the immediately preceding fiscal year.*
- (4) *Beginning with the budget request for the 2012-2014 fiscal biennium, savings shall be estimated using the baseline established in subsection (2) of this section to determine the estimated average reduction of inmates due to the implementation of amendments to or creation of statutes in KRS Chapter 218A contained in Sections 5 to 22 of this Act and multiplied by the appropriate average cost determined in subsection (3) of this section.*
- (5) *The estimated amount of savings shall be used solely for expanding and enhancing treatment programs that employ evidence-based or promising practices designed to reduce the likelihood of future criminal behavior, which shall include treatment programs at existing facilities as outlined in Section 24 of this Act.*
- (6) *The amount of savings shall be estimated each year of the 2012-2014 fiscal biennium, and for each year of each fiscal biennium thereafter, as specified in subsection (4) of this section.*

- (7) *In submitting its budget request for the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the department shall estimate the amount of savings measured under this section, and shall request the amount necessary to distribute or allocate those savings as provided in subsection (5) of this section.*
- (8) *In enacting the budget for the department, beginning in the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the General Assembly shall determine the estimated amount necessary for reinvestment in programs and initiatives as provided by subsection (5) of this section, based upon projected savings as measured by this section, and shall ensure that appropriations to the department are sufficient to meet the funding requirements of this section.*

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

The department shall use a portion of the savings identified in Section 23 of this Act to expand treatment programs at its existing state penal institutions, including the expansion or creation of treatment programs at facilities that are currently being underutilized if those facilities are appropriate locations for treatment programs or could be modified easily to accommodate treatment programs.

➔SECTION 25. A NEW SECTION OF KRS CHAPTER 26A IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context otherwise requires, "drug court program" means any drug court program authorized and administered by the Kentucky Supreme Court.*
- (2) *The Supreme Court of Kentucky shall administer the drug court program to:*
 - (a) *Develop standards, establish program eligibility, and provide oversight for operation for drug court programs;*
 - (b) *Define, develop, and gather outcome measures for drug court programs;*
 - (c) *Collect, report, and disseminate drug court data;*
 - (d) *Sponsor and coordinate state drug court training; and*
 - (e) *Apply for, administer, and evaluate state drug court grants.*
- (3) *Nothing contained in this section shall confer a right or an expectation of a right to treatment for an offender within the criminal justice system or the juvenile justice system.*
- (4) *If a defendant has been accepted into the drug court program and is supervised by that program as a condition of probation, the defendant shall not be subject to the supervision of the Division of Probation and Parole during his or her participation in the drug court program.*

➔Section 26. KRS 532.080 is amended to read as follows:

- (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.
- (2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:
 - (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
 - (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
 - (c) That the offender:
 - 1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

2. Was on probation, parole, ***postincarceration supervision***, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
 3. Was discharged from probation, parole, ***postincarceration supervision***, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
 5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.
- (3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies, or one (1) or more felony sex crimes against a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more felonies. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:
- (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
 - (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
 - (c) That the offender:
 1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or
 2. Was on probation, parole, ***postincarceration supervision***, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
 3. Was discharged from probation, parole, ***postincarceration supervision***, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
 5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.
- (4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.
- (5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person, in which case probation, shock probation, or conditional discharge may be granted. A violent offender who is found to be a persistent felony offender in the second degree shall not be eligible for parole except as provided in KRS 439.3401.
- (6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:
- (a) If the offense for which he presently stands convicted is a Class A or Class B felony, or if the person was previously convicted of one (1) or more sex crimes committed against a minor as defined in KRS 17.500 and presently stands convicted of a subsequent sex crime, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not

be less than twenty (20) years nor more than fifty (50) years, or life imprisonment, or life imprisonment without parole for twenty-five (25) years for a sex crime committed against a minor;

- (b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.
- (7) A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person or a sex crime as that term is defined in KRS 17.500, in which case, probation, shock probation, or conditional discharge may be granted. If the offense the person presently stands convicted of is a Class A, B, or C felony, the person shall not be eligible for parole until the person has served a minimum term of incarceration of not less than ten (10) years, unless another sentencing scheme applies. A violent offender who is found to be a persistent felony offender in the first degree shall not be eligible for parole except as provided in KRS 439.3401.
- (8) (a) No conviction, plea of guilty, or Alford plea to a violation of KRS 218A.500 shall bring a defendant within the purview of or be used as a conviction eligible for making a person a persistent felony offender under this section.
- (b) *A conviction, plea of guilty, or Alford plea under Section 12 of this Act shall not trigger the application of this section, regardless of the number or type of prior felony convictions that may have been entered against the defendant. A conviction, plea of guilty, or Alford plea under Section 12 of this Act may be used as a prior felony offense allowing this section to be applied if he or she is subsequently convicted of a different felony offense.*
- (9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.
- (10) (a) *Except as provided in paragraph (b) of this subsection, this section shall not apply to a person convicted of a criminal offense if the penalty for that offense was increased from a misdemeanor to a felony, or from a lower felony classification to a higher felony classification, because the conviction constituted a second or subsequent violation of that offense.*
- (b) *This subsection shall not prohibit the application of this section to a person convicted of:*
 - 1. *A felony offense arising out of KRS 189A.010, 189A.090, 506.140, 508.032, 508.140, or 510.015; or*
 - 2. *Any other felony offense if the penalty was not enhanced to a higher level because the Commonwealth elected to prosecute the person as a first-time violator of that offense.*

➔Section 27. KRS 197.020 is amended to read as follows:

- (1) The Department of Corrections shall:
 - (a) Promulgate administrative regulations for the government and discipline of the penitentiary, for the government and official conduct of all officials connected with the penitentiary, and for the government of the prisoners in their department and conduct;
 - (b) Promulgate administrative regulations for the character of food and diet of the prisoners; the preservation of the health of the prisoners; the daily cleansing of the penitentiary; the cleanliness of the persons of the prisoners; the general sanitary government of the penitentiary and prisoners; the character of the labor; the quantity of food and clothing; and the length of time during which the prisoners shall be employed daily;
 - (c) Promulgate administrative regulations, as the department deems necessary, for the disposition of abandoned, lost, or confiscated property of prisoners; ~~and~~
 - (d) *Promulgate administrative regulations for the administration of a validated risk and needs assessment to assess the criminal risk factors and correctional needs of all inmates upon commitment to the department; and*
 - (e) Cause the administrative regulations promulgated by the department, together with the law allowing commutation of time to prisoners for good conduct, to be printed and posted in conspicuous places in the cell houses and workshops.

- (2) The department may impose a reasonable fee for the use of medical facilities by a prisoner who has the ability to pay for the medical and dental care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical or dental treatment because he has insufficient funds in his inmate account.
- (3) The department may promulgate administrative regulations in accordance with KRS Chapter 13A to implement a program that provides for reimbursement of telehealth consultations.
- (4) Fees for the use of medical facilities by a state prisoner who is confined in a county jail pursuant to KRS 532.100 or other statute shall be governed by KRS 441.045.

➔Section 28. KRS 439.3405 is amended to read as follows:

- (1) Notwithstanding any statute eliminating parole or establishing minimum time for parole eligibility for a certain class or status of offender, including KRS 439.340(11), 439.3401, 532.080(7), and 533.060, the board, with the written consent of a majority of the full board, may review the case of any prisoner and release that prisoner on parole despite any elimination of or minimum time for parole eligibility, when the prisoner has a documented terminal medical condition likely to result in death within one (1) year or severe chronic lung disease, end-stage heart disease, severe neuro-muscular disease such as multiple sclerosis; or has severely limited mobility~~[due to paralysis]~~ as a result of stroke, **disease**, or trauma; or is dependent on external life support systems and would not pose a threat to society if paroled.
- (2) Medical information considered under this section shall be limited to the medical findings supplied by Department of Corrections medical staff. The medical staff shall provide in writing the prisoner's diagnosis and prognosis in support of the conclusion that the prisoner suffers from a terminal medical condition likely to result in death within one (1) year or because of the conditions set forth in subsection (1) of this section he **or she** is **substantially**~~[totally]~~ dependent on others for the activities of daily living.
- (3) The medical information prepared by the Department of Corrections medical staff under this section shall be forwarded to the **medical director of the Department of Corrections**~~[warden of the institution]~~ who shall submit that information and a recommendation for or against parole review under this section to the commissioner of the Department of Corrections or his **or her** designee. With the approval of the commissioner of the Department of Corrections, a request for parole review under this section, along with the medical information and **medical director's**~~[warden's]~~ recommendation, shall be submitted to the board.
- (4) Medical information presented under this section shall be considered along with other information relevant to a decision regarding the granting of parole and shall not constitute the only reason for granting parole.
- (5) Notwithstanding KRS 439.340(5), in addition to or in conjunction with each review conducted under subsection (1) of this section for any prisoner convicted of a Class A ~~or B or C~~ felony, **or of a Class C felony involving violence or a sexual offense** and prior to the granting of parole to any such prisoner, the Parole Board shall conduct a hearing of which the following persons shall receive not less than fifteen (15) nor more than thirty (30) days' notice:
 - (a) The Commonwealth's attorney, who shall notify the sheriff of every county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony for which he **or she** is imprisoned; and
 - (b) All identified victims of the crimes or the next of kin of any victim who is deceased.

Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means, at the discretion of the board, and shall be in a manner that ensures receipt at the Commonwealth attorney's business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made by mail, fax, or electronic means, at the discretion of the board, to their last known address or telephone number as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. Notice to the victim or the next of kin of subsequent considerations for parole after the initial consideration shall not be sent if the victim or the next of kin gives notice to the board that he or she no longer wants to receive such notices. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.

➔Section 29. KRS 439.250 is amended to read as follows:

As used in KRS 439.250 to 439.560, unless the context requires otherwise:

- (1) "Secretary" means the secretary of the Justice and Public Safety Cabinet;
- (2) "Commissioner" means the commissioner of the Department of Corrections;
- (3) "Department" means the Department of Corrections;
- (4) "Deputy commissioner" means the deputy commissioner of the Office of Adult Institutions or the deputy commissioner of the Office of Community Services and Facilities of the Department of Corrections;~~and~~
- (5) "Board" means the Parole Board created by KRS 439.320;
- (6) ***"Community supervision" means:***
 - (a) ***The placement of a defendant under supervision with conditions imposed by a court for a specified period during which:***
 1. ***Criminal proceedings are deferred without an adjudication of guilt; or***
 2. ***A sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part; or***
 - (b) ***The placement of an individual under supervision after release from prison or jail, with conditions imposed by the board for a specified period;***
- (7) ***"Compliance credit" means a credit on a paroled individual's sentence for program credit, work-for-time credit, educational accomplishment, or meritorious service and shall be calculated pursuant to the applicable provisions in Section 36 of this Act and KRS 197.047;***
- (8) ***"Positive reinforcement" means any of a wide range of rewards and incentives, including but not limited to awarding certificates of achievement, reducing reporting requirements, deferring a monthly supervision fee payment, removing supervision conditions such as home detention or curfew, or asking the supervised individual to be a mentor to others;***
- (9) ***"Probation and parole district supervisor" means the highest ranking field probation or parole administrator in each district; and***
- (10) ***"Supervised individual" means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail.***

➔SECTION 30. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

The department shall:

- (1) ***Administer a validated risk and needs assessment to assess the criminal risk factors of all inmates who are eligible for parole, or a reassessment of a previously administered risk and needs assessment, before the case is considered by the board.***
- (2) ***Provide the results of the most recent risk and needs assessment to the board before an inmate appears before the board; and***
- (3) ***Incorporate information from an inmate's criminal risk and needs assessment into the development of his or her case plan.***

➔Section 31. KRS 439.335 is amended to read as follows:

In considering the granting of~~a~~ parole ***and the terms of parole***, the parole board ~~shall~~~~is authorized to~~ use ***the results from an inmate's validated risk and needs assessment***~~computer voice stress analysis, the polygraph, truth serum,~~ and any other scientific means for personality analysis that may hereafter be developed, ***to define the terms and intensity of supervision*** before granting~~a~~ parole. ***The terms and intensity of supervision shall be based on an individual's level of risk to public safety, criminal risk factors, and the need for treatment and other interventions.***

➔Section 32. KRS 439.340 is amended to read as follows:

- (1) The board may release on parole persons confined in any adult state penal or correctional institution of Kentucky or sentenced felons incarcerated in county jails eligible for parole. All paroles shall issue upon order of the board duly adopted. As soon as practicable after his or her admission to an adult state penal or correctional institution or county jail if he or she is a sentenced felon, and at such intervals thereafter as it may determine, the Department of Corrections shall obtain all pertinent information regarding each prisoner, except

those not eligible for parole. The information shall include ***the results of his or her most recent risk and needs assessment***, his or her criminal record, his or her conduct, employment~~, and attitude in prison~~, and the reports of physical and mental examinations that have been made. The Department of Corrections shall furnish the circumstances of his or her offense, ***the results of his or her most recent risk and needs assessment***, and his or her previous social history to the ~~institution and the~~ board. The Department of Corrections shall prepare a report on any information it obtains. It shall be the duty of the Department of Corrections to supplement this report with any material the board may request and submit the report to the board.

- (2) Before granting the parole of any prisoner, the board shall consider the pertinent information regarding the prisoner, ***including the results of his or her most recent risk and needs assessment***, and shall have him or her appear before it for interview and hearing. The board in its discretion may hold interviews and hearings for prisoners convicted of Class C felonies not included within the definition of "violent offender" in KRS 439.3401 and Class D felonies. The board in its discretion may request the parole board of another state confining prisoners pursuant to KRS 196.610 to interview eligible prisoners and make a parole recommendation to the board. A parole shall be ordered only for the best interest of society and not as an award of clemency, and it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his or her proper employment or for his or her maintenance and care, and when the board believes he or she is able and willing to fulfill the obligations of a law abiding citizen. Notwithstanding any statute to the contrary, including KRS 440.330, when a prisoner is otherwise eligible for parole and the board has recommended parole for that prisoner for the reasons set forth in this subsection, the board may grant parole to any prisoner wanted as a fugitive by any other jurisdiction, and the prisoner shall be released to the detainer from that jurisdiction. Such parole shall not constitute a relinquishment of jurisdiction over the prisoner, and the board in all cases expressly reserves the right to return the prisoner to confinement in a correctional institution of the Commonwealth if the prisoner violates the terms of his or her parole.
- (3)
 - (a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years who is confined to a state penal institution or county jail shall have his or her case reviewed by the Parole Board after serving fifteen percent (15%) or two (2) months of the original sentence, whichever is longer.
 - (b) Except as provided in ***this section***~~paragraph (a) of this subsection~~, the board shall adopt administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. Regulations governing the eligibility of prisoners for parole shall be in accordance with professionally accepted ideas of correction and reform and may utilize in part objective, performance-based criteria ***and risk and needs assessment information***; however, nothing herein contained shall preclude the board from utilizing its present regulations in conjunction with other factors involved that would relate to the inmate's needs and the safety of the public.
- (4) The board shall insure that ***all*** sentenced felons ***who have longer than ninety (90) days to serve***~~confined~~ in ***state penal institutions, halfway houses, and*** county jails are considered for parole ***not less than sixty (60)***~~within thirty (30)~~ days ***prior to***~~of~~ their parole eligibility date, and the Department of Corrections shall provide the necessary assistance and information to the board in order for it to conduct timely parole reviews.
- (5) In addition to or in conjunction with each hearing conducted under subsection (2) of this section for any prisoner convicted of a Class A, B, or C felony and prior to the granting of a parole to any such prisoner, the parole board shall conduct a hearing of which the following persons shall receive not less than forty-five (45) nor more than ninety (90) days' notice: the Commonwealth's attorney who shall notify the sheriff of every county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony for which he or she is imprisoned, and all identified victims of the crimes or the next of kin of any victim who is deceased. Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt at the Commonwealth attorney's business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made, for prisoners incarcerated prior to July 15, 1986, by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt by the Commonwealth's attorney, who shall forward the notice promptly to the victims or their next of kin at their last known address. For prisoners incarcerated on or after July 15, 1986, notice to the victims or their next of kin shall be by mail from the Parole Board to their last known address as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. Notice to the victim or the next of kin of subsequent considerations for parole

after the initial consideration shall not be sent if the victim or the next of kin gives notice to the board that he or she no longer wants to receive such notices. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.

- (6) Persons receiving notice as provided for in subsection (5) of this section may submit comments, in person or in writing, to the board upon all issues relating to the parole of the prisoner. The board shall read and consider all comments prior to making its parole decision, if they are received by the board not less than seven (7) days before the date for the hearing. The board shall retain all comments in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decisions affecting the prisoner. In addition to officers listed in subsection (5) of this section, the crime victims or the next of kin of any victim who is deceased or who is disabled and cannot attend the hearing or the parent or legal guardian of any victim who is a minor may attend the hearing provided for in subsection (5) of this section and present oral and written comments upon all issues relating to the parole of the prisoner, if they have advised the board, in writing received by the board not less than seven (7) days prior to the date set for the hearing, of their intention to attend the hearing. The board shall receive and consider all comments, shall make a record of them which it shall retain in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decision affecting the prisoner. Persons appearing before the Parole Board pursuant to this subsection may elect to make their presentations outside of the presence of the prisoner.
- (7) Victims of Class D felonies may submit comments in person or in writing to the board upon all issues relating to the parole of a prisoner.
- (8) Any hearing provided for in subsections (5), (6), and (7) of this section shall be open to the public unless the persons having a right to appear before the board as specified in those subsections request closure of hearing for reasons of personal safety, in which event the hearing shall be closed. The time, date, and location of closed hearings shall not be disclosed to the public.
- (9) Except as specifically set forth in this section, nothing in this section shall be deemed to expand or abridge any existing rights of persons to contact and communicate with the Parole Board or any of its members, agents, or employees.
- (10) The unintentional failure by the Parole Board, sheriff, chief of police, or any of its members, agents, or employees or by a Commonwealth's attorney or any of his or her agents or employees to comply with any of the provisions of subsections (5), (6), and (8) of this section shall not affect the validity of any parole decision or give rise to any right or cause of action by the crime victim, the prisoner, or any other person.
- (11) No eligible sexual offender within the meaning of KRS 197.400 to 197.440 shall be granted parole unless he or she has successfully completed the Sexual Offender Treatment Program.
- (12) Any prisoner who is granted parole after completion of the Sexual Offender Treatment Program shall be required, as a condition of his or her parole, to participate in regular treatment in a mental health program approved or operated by the Department of Corrections.
- (13) *When the board grants parole contingent upon completion of a program, the commissioner, or his or her designee, shall determine the most appropriate placement in a program operated by the department or a residential or nonresidential program within the community approved by the department. If the department releases a parolee to a nonresidential program, the department shall release the parolee only if he or she will have appropriate community housing pursuant to Section 41 of this Act.*
- (14) *If the parole board does not grant parole to a prisoner, the maximum deferment for a prisoner convicted of a non-violent, non-sexual Class C or Class D felony shall be twenty-four (24) months. For all other prisoners who are eligible for parole:*
 - (a) *No parole deferment greater than five (5) years shall be ordered unless approved by a majority vote of the full board; and*
 - (b) *No deferment shall exceed ten (10) years, except for life sentences.*
- (15) When an order for parole is issued, it shall recite the conditions thereof.

➔SECTION 33. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section, the board shall reconsider the parole of any prisoner as of the effective date of this Act who was given a deferment or serve-out of longer than sixty (60) months at the prisoner's most recent parole hearing.*

- (2) *No reconsideration shall be required under this section for any prisoner who has received a deferment or serve-out of longer than sixty (60) months if:*
- (a) *The deferment or serve-out was approved by a majority vote of the full board; or*
 - (b) *The prisoner stands convicted of a criminal offense currently defined as a violent offense in KRS 439.3401 or as a sex crime in KRS 17.500, regardless of the date the crime was committed or the date of conviction.*
- (3) *The board shall schedule parole hearings for prisoners eligible for reconsideration of parole under this section according to the following schedule:*
- (a) *For a prisoner who has served less than sixty (60) months of his or her sentence as of the effective date of this Act, the board shall schedule and conduct a parole hearing during the month the prisoner has served sixty (60) months of his or her sentence; and*
 - (b) *For a prisoner who has served more than sixty (60) months of his or her sentence as of the effective date of this Act, the board shall schedule and conduct a parole hearing within twelve (12) months of the effective date of this Act.*
- (4) *The department shall provide all necessary assistance and information to the board in accordance with Section 32 of this Act in order for the board to conduct timely hearings under subsection (1) of this section.*
- (5) *Parole hearings required under subsection (1) of this section shall be conducted in accordance with and subject to the provisions of KRS 439.250 to 439.560, including but not limited to the requirements relating to notification of victims, the authority of the board to conduct hearings by panels of the board, and the requirement to keep records relating to the hearings.*

➔SECTION 34. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall order mandatory reentry supervision and the terms of supervision, which may include electronic monitoring, for an inmate who has not been granted discretionary parole six (6) months prior to the inmate's minimum expiration of sentence.*
- (2) *The provisions of subsection (1) of this section shall not apply to an inmate who:*
- (a) *Is not eligible for parole by statute;*
 - (b) *Has been convicted of a capital offense or a Class A felony;*
 - (c) *Has a maximum or close security classification as defined by administrative regulations promulgated by the department;*
 - (d) *Has been sentenced to two (2) years or less of incarceration;*
 - (e) *Is subject to the provisions of Section 91 of this Act; or*
 - (f) *Has six (6) months or less to be served after his or her sentencing by a court or recommitment to prison for a violation of probation, shock probation, parole, or conditional discharge.*
- (3) *An inmate granted mandatory reentry supervision pursuant to this section may be returned by the board to prison for violation of the conditions of supervision and shall not again be eligible for mandatory reentry supervision during the same period of incarceration.*
- (4) *An inmate released to mandatory reentry supervision shall be considered to be released on parole.*
- (5) *Mandatory reentry supervision is not a commutation of sentence or any other form of clemency.*
- (6) *The board shall consider an inmate's risk and needs assessment results when setting the terms and conditions of mandatory reentry supervision.*
- (7) *Subject to subsection (3) of this section, the period of mandatory reentry supervision shall conclude upon completion of the individual's minimum expiration of sentence.*
- (8) *The department shall report the results of the mandatory reentry supervision program to the Interim Joint Committee on Judiciary by February 1, 2015.*

➔SECTION 35. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the penalties authorized by law, any person who:*

- (a) *Is convicted of a capital offense or a Class A felony;*
- (b) *Has a maximum or close security classification as defined by administrative regulations promulgated by the department; or*
- (c) *Is not eligible for parole by statute;*

shall be subject to a period of postincarceration supervision following release from incarceration upon expiration of sentence or completion of parole.

- (2) *The period of postincarceration supervision shall be one (1) year.*
- (3) *During the period of postincarceration supervision, the defendant shall:*
 - (a) *Be subject to all orders specified by the Department of Corrections; and*
 - (b) *Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.*
- (4) *Persons under postincarceration supervision pursuant to this section shall be subject to the supervision of the Division of Probation and Parole and under the authority of the Parole Board.*
- (5) *If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing by the Division of Probation and Parole. Notice of the violation shall be sent to the Parole Board to determine whether probable cause exists to revoke the defendant's postincarceration supervision and reincarcerate the defendant as set forth in Section 38 of this Act.*
- (6) *The provisions of this section shall not apply to a person who is subject to the provisions of Section 91 of this Act.*
- (7) *The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea for an offense committed after the effective date of this Act.*

➔Section 36. KRS 197.045 is amended to read as follows:

- (1) Any person convicted and sentenced to a state penal institution:
 - (a) *Shall receive a credit on his or her sentence for:*
 - 1. *Prior confinement as specified in Section 98 of this Act;*
 - 2. *Successfully receiving a general equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, a two (2) year or four (4) year certification in applied sciences, a technical education diploma as provided and defined by the department, or a civics education program that requires passing a final exam, in the amount of ninety (90) days per diploma, degree, or certification received; and*
 - 3. *Successfully completing a drug treatment program or other program as defined by the department that requires participation for a minimum of six (6) months, in the amount of ninety (90) days for each program completed; and*
 - (b) *May receive a credit on his or her sentence for:*
 - 1. *Good behavior in an amount ~~of~~ not exceeding ten (10) days for each month served, ~~except as otherwise provided in this section,~~ to be determined by the department from the conduct of the prisoner;*
 - 2. *Performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs, awarded at the discretion of the commissioner in an amount not to exceed seven (7) days per month; and*
 - 3. *Acts of exceptional service during times of emergency, awarded at the discretion of the commissioner in an amount not to exceed seven (7) days per month.*

~~In addition, the department shall provide an educational good time credit of ninety (90) days to any prisoner who successfully receives a general equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, a two (2) year or four (4) year certification in applied sciences, or a technical education diploma as provided and defined by the department, or who completes a drug treatment program or other program as defined by the department that requires~~

~~participation in the program for a minimum of six (6) months; prisoners may earn additional credit for each program completed.]~~

- (2) ***Except for a sentencing credit awarded for prior confinement***, the department may forfeit any ***sentencing credit awarded under subsection (1) of this section***~~[good time]~~ previously earned by the prisoner or deny the prisoner the right to earn ***future sentencing credit***~~[good time]~~ in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.

- ~~(3)(2)~~ When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the ***sentencing***~~[good time]~~ credit computation or in computing dates of expiration of sentence.

~~[(3) An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed seven (7) days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs, and may be allowed an additional seven (7) days per month served for acts of exceptional service during times of emergency. The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.]~~

- (4) Until successful completion of the sex offender treatment program, an eligible sexual offender may earn ***sentencing credit***~~[good time]~~. However, the ***sentencing credit***~~[good time]~~ shall not be credited to the eligible sexual offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all ***sentencing credit***~~[good time]~~ earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, an eligible sexual offender may continue to earn ***sentencing credit***~~[good time]~~ in the manner provided by administrative regulations promulgated by the Department of Corrections. Any eligible sexual offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his or her sentence. A sexual offender who does not complete the sex offender treatment program for any reason shall serve his or her entire sentence without benefit of ***sentencing credit***~~[good time]~~, parole, or other form of early release. The provisions of this section shall not apply to any sexual offender convicted before July 15, 1998, or to any mentally retarded sexual offender.

- (5) (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of ***sentencing credit***~~[good time]~~ and the ability to earn ***sentencing credit***~~[good time]~~ in the future for those inmates who have civil actions dismissed because the court found the action to be malicious, harassing, or factually frivolous.
- (b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of ***sentencing credit***~~[good time]~~ forfeited as well as any prohibition imposed on the future earning of ***sentencing credit***~~[good time]~~.

➔Section 37. KRS 532.050 is amended to read as follows:

- (1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody.
- (2) The report shall be prepared and presented by a probation officer and shall include:
- (a) ***The results of the defendant's risk and needs assessment;***
 - (b) An analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, ***and*** personal habits;~~;~~
 - (c) ***A preliminary calculation of the credit allowed the defendant for time spent in custody prior to the commencement of a sentence under Section 98 of this Act; and***
 - (d) Any other matters that the court directs to be included.
- (3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for

this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.

- (4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior to determining the sentence or prior to final sentencing for youthful offenders, the court shall order a comprehensive sex offender presentence evaluation of the defendant to be conducted by an approved provider, as defined in KRS 17.500, the Department of Corrections, or the Department of Juvenile Justice if the defendant is a youthful offender. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the comprehensive sex offender presentence evaluation shall be furnished to the court, the Commonwealth's attorney, and to counsel for the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the comprehensive sex offender presentence evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any comprehensive sex offender presentence evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.
- (6) Before imposing sentence, the court shall advise the defendant or his or her counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

➔Section 38. KRS 532.060 is amended to read as follows:

- (1) A sentence of imprisonment for a felony shall be an indeterminate sentence, the maximum of which shall be fixed within the limits provided by subsection (2), and subject to modification by the trial judge pursuant to KRS 532.070.
- (2) ***Unless otherwise provided by law***, the authorized maximum terms of imprisonment for felonies are:
 - (a) For a Class A felony, not less than twenty (20) years nor more than fifty (50) years, or life imprisonment;
 - (b) For a Class B felony, not less than ten (10) years nor more than twenty (20) years;
 - (c) For a Class C felony, not less than five (5) years nor more than ten (10) years; and
 - (d) For a Class D felony, not less than one (1) year nor more than five (5) years.
- (3) For any felony specified in KRS Chapter 510, KRS 530.020, 530.064(1)(a), or 531.310, the sentence shall include an additional five (5) year period of ***postincarceration supervision***~~[conditional discharge]~~ which shall be added to the maximum sentence rendered for the offense. During this period of ***postincarceration supervision***~~[conditional discharge]~~, if a defendant violates the provisions of ***postincarceration supervision***~~[conditional discharge]~~, the defendant may be reincarcerated for:
 - (a) The remaining period of his initial sentence, if any is remaining; and
 - (b) The entire period of ***postincarceration supervision***~~[conditional discharge]~~, or if the initial sentence has been served, for the remaining period of ***postincarceration supervision***~~[conditional discharge]~~.
- (4) ***In addition to the penalties provided in this section, for any person subject to a period of postincarceration supervision pursuant to Section 35 of this Act his or her sentence shall include an additional one (1) year period of postincarceration supervision following release from incarceration upon expiration of sentence if the offender is not otherwise subject to another form of postincarceration supervision. During this period of postincarceration supervision, if an offender violates the provisions of supervision, the offender may be reincarcerated for the remaining period of his or her postincarceration supervision.***

- (5) The actual time of release within the maximum established by subsection (1), or as modified pursuant to KRS 532.070, shall be determined under procedures established elsewhere by law.

➔SECTION 39. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The department may promulgate administrative regulations to implement conditional parole of state inmates incarcerated in state corrections institutions or local correctional facilities or county jails to place those individuals closer to their communities prior to release. A parolee placed on conditional parole shall serve that term in a local correctional facility or county jail in a county in which the fiscal court has agreed to house parolees if beds are available in the local correctional facility or county jail.*
- (2) *The department may authorize parolees on conditional parole to be placed on work release. If a person placed in a county jail on conditional parole under subsection (1) of this section is granted work release, he or she shall pay the work release fees required by law to the jailer. The amount of work release fees paid by a parolee shall be deducted from the amount which the Department of Corrections shall pay for the placement of that parolee.*
- (3) *Local correctional facilities or county jails housing parolees under subsection (1) of this section shall have the same rights and obligations as county jails housing felons pursuant to KRS 532.100.*
- (4) *Administrative regulations promulgated pursuant to subsection (1) of this section relating to eligibility of an individual for conditional parole shall take into consideration, at a minimum, the following information about the individual:*
 - (a) *The offense for which the individual was convicted and his or her rehabilitation efforts while incarcerated;*
 - (b) *The security classification while incarcerated in the state correctional institution;*
 - (c) *Conduct while incarcerated in the state correctional institution;*
 - (d) *Ability to find employment in the community; and*
 - (e) *The availability of additional applicable education, treatment or intervention, and training for employment in the local correctional facility or county jail, if needed by the individual.*

➔Section 40. KRS 532.100 is amended to read as follows:

- (1) When an indeterminate term of imprisonment is imposed, the court shall commit the defendant to the custody of the Department of Corrections for the term of his sentence and until released in accordance with the law.
- (2) When a definite term of imprisonment is imposed, the court shall commit the defendant to the county or city correctional institution or to a regional correctional institution for the term of his sentence and until released in accordance with the law.
- (3) When a sentence of death is imposed, the court shall commit the defendant to the custody of the Department of Corrections with directions that the sentence be carried out according to law.
- (4)
 - (a) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is sentenced to an indeterminate term of imprisonment of five (5) years or less, he shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners; except that, when an indeterminate sentence of two (2) years or more is imposed on a Class D felon convicted of a sexual offense enumerated in KRS 197.410(1), or a crime under KRS 17.510(11) or (12), the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.
 - (b) *The provisions of KRS 500.080(5) notwithstanding, a Class D felon who received a sentence of more than five (5) years for nonviolent, nonsexual offenses, but who currently has less than five (5) years remaining to be served, may serve the remainder of his or her term in a county jail in a county in which the fiscal court has agreed to house state prisoners.*
 - (c)
 1. The provisions of KRS 500.080(5) notwithstanding, and except as provided in subparagraph 2. of this paragraph, a Class C or D felon with a sentence of more than five (5) years who is classified by the Department of Corrections as community custody shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners if:
 - a. Beds are available in the county jail;

- b. State facilities are at capacity; and
 - c. Halfway house beds are being utilized at the contract level as of July 15, 2000.
- 2. When an indeterminate sentence of two (2) years or more is imposed on a felon convicted of a sex crime, as defined in KRS 17.500, or any similar offense in another jurisdiction, the sentence shall be served in a state institution.
- 3. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.
- ~~(d)(e)~~ Any jail that houses state inmates under ~~paragraph (a) or (b) of~~ this subsection shall offer programs as recommended by the Jail Standards Commission. The Department of Corrections shall adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations establishing required programs for a jail that houses state inmates under ~~paragraph (a) or (b) of~~ this subsection.
- (5) The jailer of a county in which a Class D felon or a Class C felon is incarcerated may request the commissioner of the Department of Corrections to incarcerate the felon in a state corrections institution if the jailer has reasons to believe that the felon is an escape risk, a danger to himself or other inmates, an extreme security risk, or needs protective custody beyond that which can be provided in a county jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he deems it necessary. If the commissioner refuses to accept the felon inmate, and the Circuit Judge of the county that has jurisdiction of the offense charged is of the opinion that the felon cannot be safely kept in a county jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.
- (6) Class D felons and Class C felons serving their time in a local jail shall be considered state prisoners, and the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem amount determined according to KRS 431.215(2). For other state prisoners and parole violator prisoners, the per diem payments shall also begin on the date prescribed in KRS 431.215(2).
- (7) State prisoners, excluding the Class D felons and Class C felons qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.

➔SECTION 41. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

When considering appropriate housing options for a person considered for parole or a person who is being paroled, the department shall approve any form of acceptable housing, including but not limited to apartments, shelters for homeless or other persons, county jails or restricted custody facilities which a county approves for parolees, educational institutions with dormitories if the parolee is enrolled or accepted for enrollment at an educational institution, halfway houses, residential treatment or other programs in which the parolee is enrolled or accepted for enrollment, and other forms of transitional housing meeting the requirements of applicable statutes.

➔SECTION 42. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

When considering appropriate housing for a prisoner who is considered for or who is granted conditional release pursuant to Section 43 of this Act, the Department of Corrections shall approve any form of acceptable housing, including but not limited to apartments, shelters for the homeless or other persons, county jails or restricted custody facilities that a county approves for persons granted conditional release, educational institutions with dormitories if the releasee is enrolled or accepted for enrollment at an educational institution, halfway houses, residential treatment or other programs in which the releasee is enrolled or accepted for enrollment, and other forms of transitional housing meeting the requirements of applicable statutes.

➔Section 43. KRS 532.260 is amended to read as follows:

- (1) Any Class C or Class D felon who is serving a sentence in a state-operated prison, contract facility, or county jail shall, at the discretion of the commissioner, be eligible to serve the remainder of his or her sentence outside the walls of the detention facility under terms of home incarceration **or conditional release to an appropriate housing alternative specified by Section 42 of this Act** using an approved monitoring device as defined in KRS 532.200, if the felon:
 - (a) 1. Has not been convicted of, pled guilty to, or entered an Alford plea to a violent felony as defined by the Department of Corrections classification system; or

2. Has not been convicted of, pled guilty to, or entered an Alford plea to a sex crime as defined in KRS 17.500;
 - (b) Has **nine (9) months**~~one hundred eighty (180) days~~ or less to serve on his or her sentence;
 - (c) Has voluntarily participated in a discharge planning process with the department to address his or her:
 1. Education;
 2. Employment, technical, and vocational skills;~~and~~
 3. Housing, medical, and mental health needs; and
 4. **Criminal risk factors; and**
 - (d) Has needs that may be adequately met in the community where he or she will reside upon release.
- (2) A person who is placed under terms of home incarceration pursuant to subsection (1) of this section shall remain in the custody of the Department of Corrections. Any unauthorized departure from the terms of home incarceration may be prosecuted as an escape pursuant to KRS Chapter 520 and shall result in the person being returned to prison.
 - (3) The Department of Corrections shall promulgate administrative regulations to implement the provisions of this section.

➔SECTION 44. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

- (1) *The Supreme Court shall establish recommended guidelines for judges to use when ordering pretrial release and monitored conditional release for defendants whose pretrial risk assessments indicate that they are moderate or high risk and would otherwise be ordered to a local correctional facility while waiting for trial.*
- (2) *The Supreme Court shall establish recommended guidelines for judges to use to determine whether defendants whose pretrial risk assessments indicate that they are moderate or high risk and are eligible for pretrial supervision.*
- (3) *Judges shall consider the guidelines established by the Supreme Court pursuant to this section when setting terms of pretrial supervision.*

➔SECTION 45. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

When considering the pretrial release of a person whose pretrial risk assessment indicates he or she is a moderate or high risk defendant, the court considering the release may order as a condition of pretrial release that the person participate in a global positioning monitoring system program under the same terms and conditions provided in KRS 431.517 during all or part of the person's period of pretrial release.

➔Section 46. KRS 431.015 is amended to read as follows:

- (1) (a) *KRS 431.005 to the contrary notwithstanding, and except as provided in paragraphs (b) and (c) of this subsection, a peace officer shall~~may~~ issue a citation instead of making an arrest for a misdemeanor committed in his or her presence, if there are reasonable grounds to believe that the person being cited will appear to answer the charge. The citation shall provide that the defendant shall appear within a designated time.*
 - (b) *A peace officer may make an arrest instead of issuing a citation for a misdemeanor committed in his or her presence if the misdemeanor is:*
 1. *A violation of KRS Chapter 508, 510, or 527, or KRS 189A.010;*
 2. *An offense in which the defendant poses a risk of danger to himself, herself, or another person; or*
 3. *An offense in which the defendant refuses to follow the peace officer's reasonable instructions.*
 - (c) *A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785.*
- (2) A peace officer may issue a citation instead of making an arrest for a violation committed in his presence but may not make a physical arrest unless there are reasonable grounds to believe that the defendant, if a citation is

issued, will not appear at the designated time or unless the offense charged is a violation of KRS 189.223, 189.290, 189.393, 189.520, 189.580, 235.240, 281.600, 511.080, or 525.070 committed in his presence or a violation of KRS 189A.010, not committed in his presence, for which an arrest without a warrant is permitted under KRS 431.005(1)(e).

- (3) If the defendant fails to appear in response to the citation, or if there are reasonable grounds to believe that he will not appear, a complaint may be made before a judge and a warrant shall issue.
- (4) When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word "ARRESTED" in lieu of the date of court appearance.

➔Section 47. KRS 431.525 is amended to read as follows:

- (1) The amount of the bail shall be:
 - (a) Sufficient to insure compliance with the conditions of release set by the court;
 - (b) Not oppressive;
 - (c) Commensurate with the nature of the offense charged;
 - (d) Considerate of the past criminal acts and the reasonably anticipated conduct of the defendant if released; and
 - (e) Considerate of the financial ability of the defendant.
- (2) When a person is charged with an offense punishable by fine only, the amount of the bail bond set shall not exceed the amount of the maximum penalty and costs.
- (3) When a person has been convicted of an offense and only a fine has been imposed, the amount of the bail shall not exceed~~double~~ the amount of the fine.
- (4) ***When a person has been charged with one (1) or more misdemeanors, the amount of the bail for all charges shall be encompassed by a single amount of bail that shall not exceed the amount of the fine and court costs for the one (1) highest misdemeanor charged. This subsection shall apply only to misdemeanor offenses not involving physical injury or sexual contact.***
- (5) ***When a person has been convicted of a misdemeanor offense and a sentence of jail, probation, conditional discharge, or sentence other than a fine only has been imposed, the amount of bail for release on appeal shall not exceed double the amount of the maximum fine that could have been imposed for the one (1) highest misdemeanor offense for which the person was convicted. This subsection shall apply only to misdemeanors not involving physical injury or sexual contact.***
- (6) ***The provisions of this section shall not apply to a defendant who is found by the court to present a flight risk or to be a danger to others.***
- (7) ***If a court determines that a defendant shall not be released pursuant to subsection (6) of this section, the court shall document the reasons for denying the release in a written order.***
- (8) The Administrative Office of the Courts shall establish pilot projects to implement controlled substance or alcohol abuse testing as specified under this subsection. If the person's record indicates a history of controlled substance or alcohol abuse, the court may order the person to submit to periodic testing for use of controlled substances or alcohol and to pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. If the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the person and his surety or sureties for the amount of the bail bond or any portion thereof and the cost of the proceedings.

➔SECTION 48. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

- (1) ***When a court considers pretrial release and bail for an arrested defendant, the court shall consider whether the defendant constitutes a flight risk, is unlikely to appear for trial, or is likely to be a danger to the public if released.***

- (2) *If the defendant poses low risk of flight, is likely to appear for trial and is not likely to be a danger to others, the court shall order the defendant released on unsecured bond or on the defendant's own recognizance subject to such other conditions as the court may order.*
- (3) *If the defendant poses a moderate risk of flight, has a moderate risk of not appearing for trial, or poses a moderate risk of danger to others, the court shall release the defendant under the same conditions as in subsection (2) of this section but shall consider ordering the defendant to participate in global positioning system monitoring, controlled substance testing, increased supervision, or such other conditions as the court may order.*
- (4)
 - (a) *Except as provided in paragraph (b) of this subsection, regardless of the amount of the bail set, the court shall permit the defendant a credit of one hundred dollars (\$100) per day as a payment toward the amount of the bail set for each day or portion of a day that the defendant remains in jail prior to trial. Upon the service of sufficient days in jail to have sufficient credit to satisfy the bail, the court shall order the defendant released from jail on the conditions specified in this section or in this chapter.*
 - (b) *The provisions of paragraph (a) of this subsection shall not apply to:*
 1. *Any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, 529.100 involving commercial sexual activity, 530.020, 530.064(1)(a), 531.310, or 531.320, or who is a violent offender as defined in KRS 439.3401; or*
 2. *A defendant who is found by the court to present a flight risk or to be a danger to others.*
- (5) *If a court determines that a defendant shall not be released pursuant to subsection (4) of this section, the court shall document the reasons for denying the release in a written order.*
- (6) *The jailer shall be responsible for tracking the credit earned by a defendant pursuant to subsection (4) of this section.*

➔SECTION 49. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "evidence-based practices" means intervention programs and supervision policies, procedures, programs, and practices that scientific research demonstrates reduce instances of a defendant's failure to appear in court and criminal activity among pretrial defendants when implemented competently.*
- (2) *In order to increase the effectiveness of supervision and intervention programs funded by the state and provided to pretrial defendants, the Supreme Court shall require that a vendor or contractor providing supervision and intervention programs for adult criminal defendants use evidence-based practices.*
- (3) *The Supreme Court shall measure the effectiveness of supervision and intervention programs provided by vendors or contractors and demonstrate that the programs have a documented evidence base and have been evaluated for effectiveness in reducing a defendant's failure to appear in court and criminal activity.*
- (4) *The Supreme Court shall require, at a minimum, the following:*
 - (a) *A process for reviewing the objective criteria for evidence-based practices established by the vendor or contractor providing the program;*
 - (b) *A process for auditing the effectiveness of the program;*
 - (c) *An opportunity for programs that do not meet the criteria based on the audit results to improve performance; and*
 - (d) *A mechanism to defund any program provided by a vendor or contractor that does not meet the criteria upon a second audit.*
- (5) *Beginning July 1, 2012, twenty-five percent (25%) of state moneys expended on supervision and intervention programs for pretrial defendants shall be for programs that are in accordance with evidence-based practices. Beginning July 1, 2014, fifty percent (50%) of state moneys expended on supervision and intervention programs shall be for programs that are in accordance with evidence-based practices. Beginning July 1, 2016 and thereafter, seventy-five percent (75%) of state moneys expended on supervision and intervention programs shall be for programs that are in accordance with evidence-based practices.*

➔SECTION 50. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "evidence-based practices" means supervision policies, procedures, treatment and intervention programs, and practices that scientific research demonstrates reduce recidivism among inmates and individuals on probation, parole, or other form of post-release supervision when implemented competently.*
- (2) *In order to increase the effectiveness of treatment and intervention programs funded by the state and provided by the department for inmates, probationers, and parolees, the department shall require that such programs use evidence-based practices.*
- (3) *The department shall measure the effectiveness of each treatment and intervention program and demonstrate that the program has a documented evidence base and has been evaluated for effectiveness in reducing recidivism.*
- (4) *The department shall promulgate administrative regulations to provide, at a minimum:*
 - (a) *A process for reviewing the objective criteria for evidence-based practices established by the agency providing the program;*
 - (b) *A process for auditing the effectiveness of the program;*
 - (c) *An opportunity for programs that do not meet the criteria based on the audit results to improve performance; and*
 - (d) *A mechanism to defund any program that does not meet the criteria upon a second audit.*
- (5) *Beginning July 1, 2012, twenty-five percent (25%) of state moneys expended on programs shall be for programs that are in accordance with evidence-based practices. Beginning July 1, 2014, fifty percent (50%) of state moneys expended on programs shall be for programs that are in accordance with evidence-based practices. Beginning July 1, 2016 and thereafter, seventy-five percent (75%) of state moneys expended on programs shall be for programs that are in accordance with evidence-based practices.*
- (6) *By fiscal year 2015-2016, the department shall eliminate supervision policies, procedures, programs, and practices intended to reduce recidivism that scientific research demonstrates do not reduce recidivism. However, the department may utilize a new supervision policy, procedure, program, or practice if the department determines that the new supervision policy, procedure, program, or practice has the potential for qualifying as an evidence-based practice after more scientific research is conducted.*

➔SECTION 51. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall promulgate administrative regulations that require the supervision and treatment of supervised individuals in accordance with evidence-based practices.*
- (2) *The administrative regulations shall, at a minimum, include:*
 - (a) *The administration of a validated risk and needs assessment on all supervised individuals at regular intervals to determine their criminal risk factors and to identify intervention targets;*
 - (b) *Use of assessment scores and other objective criteria throughout the period of community supervision to determine the risk level and program needs of each supervised individual;*
 - (c) *Caseload size guidelines that are based on supervised individuals' risk levels and take into account department resources and employee workload and prioritization of supervision and program resources for supervised individuals who are at higher risk to reoffend;*
 - (d) *Definitions of various risk levels to apply to supervised individuals during the period of community supervision;*
 - (e) *Development of a case plan for each individual who is assessed to be moderate-to-high risk based on the risk and needs assessment, that targets the criminal risk factors identified in the assessment, is responsive to individual characteristics, and provides supervision of offenders according to that case plan;*
 - (f) *Implementation of swift, certain, proportionate, and graduated sanctions that a probation and parole officer shall apply in response to a supervised individual's noncompliant behaviors; and*
 - (g) *Establishment of protocols and standards that assess the degree to which policies, procedures, programs, interventions, and practices relating to offender recidivism reduction, whether utilized by the department or contract or referral agencies, are evidence-based.*

➔SECTION 52. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall provide its employees with intensive initial and on-going training and professional development services to support the implementation of evidence-based practices.*
- (2) *The training and professional development services shall include assessment techniques, case planning, risk reduction and intervention strategies, effective communication skills, cognitive-behavioral treatment, substance abuse, and other topics identified by the department or its employees.*

➔SECTION 53. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *By December 1 of each year, beginning in 2012, the department shall submit to the Governor, the General Assembly, and the Chief Justice a comprehensive report on its efforts to implement evidence-based practices to reduce recidivism. The report shall include at a minimum:*
 - (a) *The percentage of supervised individuals being supervised in accordance with evidence-based practices;*
 - (b) *The percentage of state moneys expended by the department for programs that are evidence based, and a list of all programs with identification of which are evidence based;*
 - (c) *Specification of supervision policies, procedures, programs, and practices that were created, modified, or eliminated; and*
 - (d) *The department's recommendations for resource allocation, and any additional collaboration with other state, regional, or local public agencies, private entities, or faith-based and community organizations.*
- (2) *The department shall make the full report and an executive summary available to the general public on its Web site.*

➔SECTION 54. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

The department shall:

- (1) *Conduct an initial administration of a validated risk and needs assessment instrument on an individual upon intake to community supervision, unless an initial assessment has been previously conducted within a reasonable time period as specified in department regulations;*
- (2) *While the individual is on community supervision, readminister the risk and needs assessment at regular intervals as determined by administrative regulations promulgated pursuant to Section 51 of this Act;*
- (3) *Apply the results of the risk and needs assessment to:*
 - (a) *Establish an appropriate level of supervision;*
 - (b) *Determine the content of a case plan that addresses the supervised individual's criminal needs; and*
 - (c) *Respond to compliant and noncompliant behavior; and*
- (4) *Promulgate administrative regulations to determine appropriate levels of supervision, guidelines for case planning, and guidelines for responses to specified behavior by supervised individuals.*

➔SECTION 55. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *A supervised individual on parole shall receive compliance credits to be applied toward the individual's sentence, if the paroled individual does all of the following:*
 - (a) *Fulfills the terms of his or her case plan;*
 - (b) *Has no new arrests; and*
 - (c) *Makes scheduled monthly payments for restitution.*
- (2) *The department shall promulgate administrative regulations for the awarding of earned compliance credits to a supervised individual who is on parole.*

➔SECTION 56. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall promulgate administrative regulations to develop a system of graduated sanctions for responding to technical violations of probation. The department shall consult with the Supreme Court when promulgating these administrative regulations.*

- (2) *The administrative regulations shall create a system of graduated sanctions with the following objectives:*
- (a) *Responding quickly and consistently to violations of probation, based on the nature of the violation and the risk level of the supervised individual;*
 - (b) *Reducing the time and resources expended by the department and the courts to respond to violations; and*
 - (c) *Reducing the commission of new crimes and revocation rates.*

➔SECTION 57. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall promulgate administrative regulations in consultation with the Supreme Court to establish procedures to:*
- (a) *Recommend to the court the early termination of probation for a supervised individual who has:*
 - 1. *Fulfilled the terms of his or her case plan;*
 - 2. *No new arrests;*
 - 3. *Demonstrated a reduction in criminal risk factors upon reassessment; and*
 - 4. *Fulfilled all restitution and substantially fulfilled all other financial obligations to the court; and*
 - (b) *Review the compliance of the supervised individual on probation with the requirements in paragraph (a) of this subsection. This review for compliance shall occur at the same time as the regular reassessment pursuant to Sections 51 and 54 of this Act.*
- (2) *The department shall petition the court with a request for early termination if the supervised individual on probation has:*
- (a) *Complied with the requirements in subsection (1)(a) of this section;*
 - (b) *Has completed at least eighteen (18) months of his or her term of supervision; and*
 - (c) *Has not violated the terms of his or her supervision in the last twelve (12) months.*
- (3) *The department may establish by administrative regulation conditions for overriding the recommendation of early termination of probation.*

➔SECTION 58. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS

- (1) *The department shall promulgate administrative regulations in accordance with the provisions of this section to establish an administrative caseload supervision program for supervised individuals whose results from a risk and needs assessment indicate that they are low-risk offenders.*
- (2) *The administrative caseload supervision program shall consist of monitoring supervised individuals to ensure that they have not engaged in new criminal activity and are fulfilling financial obligations to the court.*
- (3) *If a supervised individual on administrative caseload supervision:*
- (a) *Does not fulfill his or her restitution or other financial obligations to the court, he or she may be placed on a higher level of supervision at the discretion of the department; or*
 - (b) *Engages in criminal activity, he or she may be prosecuted, revoked, or placed on a higher level of supervision; or*
 - (c) *Exhibits signs or symptoms of a substance abuse disorder, he or she may be assessed by the Administrative Office of the Courts drug court personnel for consideration of admission into drug court.*
- (4) *A supervised individual on a higher level of supervision who demonstrates a reduction in criminal risk factors upon reassessment and who has achieved the goals established in his or her case plan may be placed on administrative caseload supervision at the discretion of the department.*
- (5) *A supervised individual on a higher level of supervision shall presumptively be placed on administrative supervision if he or she has:*
- (a) *Completed twelve (12) months of community supervision;*

- (b) *Not violated the terms of his or her community supervision in the previous twelve (12) months;*
 - (c) *Fulfilled all restitution and other financial obligations to the court;*
 - (d) *Demonstrated a reduction in criminal risk factors upon reassessment; and*
 - (e) *Achieved the goals established in his or her case plan.*
- (6) *If the conditions or level of community supervision of a probationer are modified under this section, the probation and parole officer shall file a copy of the modified conditions or level with the sentencing court.*
 - (7) *The department may establish by administrative regulation conditions for overriding presumptive administrative supervision.*

➔SECTION 59. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

Supervised individuals shall be subject to:

- (1) *Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community; or*
- (2) *Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.*

➔SECTION 60. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall, by January 1, 2012, adopt a system of graduated sanctions for violations of conditions of community supervision. Notwithstanding KRS Chapter 533, the system shall set forth a menu of presumptive sanctions for the most common types of supervision violations, including but not limited to: failure to report; failure to pay fines, fees, and victim restitution; failure to participate in a required program or service; failure to complete community service; violation of a protective or no contact order; and failure to refrain from the use of alcohol or controlled substances. The system of sanctions shall take into account factors such as the severity of the current violation, the supervised individual's previous criminal record, the number and severity of any previous supervision violations, the supervised individual's assessed risk level, and the extent to which graduated sanctions were imposed for previous violations. The system also shall define positive reinforcements that supervised individuals may receive for compliance with conditions of supervision.*
- (2) *The department shall establish by administrative regulation an administrative process to review and approve or reject, prior to imposition, graduated sanctions that deviate from those prescribed.*
- (3) *The department shall establish by administrative regulation an administrative process to review graduated sanctions contested by supervised individuals under Section 62 of this Act.*

➔SECTION 61. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

For supervised individuals on probation, the court having jurisdiction of the case shall determine the conditions of community supervision and may impose as a condition of community supervision that the department supervising the individual shall, in accordance with Section 62 of this Act, impose graduated sanctions adopted by the department for violations of the conditions of community supervision.

➔SECTION 62. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any administrative regulation or law to the contrary, including KRS 439.340(3)(b), the department or board may:*
 - (a) *Modify the conditions of community supervision for the limited purpose of imposing graduated sanctions; and*
 - (b) *Place a supervised individual who violates the conditions of community supervision in a state or local correctional or detention facility or residential center for a period of not more than ten (10) days consecutively, and not more than thirty (30) days in any one (1) calendar year. The department shall reimburse the local correctional or detention facility or residential center for the costs of incarcerating a person confined under this paragraph at the rate specified in KRS 532.100.*
- (2) *A probation and parole officer intending to modify the conditions of community supervision by imposing a graduated sanction shall issue to the supervised individual a notice of the intended sanction. The notice*

shall inform the supervised individual of the technical violation or violations alleged, the date or dates of the violation or violations, and the graduated sanction to be imposed.

- (3) *The imposition of a graduated sanction or sanctions by a probation and parole officer shall comport with the system of graduated sanctions adopted by the department under Section 60 of this Act. Upon receipt of the notice, the supervised individual shall immediately accept or object to the sanction or sanctions proposed by the officer. The failure of the supervised individual to comply with a sanction shall constitute a violation of community supervision.*
- (4) *If the supervised individual objects to the imposition of the sanction or sanctions, then:*
 - (a) *If the supervised individual is serving a period of parole or post-release supervision from prison or jail, then the administrative process promulgated under subsection (3) of Section 60 of this Act shall apply; or*
 - (b) *If the supervised individual is on probation, then the provisions of KRS 533.050 shall apply.*
- (5) *If the graduated sanction involves confinement in a correctional or detention facility, confinement shall be approved by the probation and parole district supervisor, but the supervised individual may be taken into custody for up to four (4) hours while such approval is obtained. If the supervised individual is employed, the probation and parole officer shall, to the extent feasible, impose this sanction on weekend days or other days and times when the supervised individual is not working.*
- (6) *A sanction that confines a supervised individual in a correctional or detention facility for a period of more than ten (10) consecutive days, or extends the term of community supervision, shall not be imposed as a graduated sanction, except pursuant to an order of the court or the board.*
- (7) *Upon successful completion of a graduated sanction or sanctions, a court may not revoke the term of community supervision or impose additional sanctions for the same violation.*
- (8) *If a probation and parole officer modifies the conditions of community supervision by imposing a graduated sanction, the officer shall:*
 - (a) *Deliver a copy of the modified conditions to the supervised individual;*
 - (b) *File a copy of the modified conditions with the sentencing court or releasing authority; and*
 - (c) *Note the date of delivery of the copy in the supervised individual's file or case management system.*

➔SECTION 63. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

The probation and parole district supervisor shall review confinement sanctions recommended by probation and parole officers on a quarterly basis to assess any disparities that may exist among officers, evaluate the effectiveness of the sanction as measured by the supervised individuals' subsequent conduct, and monitor the impact on the department's number and type of revocations for violations of the conditions of supervision.

➔SECTION 64. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

The Chief Justice shall submit an annual report to the Interim Joint Committee on Judiciary by November 1 of each year that provides information on state-funded crime reduction and recidivism reduction efforts, including participation in intervention programming, public safety outcomes, and cost effectiveness. The report shall, at a minimum, include:

- (1) *The percentage of defendants on pretrial supervision who appear for court and do not commit a new crime;*
- (2) *The percentage of drug court clients who successfully complete drug court;*
- (3) *The percentage of drug court clients who are arrested, convicted, and incarcerated within six (6) months, one (1) year, and three (3) years of successful completion of drug court; and*
- (4) *The amount of restitution paid while in drug court.*

➔Section 65. KRS 196.031 is amended to read as follows:

- (1) The cabinet shall employ the personnel and operate and maintain data collection and processing systems necessary to comply with the provisions of this section.
- (2) The cabinet shall annually on July 1 of each year report to the Governor, the Legislative Research Commission, and the Kentucky State Corrections Commission on:

- (a) The placement of prisoners within the Commonwealth's correctional system by institution, whether imprisoned in a state prison or other institution, including county jails, on probation, paroled, housed in halfway houses, sentenced to community service or otherwise;
 - (b) Numbers of prisoners by type of offense;
 - (c) Numbers of prisoners by number and type of prior convictions;
 - (d) Numbers of prisoners paroled by type of offense and by length of time served;
 - (e) Numbers of prisoners released through shock probation by type of offense and by length of time served; ~~and~~
 - (f) Numbers of prisoners serving their full sentence by type of offense;
 - (g) *The percentage of felony offenders on parole or some form of post-release supervision who are participating or completing treatment consistent with assessment results, in prison and in the community;*
 - (h) *The percentage of felony offenders whose reassessment results demonstrate reductions in criminal risk factors;*
 - (i) *The percentage of programs that demonstrate their effectiveness in reducing recidivism;*
 - (j) *The percentage of felony offenders on parole or some form of post-release supervision, by supervision type, who:*
 - 1. *Are employed or in school within thirty (30) days, six (6) months, and one (1) year of the start of supervision;*
 - 2. *Have had part-time employment for a minimum of six (6) months, and the percentage of offenders who have had full-time employment for a minimum of six (6) months;*
 - 3. *Have housing upon release from incarceration;*
 - 4. *Had stable housing for at least six (6) months; and*
 - 5. *Are arrested, convicted, or incarcerated within six (6) months, one (1) year, and three (3) years;*
 - (k) *The percentage of admissions to prison by offenders under supervision at the time of admission, including information regarding whether the violations were criminal or technical; and*
 - (l) *Any other data that provides information on state-funded crime reduction and recidivism reduction efforts, including caseload sizes by risk level, participation in treatment and intervention programming, public safety outcomes, and cost effectiveness.*
- (3) The cabinet shall annually report to the Governor and to the Legislative Research Commission on:
- (a) Numbers and types of prison beds necessary to meet current population needs and six (6) year projections of those needs;
 - (b) Current personnel needs of the cabinet and five (5) year projections of the needs; and
 - (c) A six (6) year projection of needed capital construction, program development, and anticipated requests for appropriations.

➔Section 66. KRS 27A.470 is amended to read as follows:

The Administrative Office of the Courts may combine its annual report *in KRS 27A.460* with the Kentucky Uniform Crime Report.

➔SECTION 67. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

The department shall develop an online system based on state statistics of actual offenders to provide courts, attorneys, probation and parole officers, and victims with objective information for use in plea negotiations and sentencing. The system shall include but not be limited to the following information:

- (1) *Sentencing information for all felonies, including the amount of time likely to be served for particular offenses;*
- (2) *The offender's risk assessment rating;*

- (3) *The offender's expected time to serve, including but not limited to parole eligibility date, good time release date, maximum expiration of sentence date, and the historic percentage of time served for similar offenders;*
- (4) *The costs for various sentencing options and costs for various alternatives to incarceration; and*
- (5) *The offender's likelihood of being reincarcerated within two (2) years under the different sentencing options and alternatives, taking into account the offender's risk assessment rating.*

➔SECTION 68. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall measure and document cost savings resulting from amendments to or creation of statutes in KRS Chapters 27A, 196, 197, 431, 439, 532, 533, and 534 contained in the provisions of this Act. Measured and documented savings shall be reinvested or distributed as provided in this section.*
- (2) *The department shall establish a baseline for measurement using the average number of inmates incarcerated at each type of penitentiary as defined in KRS 197.010 and at local jails in fiscal year 2010-2011.*
- (3) *The department shall determine the average cost of:*
 - (a) *Incarceration for each type of penitentiary as defined in KRS 197.010 and for local jails, including health care costs, transportation costs, and other related costs, for one (1) inmate for one (1) year for the immediately preceding fiscal year; and*
 - (b) *Providing probation and parole services for one (1) parolee for one (1) year for the immediately preceding fiscal year.*
- (4) *Beginning with the budget request for the 2012-2014 fiscal biennium, savings shall be estimated from the baseline established in subsection (2) of this section as follows:*
 - (a) *The estimated average reduction of inmates due to mandatory reentry supervision as required by Section 34 of this Act multiplied by the appropriate average cost as determined in paragraph (a) of subsection (3) of this section;*
 - (b) *The estimated average reduction of inmates due to accelerated parole hearings as required by Section 32 of this Act multiplied by the appropriate average cost as determined in paragraph (a) of subsection (3) of this section;*
 - (c) *The estimated average increase of parolees due to paragraphs (a) and (b) of this subsection multiplied by the average cost as determined in paragraph (b) of subsection (3) of this section; and*
 - (d) *The estimated average reduction of parolees due to parole credit for good behavior as provided in Section 55 of this Act multiplied by the average cost as determined in paragraph (b) of subsection (3) of this section.*
- (5) *The following amounts shall be allocated or distributed from the estimated amount of savings that would otherwise remain in the general fund:*
 - (a) *Twenty-five percent (25%) shall be distributed to the local corrections assistance fund established by Section 69 of this Act; and*
 - (b) *In enacting the budget for the department and the judicial branch, beginning in the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the General Assembly shall:*
 - 1. *Determine the estimated amount necessary for reinvestment in:*
 - a. *Expanded treatment programs and expanded probation and parole services provided by or through the department; and*
 - b. *Additional pretrial services and drug court case specialists provided by or through the Administrative Office of the Courts; and*
 - 2. *Shall allocate and appropriate sufficient amounts to fully fund these reinvestment programs.*
- (6) *The amount of savings shall be estimated each year of the 2012-2014 fiscal biennium, and for each year of each fiscal biennium thereafter, as specified in subsection (4) of this section.*
- (7) (a) *In submitting its budget request for the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the department shall estimate the amount of savings measured under this section, and*

shall request the amount necessary to distribute or allocate those savings as provided in subsection (5) of this section.

- (b) *In submitting its budget request for the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the judicial branch shall request the amount necessary to distribute or allocate those savings as provided in subsection (5) of this section.*

➔SECTION 69. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *The local corrections assistance fund is created as a separate revolving fund to be administered by the department. The fund shall consist of amounts transferred to the fund pursuant to the provisions of Section 68 of this Act, along with any other proceeds from grants, contributions, appropriations, or other moneys made available for purposes of the fund.*
- (2) *Notwithstanding KRS 45.229, amounts not expended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year.*
- (3) *Any interest earnings from the fund shall become a part of the fund and shall not lapse.*
- (4) *Moneys in the fund shall accrue to the fund and shall be retained in the fund until the General Assembly establishes a statutory process and method for distributing the funds to local correctional facilities and programs.*

➔Section 70. KRS 196.700 is amended to read as follows:

As used in KRS 196.700 to 196.735, unless the context otherwise requires:

- (1) "Commission" means the Kentucky State Corrections Commission created in KRS 196.701;
- (2) "Community corrections program" means a local government agency, private nonprofit, or charitable organization within the judicial circuit which shall perform one (1) or more of the following:
 - (a) Prepare community penalties plans;
 - (b) Directly provide, arrange, or contract with public and private agencies for sentencing services for offenders; and
 - (c) Monitor the progress of offenders placed on community penalty plans or who receive sentencing services through provisions of KRS 196.700 to 196.735;
- (3) "Community corrections programs plan" means a written plan for the development, implementation, operation, and improvement of a community corrections program;
- (4) "Community penalties plan" means a plan presented in writing to the sentencing judge which provides a detailed description of and rationale for the targeted offender's proposed sentence to a community corrections program or to one (1) or more special programs, conditions of probation, community punishments, or sanctions in lieu of lengthy incarceration;
- (5) *"Conditions of supervision" means conditions of probation, parole, mandatory reentry supervision, or other form of post-prison supervision;*
- (6) "Judicial circuit" means the circuits prescribed by KRS 23A.020;~~and~~
- (7) *"Supervised individual" means an individual placed on probation by a court or serving a period of parole or other form of post-release supervision; and*
- (8)~~(6)~~ "Targeted offenders" means persons charged with or convicted of one (1) or more felonies who under application of law are eligible for probation or suspension of sentence~~or a minimum period of incarceration not to exceed one (1) year~~.

➔SECTION 71. A NEW SECTION OF KRS 196.700 to 196.735 IS CREATED TO READ AS FOLLOWS:

- (1) *The commission may:*
 - (a) *Approve up to five (5) pilot projects to grant performance incentive funding to community corrections programs in judicial circuits with high rates of targeted offenders who are ordered to serve a term of imprisonment; and*

- (b) *Approve up to five (5) pilot projects to grant performance incentive funding to community corrections programs in judicial circuits with high rates of supervised individuals who are revoked for violations of their conditions of supervision and ordered to serve a term of imprisonment.*
- (2) *Upon development of an approved pilot project described in subsection (1)(a) of this section, the commission shall annually calculate:*
 - (a) *The percentage of targeted offenders in the judicial circuit for that pilot project who are convicted of a felony offense and sentenced to a term of imprisonment. This calculation shall be based on the fiscal year prior to the fiscal year in which the report is required pursuant to Section 73 of this Act. The baseline shall be the percentage of targeted offenders convicted and imprisoned for that judicial circuit in the fiscal year prior to the implementation of the pilot project; and*
 - (b) *Any state expenditures that have been avoided by reductions in the baseline percentage as calculated in paragraph (a) of this subsection.*
- (3) *Upon development of an approved pilot project described in subsection (1)(b) of this section, the commission shall annually calculate:*
 - (a) *The percentage of supervised individuals in the judicial circuit for that pilot project who are revoked for violations of their conditions of supervision and ordered to serve a term of imprisonment. This calculation shall be based on the fiscal year prior to the fiscal year in which the report is required pursuant to Section 73 of this Act. The baseline revocation percentage shall be the percentage of revocations for that judicial circuit in the fiscal year prior to the implementation of the pilot project; and*
 - (b) *Any state expenditures that have been avoided by reductions in the revocation percentage as calculated in paragraph (a) of this subsection.*

➔SECTION 72. A NEW SECTION OF KRS 196.700 TO 196.735 IS CREATED TO READ AS FOLLOWS:

- (1) *Beginning in the fiscal year after a pilot project has been implemented pursuant to Section 71 of this Act, fifty percent (50%) of any state expenditures that are avoided as calculated in Section 71 of this Act shall be deposited by the department in the community corrections fund, which shall be a separate, interest-bearing account within the State Treasury. The remaining fifty percent (50%) shall be deposited in the general fund. Amounts deposited in the community corrections fund, including interest, are hereby appropriated to the commission for the following purposes:*
 - (a) *Fifty percent (50%) to the community corrections program responsible for those savings; and*
 - (b) *Fifty percent (50%) to the Division of Probation and Parole.*
- (2) *Notwithstanding KRS 45.229, any moneys remaining in the community corrections fund at the close of the fiscal year shall not lapse but shall carry forward into the next fiscal year to be used for the purposes outlined in this subsection.*
- (3) *None of the calculated savings shall be appropriated to the commission for distribution if:*
 - (a) *In a pilot project developed pursuant to subsection (1)(a) of Section 71 of this Act, there is an increase in the percentage of targeted offenders on probation who are convicted of a new felony offense and sentenced to a term of imprisonment; or*
 - (b) *In a pilot project developed pursuant to subsection (1)(b) of Section 71 of this Act, there is an increase in the percentage of supervised individuals who are convicted of a new felony offense.*
- (4) *The moneys appropriated pursuant to this section shall be used to supplement, not supplant, any other state or county appropriations for probation, parole or other post-prison supervision services, or community corrections programs.*
- (5) *Moneys received through appropriations pursuant to this section and Section 71 of this Act shall be used for the following purposes:*
 - (a) *Implementing evidence-based practices;*
 - (b) *Creating, increasing, or improving the availability of risk reduction and treatment programs and interventions, including substance abuse treatment programs, for supervised individuals;*
 - (c) *Paying the costs of global positioning monitoring system for offenders of at least medium risk; and*

- (d) *Increasing the number of probation and parole staff, including equipment and office space the officers and staff may need.*

➔SECTION 73. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

The Kentucky State Corrections Commission shall submit an annual report on the implementation and results of any pilot projects developed pursuant to Section 71 of this Act to the Legislative Research Commission, the Chief Justice, and the Governor on or before September 1 of each year. The report shall also include the calculations made pursuant to Section 71 of this Act and the resulting performance incentive funding appropriated, if any.

➔SECTION 74. A NEW SECTION OF KRS CHAPTER 6 IS CREATED TO READ AS FOLLOWS:

- (1) *Any bill, amendment, or committee substitute that creates a new crime, increases the penalty for an existing crime, decreases the penalty for an existing crime, changes the elements of the offense for an existing crime, repeals an existing crime, or proposes to increase, decrease, or otherwise impact incarceration shall be identified by the drafter as having a corrections impact on a "Corrections Impact Statement" form specified by the Legislative Research Commission.*
- (2) *Any bill, amendment, or committee substitute which permits a state agency to do any of the acts specified in subsection (1) of this section, even if the action is termed a regulatory offense by administrative regulation, shall be identified by the drafter as having a corrections impact in the manner specified in subsection (1) of this section.*
- (3) *Any bill, amendment, or committee substitute that permits a city, county, urban-county, charter county, consolidated local government, special district, or any other subdivision of local government to do any of the acts specified in subsection (1) of this section by ordinance or any other form of action shall be identified by the drafter as having a corrections impact in the manner specified in subsection (1) of this section.*
- (4) *The drafter of any bill, amendment, or committee substitute identified as having a corrections impact under subsections (1) to (3) of this section shall notify the sponsor of the bill, amendment, or committee substitute that a corrections impact is required.*
- (5) *If a bill, amendment, or committee substitute is identified as having a corrections impact, a "Corrections Impact Statement" shall be prepared by the staff of the Department of Corrections with the assistance of the Department of Kentucky State Police, Administrative Office of the Courts, Parole Board, and other persons, agencies, or organizations deemed necessary by the Department of Corrections staff assigned to prepare the corrections impact statement. The Department of Kentucky State Police, Administrative Office of the Courts, Parole Board, and other persons, agencies, and organizations that have been requested to provide information for the corrections impact statement shall do so within the period of time specified by the Department of Corrections staff person requesting the information, which in no case shall exceed two (2) business days unless an extension is granted by the requesting staff person.*
- (6) *The corrections impact statement shall contain the estimated costs, estimated savings, and necessary appropriations based upon:*
 - (a) *Incarceration in jail prior to trial and during trial based on the available information about persons granted bail or other form of pretrial release and the length of time spent in jail prior to release;*
 - (b) *Supervision of a person who has been granted bail or pretrial release based on the average time spent between the time of release until the time of trial for the offense;*
 - (c) *Incarceration in jail for a misdemeanor following conviction based on the maximum time of incarceration authorized for the offense;*
 - (d) *Incarceration in a state correctional facility for a capital offense, or felony offense based on the maximum and minimum length of incarceration authorized for the offense, except for offenses in which incarceration in a county jail for a Class D felony is required;*
 - (e) *Incarceration in a county jail for a Class D felony for which incarceration in a county jail is authorized based on the maximum and minimum sentence of incarceration authorized for a Class D felony;*
 - (f) *Probation or conditional discharge supervision based on the maximum time of probation or conditional discharge authorized for the offense;*

- (g) *Parole supervision based on the average length of parole supervision authorized for the offense assuming full parole supervision; and*
 - (h) *Mandated treatment, education, and other programs which are to be paid by the state, unit of local government, or public agency based on the number of persons anticipated to be required to complete the program if the education, treatment, or other program is not normally offered as a part of a defendant's incarceration and is required to be completed outside of a correctional facility.*
- (7) *Insofar as possible, costs and savings for a change to an existing crime shall be calculated using:*
- (a) *Arrest data for the crime from the Department of Kentucky State Police;*
 - (b) *Pretrial incarceration data from the Administrative Office of the Courts;*
 - (c) *Preconviction jail data from the Administrative Office of the Courts;*
 - (d) *Conviction data from the Administrative Office of the Courts;*
 - (e) *Postconviction jail and imprisonment data from the Department of Corrections;*
 - (f) *Probation and parole data from the Department of Corrections; and*
 - (g) *Data from applicable agencies or organizations providing treatment, education, or other mandated programs.*
- (8) *Insofar as possible, costs or savings for a new crime shall be calculated in the same manner as specified in subsection (7) of this section using data for similar crimes unless that is determined by the Department of Corrections staff person to be impractical or impossible in which case the estimate for a new crime may be prepared using:*
- (a) *The maximum and minimum length of incarceration for the offense;*
 - (b) *An estimate of cost based on ten (10) persons being charged with the offense, and based on one hundred (100) persons being charged with the offense;*
 - (c) *An estimate of cost based on ten (10) persons and one hundred (100) persons being convicted of the offense and sent to jail if the offense is a misdemeanor using the criteria specified in subsection (9) of this section; and*
 - (d) *An estimate of cost based on ten (10) persons and one hundred (100) persons being convicted of a felony offense requiring imprisonment in a state-operated correctional facility unless the offense is a Class D felony for which imprisonment in a county jail is required in which case the cost shall be based on the amount paid by the Department of Corrections for a person incarcerated in a county jail for a Class D felony.*
- (9) *Costs or savings shall be based on the average costs actually paid by the Department of Corrections during the previous fiscal year for incarceration of a person in a state correctional facility, the average cost for supervision of a person placed on probation without electronic monitoring, the average cost of a person placed on probation with electronic monitoring, the average cost of parole supervision without electronic monitoring, and the average cost of parole supervision with electronic monitoring.*
- (10) *The sponsor of any bill or amendment or sponsor of a proposed committee substitute adopted by a committee that is identified as having a corrections impact shall identify in writing where the funds to pay for additional costs of the proposal will come from either by reducing other expenditures, additional revenues, or otherwise. The sponsor's statement shall be included with the corrections impact.*
- (11) *If an amendment to a bill is combined into a committee substitute or a GA version of the bill is created incorporating a floor amendment, a new corrections impact statement shall be prepared combining the information in the original bill as modified by the amendment.*
- (12) *A bill, amendment, or committee substitute shall not be considered for final passage unless the corrections impact and latest revised corrections impact, if required, has been made available to the members of the House of Representatives or the Senate, as appropriate, on the day prior to the day the bill, amendment, or committee substitute is to be voted on for final passage.*

➔Section 75. KRS 441.045 is amended to read as follows:

- (1) The county governing body shall prescribe rules for the government, security, safety, and cleanliness of the jail and the comfort and treatment of prisoners, provided such rules are consistent with state law. The county judge/executive may inspect the jail at any reasonable time.
- (2) Willful violation of the rules promulgated pursuant to subsection (1) of this section shall be deemed a violation.
- (3) Except as provided in subsections (4) and (5) of this section, the cost of providing necessary medical, dental, and psychological care for indigent prisoners in the jail shall be paid from the jail budget.
- (4) The cost of providing necessary medical, dental, or psychological care for prisoners of the United States government shall be paid as provided by contract between the United States government and the county or as may otherwise be provided by federal law.
- (5) The cost of providing necessary medical, dental, or psychological care, beyond routine care and diagnostic services, for prisoners held pursuant to a contractual agreement with the state shall be paid as provided by contract between the state and county. The costs of necessary medical, dental, or psychological care, beyond routine care and diagnostic services, of prisoners held in the jail for which the county receives a per diem payment shall be paid by the state.
- (6) The cost of providing necessary medical, dental, or psychological care for prisoners held pursuant to a contractual agreement with another county or a city shall be paid as provided by contract between the county or city and county.
- (7) (a) When the cost of necessary medical, dental, or psychological care for a prisoner exceeds ~~one~~~~two~~ thousand dollars ~~(\$1,000)~~~~(\$2,000)~~, as calculated by using the maximum allowable costs to similar persons or facilities for the same or similar services under the Kentucky Medical Assistance Program, the state shall reimburse the county for that portion of the costs that exceeds ~~one~~ ~~two~~ thousand dollars ~~(\$1,000)~~~~(\$2,000)~~. The reimbursement shall be subject to the following terms and conditions:
 1. ~~(a)~~ The care is necessary as defined in subsection (10) of this section;
 2. ~~(b)~~ The prisoner is indigent as defined in subsection (8) of this section, or is uninsured; and
 3. ~~(c)~~ No state reimbursement to the county for care provided by physicians, hospitals, laboratories, or other health care providers shall exceed the maximum payments allowed to similar persons or facilities for the same or similar services under the Kentucky Medical Assistance Program, except as provided in subsection (11) of this section.

(b) *A county may assign its ability to receive payment from the state under this subsection to the person providing the medical, dental, or psychological care to the prisoner, which assignment shall be accepted by the provider for the purposes of submitting billing directly to the state. The state shall pay or deny a claim submitted to it within ninety (90) days of receiving the claim. The county shall include with the assignment the information required by subsection (8) of this section necessary to qualify the prisoner as indigent. The provider shall bill for any other public or private health benefit plan or health insurance benefits available to the prisoner prior to billing the state under this subsection, and shall bill the state prior to billing the county. The county shall retain ultimate payment responsibility as established under subsection (3) of this section, and the provider may bill the county for payment after the expiration of ninety (90) days from the date the provider submitted the claim to the state for payment if the claim remains unpaid at that time.*
- (8) (a) The determination of whether a prisoner is indigent shall be made pursuant to KRS 31.120, *and may be evidenced by the affidavit of indigency required by that statute or the appointment of a public defender under that statute*. The prisoner shall not be considered indigent, in the case of prisoner medical care, if:
 1. The prisoner has funds on his inmate account to cover all or a portion of his medical expenses;
 2. The prisoner's medical expenses are covered on a medical insurance policy; or
 3. The prisoner has the private resources to pay for the use of the medical facilities.

(b) Prisoners who are later determined not to have been indigent, or who at a time following treatment are no longer indigent, shall be required to repay the costs of payments made pursuant to this section to the unit of government which made the payment.

- (9) The terms and conditions relating to any determination of nonindigency and demands for repayment shall be under the same terms and conditions as are provided under KRS Chapters 31 and 431 relating to similar circumstances in the program for defense of indigents by the public advocate.
- (10) For the purposes of this section, "necessary care" means care of a nonelective nature that cannot be postponed until after the period of confinement without hazard to the life or health of the prisoner. ~~[-The physician attending the prisoner shall certify, under oath, that the care was necessary.-]~~
- (11) Any money appropriated for a given fiscal year to fund the state's obligation under subsection (7) of this section which remains unspent at the end of the year shall not lapse but shall be made available to satisfy, to the maximum extent possible, that portion of each catastrophic claim made during said year above the threshold amount for which the county did not receive state assistance pursuant to subsection (7) of this section. In the event there is an insufficient surplus to satisfy said balance of all such catastrophic claims which are made during that year, the state shall pay to those qualified counties, on a per claim basis, an amount equal to each claim's percentage of the total surplus. Should the surplus be sufficient to satisfy all such catastrophic claims, the amount remaining, if any, shall not lapse but shall be carried forward to the next fiscal year to be made available for future catastrophic claims.
- (12) Notwithstanding other provisions of this section to the contrary, a jail may impose a reasonable fee for the use of jail medical facilities by a prisoner who has the ability to pay for the medical care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical treatment because he has insufficient funds on his inmate account. This subsection shall not preclude other recovery of funds as provided in this section.
- (13) (a) Notwithstanding any other provision of this section to the contrary, a jail may impose a reasonable fee for the use of jail medical facilities by a state prisoner who has been placed in a local jail pursuant to a contract with the Department of Corrections under KRS 532.100 or other statute, and who has the ability to pay for medical care.
- (b) Funds may be deducted from the state prisoner's inmate account at the jail.
- (c) A state prisoner shall not be denied medical treatment because he or she has insufficient funds in his or her inmate account.
- (d) This subsection shall not preclude other recovery of funds as provided in this section.
- (e) This subsection does not authorize recovery of funds from a prisoner for medical care which has been paid or reimbursed by the state pursuant to this section.
- (14) *Except as provided in subsection (4), (5), or (8) of this section, all payments for necessary medical, dental, or psychological care for jail, regional jail, or holdover prisoners shall be made at a rate not to exceed the Medicaid rate for the same or similar services, which shall be paid within thirty (30) days under the provisions of KRS 65.140 of receiving a claim from the health facility or provider for the item or service. This subsection shall not obligate the Medicaid program to pay for services provided to a prisoner.*
- (15) (a) *A peace officer or correctional officer having custody of a person shall not release the person from custody so that the person may receive treatment from a health care facility or health care provider, except pursuant to an order issued by a court of competent jurisdiction which specifically names the person to receive treatment.*
- (b) *A peace officer or correctional officer having custody of a person may take the person to a health care facility or health care provider for the purpose of receiving treatment if a correctional officer remains with the person during the time the person is on the premises of the health care facility or health care provider, unless the facility or provider consents to the absence of the officer.*
- (c) *A county, urban-county, consolidated local government, charter county, unified local government, jail, regional jail, holdover, local detention center, or other local correctional facility shall not be responsible for paying for the medical or other health care costs of a person who is released by a court of competent jurisdiction, except where the release is for the purpose of receiving medical or other health care services as evidenced by an order requiring the person to return to custody upon completion of treatment.*
- (d) *When a county, urban-county, consolidated local government, charter county, unified local government, jail, regional jail, holdover, local detention center, or other local correctional facility is*

responsible for paying for medical or other health care costs under paragraph (c) of this subsection, payment shall be made only at the Medicaid rate for same or similar services.

(e) *For the purposes of this subsection, "correctional officer" includes a:*

1. *Jailer or deputy jailer;*
2. *Director or other person in charge of a local detention center, local correctional facility, or regional jail; and*
3. *Correctional officer employed by a local detention center, local correctional facility, or regional jail.*

➔Section 76. KRS 441.053 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, each jail, regional jail, holdover, or other correctional facility owned or operated by a unit of local government, combination of units of local government, or regional jail authority shall utilize the Department of Corrections' contract pharmacy plan.
- (2) (a) Except as provided in paragraph (b) of this subsection, the Department of Corrections shall, on a yearly basis, waive the requirement of subsection (1) of this section if the unit of local government, combination of units of local government, or regional jail authority proves to the Department of Corrections that the unit of local government, combination of units of local government, or regional jail authority has contracted with another vendor and that:
 1. The prescription plan covers pharmacy services, drugs, and medicine in a manner which is equal to or superior to the Department of Corrections' contract pharmacy plan; and
 2. The cost of the prescription plan is equal to or less in total cost, including the product cost and all other costs associated with the delivery of the drugs, than the Department of Corrections' contract pharmacy plan.
- (b) If a unit of local government, combination of units of local government, or regional jail authority contracts with a private provider of comprehensive health services for inmates, then that private provider may elect not to use the Department of Corrections' contract pharmacy plan and a waiver under this subsection shall not be required.
- (3) Except as provided in subsection (4) of this section, each jail, regional jail, holdover, or other correctional facility owned or operated by a unit of local government, combination of units of local government, or regional jail authority shall utilize the Department of Corrections' contract medical, dental, and psychological care access plan, and the administrative service fee for the plan shall be paid by the Department of Corrections subject to the limits of 2007 Ky. Acts ch. 128, sec. 5.
- (4) The Department of Corrections may, on a yearly basis, waive the requirement of subsection (3) of this section if the unit of local government, combination of units of local government, or regional jail authority proves to the Department of Corrections that the unit of local government, combination of units of local government, or regional jail authority has contracted with another vendor and that:
 - (a) The medical, dental, and psychological care access plan provides services and access which is equal to or superior to the Department of Corrections' contract medical, dental, and psychological care access plan; and
 - (b) The cost of the medical, dental, and psychological care access plan is *equal to or* less in cost than the Department of Corrections' contract medical, dental, and psychological care access plan.
- (5) An entity, corporation, or organization of any kind that assists the Department of Corrections in managing claims or evaluating an application for a waiver under subsection (2) or (4) of this section shall not seek or be awarded a contract to provide medical care, dental care, psychological care, pharmaceutical products, or any other health care service to inmates housed in any jail operated by any unit of local government, combination of units of local government, or regional jail authority. The prohibition in this subsection shall also apply to the entity's, corporation's, or organization of any kind's:
 - (a) Owners;
 - (b) Incorporators;
 - (c) Officers;

- (d) Employees; or
- (e) Other person who has a financial interest in the organization.

Nothing in this subsection shall be construed to prohibit or limit the ability of the University of Kentucky to provide health care services to prison populations.

- (6) A unit of local government, combination of units of local government, or regional jail authority may appeal a decision of the Department of Corrections denying a waiver under subsection (2) or (4) of this section to the secretary of justice and public safety.
- (7) *No program specified in this section shall require or permit reimbursement at a rate in excess of the Kentucky Medicaid program for the same or similar services or products but may permit a lesser rate of reimbursement.*

➔SECTION 77. A NEW SECTION OF KRS 441.420 to 441.450 IS CREATED TO READ AS FOLLOWS:

As used in KRS 441.420 to 441.450:

- (1) (a) *"Local correctional facility" means a jail as defined in KRS 441.005, and any other facility by whatever name known that is operated by a unit of local government, combination of units of local governments, or regional jail authority for the involuntary confinement of persons arrested for or charged with the commission of a crime and of persons convicted of a crime.*
- (b) *The definition in paragraph (a) of this subsection shall not include a hospital licensed pursuant to KRS Chapter 216B unless the hospital is operated solely for the purpose of incarcerating persons specified in paragraph (a) of this subsection; and*
- (2) *"Construction authority" means the Local Correctional Facilities Construction Authority established under KRS 441.615.*

➔Section 78. KRS 441.420 is amended to read as follows:

- (1) No political subdivision of this Commonwealth, ~~or no~~ combination of subdivisions, *or regional jail authority* shall build a new *local correctional facility* ~~jail~~ unless the facility meets the approval or complies with the standards and *administrative* regulations of the department promulgated pursuant to KRS 441.055 *and construction of the local correctional facility is approved by the construction authority.*
- (2) Final authority for approval of plans for the construction of a *local correctional facility* ~~jail~~, or an addition ~~to or renovation of~~ a *local correctional facility* ~~jail~~ shall rest with the *construction authority* ~~department's jail consultants~~.
- (3) *The department shall provide at no cost to a county, counties, or regional jail authority standard local correctional facility plans for the construction of local correctional facilities of one hundred (100), three hundred (300), and five hundred (500) bed capacity. The department shall provide plans for larger local correctional facilities in five hundred (500) bed increments at no cost to a regional jail authority, county, or counties.*

➔Section 79. KRS 441.430 is amended to read as follows:

- (1) Any political subdivision, or combination of subdivisions, desiring to build a *local correctional facility* ~~jail~~ shall make application, in writing, *to the department and the construction authority* for approval of the plans for *the local correctional facility* ~~such jail~~ not less than ninety (90) days before the advertising for bids for construction of the facility, or if bids are not to be let, ninety (90) days before the construction commences.
- (2) The department's jail consultants shall review the plans and within thirty (30) days *of the department's receipt of the application, make a recommendation to the construction authority* ~~render a decision~~ as to whether the plans *should be* ~~are~~ approved. *The construction authority shall make a decision within sixty (60) days after the department's jail consultants make their recommendation. The construction authority may delay a final decision on the construction of any new local correctional facility if the construction authority determines that it has insufficient information upon which to base a decision. If the construction authority determines that it has insufficient information upon which to base a decision, a final decision shall be delayed but shall be made within sixty (60) days after receipt of the information required by the construction authority.* ~~If the plans are not approved,~~ Construction shall not commence until the requisite approval is obtained.
- (3) *The construction authority shall not approve the construction of a new local correctional facility unless the proposed local correctional facility is built using plans supplied by the department. All local correctional*

facilities of the same inmate bed capacity shall be built using the same set of plans, which shall be suited to the type of facility being constructed pursuant to Section 78 of this Act.

- (4) *The construction authority shall not approve the construction of a local correctional facility unless the political subdivision or combination of subdivisions desiring to build a local correctional facility proves to the satisfaction of the construction authority that:*
- (a) *The construction of a new local correctional facility is necessary;*
 - (b) *The construction of a new local correctional facility with the number of beds proposed is necessary;*
 - (c) *The political subdivision or combination of political subdivisions has sufficient bonding and revenue sources to pay the bonded indebtedness of the proposed local correctional facility;*
 - (d) *The number and sources of prisoners for the local correctional facility is sufficient to maintain the financial viability of the local correctional facility;*
 - (e) *The projected operating costs for the local correctional facility are appropriate to maintain the financial viability of the local correctional facility;*
 - (f) *The sources of revenue are sufficient to pay, in addition to the bonded indebtedness, the operation costs and maintenance for the local correctional facility;*
 - (g) *If applicable, there are contracts or interlocal cooperation agreements specifying details for sharing the liability for the costs of paying the bonded indebtedness and the operation costs for the local correctional facility;*
 - (h) *If applicable, there are contracts or interlocal cooperation agreements specifying details for the management and operation of the local correctional facility; and*
 - (i) *All information has been provided that the construction authority required pursuant to administrative regulation.*

➔Section 80. KRS 441.440 is amended to read as follows:

*Except as provided in Section 81 of this Act, all construction of **local correctional facilities**~~jails~~ pursuant to approved plans shall be done as provided under those plans and no alterations to the plans or construction shall be made unless prior approval is obtained from **the construction authority upon recommendation of** the department's jail consultants.*

➔Section 81. KRS 441.450 is amended to read as follows:

- (1) Any political subdivision,~~or~~ combination of subdivisions, **or regional jail authority** desiring to remodel or reconstruct an existing **local correctional**~~jail~~ facility wherein the construction will involve physical change of the structure shall obtain the requisite approvals required by KRS 441.420 to 441.440 and shall reconstruct or modify the said **local correctional facility**~~jail~~ in accordance with the approval.
- (2) *Except as provided in subsection (3) of this section, existing local correctional facilities may be renovated without the approval of the construction authority. However, if the renovation includes an increase in the number of square footage of the local correctional facility to add prisoner bed space, that renovation shall be deemed an expansion which shall require the approval of the construction authority as provided in KRS 441.420 to 441.450.*
- (3) *When an application is made to the construction authority to renovate an existing local correctional facility by increasing the number of square feet in the local correctional facility, the authority shall not approve the application unless the resulting renovation of the local correctional facility results in a facility with a bed capacity of one hundred (100) inmate beds or more.*

➔Section 82. KRS 441.620 is amended to read as follows:

- (1) If any of the officers of the authority whose signatures or facsimiles thereof appear on any bonds of the authority or on any other instruments or documents pertaining to the functions of the authority, shall cease to be such officers before delivery of the bonds, or before the effective date or occasion of such instruments or documents, the signatures, and facsimiles thereof, shall nevertheless be valid for all purposes the same as if the officers had remained in office until such delivery or effective date or occasion.
- (2) Any six (6) members of the authority shall constitute a quorum.

- (3) The authority shall meet not less than every six (6) months ~~beginning no later than sixty (60) days after KRS 441.605 to 441.695 shall become effective,~~ and **as often as necessary to comply with the provisions of KRS 441.420 to 441.450 when** ~~at such other times as it may be~~ called as provided in this section. Special meetings of the authority may be called by the chairman, and upon written request of two (2) members the chairman shall call a special meeting of the authority to be held not later than twenty (20) days following receipt of the written request. The chairman shall give notice through the secretary by certified mail, return receipt requested, to each member of the authority at least ten (10) days prior to the time of any meeting, unless all members of the authority waive notice in writing. The offices of the authority shall be at the seat of state government.
- (4) The authority may adopt bylaws relating to its organization and internal management, and may alter the same at will. Through its bylaws, or by resolution, it shall establish stated times and places for regular meetings; and may adjourn the same from time to time. If a quorum be present at any special meeting, and it shall appear from the minutes that reasonable notice was given to absent members, or waived by them, or the minutes subsequently consented to by them, any business transacted or action taken thereat shall be as fully regular and official as if transacted or taken at a regular meeting or an adjournment thereof.
- (5) The authority may adopt rules and regulations for the conducting of its business and affairs, subject to the provisions of KRS Chapter 13A.

➔Section 83. KRS 533.010 is amended to read as follows:

- (1) Any person who has been convicted of a crime and who has not been sentenced to death may be sentenced to probation, probation with an alternative sentencing plan, or conditional discharge as provided in this chapter.
- (2) Before imposition of a sentence of imprisonment, the court shall consider probation, probation with an alternative sentencing plan, or conditional discharge. Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits probation, shock probation, or conditional discharge, after due consideration of the **defendant's risk and needs assessment**, nature and circumstances of the crime, and the history, character, and condition of the defendant, probation or conditional discharge shall be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:
- (a) There is substantial risk that during a period of probation or conditional discharge the defendant will commit another crime;
 - (b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (3) In the event the court determines that probation is not appropriate after due consideration of the **defendant's risk and needs assessment**, nature and circumstances of the crime, and the history, character, and condition of the defendant, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:
- (a) There is a likelihood that during a period of probation with an alternative sentencing plan or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;
 - (b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (4) The court shall not determine that there is a likelihood that the defendant will commit a Class C or Class D felony based upon the **defendant's risk and needs assessment and the** fact that:
- (a) The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;
 - (b) If convicted of, having pled guilty to, or entered an Alford plea to a felony offense, the defendant successfully completed probation more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or
 - (c) The defendant has been released from incarceration for the commission of a felony offense more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is

now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.

- (5) In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.
- (6) Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one (1) of the following alternative sentences:
 - (a) To a halfway house for no more than twelve (12) months;
 - (b) To home incarceration with or without work release for no more than twelve (12) months;
 - (c) To jail for a period not to exceed twelve (12) months with or without work release, community service and other programs as required by the court;
 - (d) To a residential treatment program for the abuse of alcohol or controlled substances; or
 - (e) To any other specified counseling program, rehabilitation or treatment program, or facility.
- (7) If during the term of the alternative sentence the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence or may modify or revoke probation and alternative sentence and commit the defendant to an institution.
- (8) In addition to those conditions that the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:
 - (a) A defendant sentenced to a halfway house shall:
 1. Be working or pursuing his or her education or be enrolled in a full-time treatment program;
 2. Pay restitution during the term of probation; and
 3. Have no contact with the victim of the defendant's crime;
 - (b) A defendant sentenced to home incarceration shall:
 1. Be employed by another person or self-employed at the time of sentencing to home incarceration and continue the employment throughout the period of home incarceration, unless the court determines that there is a compelling reason to allow home incarceration while the defendant is unemployed;
 2. Pay restitution during the term of home incarceration;
 3. Enter a treatment program, if appropriate;
 4. Pay all or some portion of the cost of home incarceration as determined by the court;
 5. Comply with other conditions as specified; and
 6. Have no contact with the victim of the defendant's crime;
 - (c) A defendant sentenced to jail with community service shall:
 1. Pay restitution during all or some part of the defendant's term of probation; and
 2. Have no contact with the victim of the defendant's crime; or
 - (d) A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:
 1. Undergo mandatory drug screening during term of probation;
 2. Be subject to active, supervised probation for a term of five (5) years;
 3. Undergo aftercare as required by the treatment program;
 4. Pay restitution during the term of probation; and
 5. Have no contact with the victim of the defendant's crime.

- (9) When the court deems it in the best interest of the defendant and the public, the court may order the person to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered as a form of conditional discharge.
- (10) Probation with alternative sentence shall not be available as set out in KRS 532.045 and 533.060, except as provided in KRS 533.030(6).
- (11) The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.
- (12) When the court deems it in the best interest of the defendant and the public, the court may order the defendant to placement for probation monitoring by a private agency. The private agency shall report to the court on the defendant's compliance with his *or her* terms of probation or conditional discharge. The defendant shall be responsible for any reasonable charges which the private agency charges.
- (13) The jailer in each county incarcerating Class *C or D* felons may deny work release privileges to any defendant for violating standards of discipline or other jail regulations. The jailer shall report the action taken and the details of the violation on which the action was based to the court of jurisdiction within five (5) days of the violation.
- (14) The Department of Corrections shall, by administrative regulation, develop written criteria for work release privileges granted under this section.
- (15) Reimbursement of incarceration costs shall be paid directly to the jailer in the amount specified by written order of the court. Incarceration costs owed to the Department of Corrections shall be paid through the circuit clerk.
- (16) The court shall enter into the record written findings of fact and conclusions of law when considering implementation of any sentence under this section.

➔Section 84. KRS 533.015 is amended to read as follows:

Whenever a statute mentions *probation, shock probation, conditional discharge, home incarceration, or other form of* ~~an~~ alternative to incarceration, that alternative may include a community-based, faith-based, charitable, church-sponsored, or nonprofit residential or nonresidential counseling and treatment program *or drug court*, and, upon petition by the defendant, the court may sentence or permit the defendant to attend that program. This program may also be used for *pretrial release and* pretrial diversion.

➔Section 85. KRS 533.050 is amended to read as follows:

- (1) At any time before the discharge of the defendant or the termination of the sentence of probation or conditional discharge:
 - (a) The court may summon the defendant to appear before it or may issue a warrant for his arrest upon a finding of probable cause to believe that he has failed to comply with a condition of the sentence; or
 - (b) A probation officer, or peace officer acting at the direction of a probation officer, who sees the defendant violate the terms of his probation or conditional discharge may arrest the defendant without a warrant.
- (2) *Except as provided in Section 62 of this Act*, the court may not revoke or modify the conditions of a sentence of probation or conditional discharge except after a hearing with defendant represented by counsel and following a written notice of the grounds for revocation or modification.

➔SECTION 86. A NEW SECTION OF KRS CHAPTER 534 IS CREATED TO READ AS FOLLOWS:

- (1) *A defendant who has been sentenced to jail for failure to pay a fine or court costs or for failure to appear in court on a date set for the sole purpose of addressing nonpayment of a fine or court costs shall receive credit against the fine and costs owed for each day the defendant spends in jail at the following rates:*
 - (a) *Fifty dollars (\$50) per day if the defendant does not work at a community service or community labor program; or*
 - (b) *One hundred dollars (\$100) per day if the defendant works eight (8) hours per day at a community service or community labor program. If the defendant works less than eight (8) hours in a community service or community labor program, the defendant shall be allowed an amount of one eighth (1/8) of the one hundred dollars (\$100) for each hour worked in a community service or community labor program.*

- (2) *Credit against a fine or court costs earned by a defendant pursuant to this section shall prohibit the collection of any part of a fine or costs which has been credited pursuant to this section, and that portion of the fine or costs shall be considered paid.*
- (3) *The jailer shall be responsible for monitoring a defendant's community service and tracking the number of days to be served to pay any outstanding fine or court costs.*

➔Section 87. KRS 439.330 is amended to read as follows:

- (1) The board shall:
 - (a) Study the case histories of persons eligible for parole, and deliberate on that record;
 - (b) Conduct reviews and hearings on the desirability of granting parole;
 - (c) Impose upon the parolee or conditional releasee such conditions as it sees fit;
 - (d) Order the granting of parole;
 - (e) Issue warrants for persons charged with violations of parole *and postincarceration supervision* and conduct hearings on such charges, subject to the provisions of KRS 439.341 *and Section 91 of this Act*;
 - (f) Determine the period of supervision for parolees, which period may be subject to extension or reduction after recommendation of the cabinet is received and considered; and
 - (g) Grant final discharge to parolees.
- (2) The board shall adopt an official seal of which the courts shall take judicial notice.
- (3) The orders of the board shall not be reviewable except as to compliance with the terms of KRS 439.250 to 439.560.
- (4) The board shall keep a record of its acts, an electronic record of its meetings, a written record of the votes of individual members, and the reasons for denying parole to inmates. These records shall be public records in accordance with KRS 61.870 to 61.884. The board shall notify each institution of its decisions relating to the persons who are or have been confined therein, and shall submit to the Governor a report with statistical and other data of its work at the close of each fiscal year.

➔Section 88. KRS 439.341 is amended to read as follows:

Preliminary revocation hearings of probation, ~~and~~ parole, *and postincarceration supervision* violators shall be conducted by hearing officers. These hearing officers shall be attorneys, appointed by the board and admitted to practice in Kentucky, who shall perform the aforementioned duties and any others assigned by the board.

➔Section 89. KRS 439.346 is amended to read as follows:

During the period of his *or her* parole *or postincarceration supervision*, the prisoner shall be amenable to the orders of the board and the department.

➔Section 90. KRS 439.430 is amended to read as follows:

- (1) Any parole officer having reason to believe that a parolee *or a person on postincarceration supervision pursuant to Section 91 of this Act* has violated the terms of his *or her* release may arrest the parolee *or offender on postincarceration supervision* without a warrant or may deputize any other peace officer to do so by giving him *or her* a written statement setting forth that the parolee *or offender on postincarceration supervision*, in the judgment of the parole officer, has violated the conditions of his *or her* release. The written statement delivered with the parolee *or offender on postincarceration supervision* by the arresting officer to the official in charge of the station house, jail, workhouse, or other place of detention, shall be sufficient warrant for the detention of the parolee *or offender on postincarceration supervision*. The parole officer who arrests or causes the arrest of the prisoner shall notify the commissioner or his *or her* designee at once of the arrest and detention of the parolee *or offender on postincarceration supervision*, and shall submit in writing a report showing in what manner there has been a violation of the conditions of release. Thereupon, if the commissioner or his *or her* designee believes the parolee *or offender on postincarceration supervision* should be returned to prison, the commissioner or his *or her* designee at once shall submit his *or her* recommendations to the board, and, if the board approves, it shall issue a warrant upon which the releasee shall be returned to prison; otherwise the prisoner shall be released upon the order of the commissioner or his *or her* designee.

- (2) A written statement, approved by the commissioner or his *or her* designee, by a parole officer, and filed with the board setting forth that the parolee *or offender on postincarceration supervision* in the judgment of the officer has violated the condition of his *or her* release, shall be sufficient cause for the board, in its discretion, to issue a warrant for the arrest of the parolee ~~or offender on postincarceration supervision~~ or for his *or her* return to prison.
- (3) A prisoner for whose return a warrant has been issued by the board, shall be deemed a fugitive from justice or to have fled from justice. If it shall appear he *or she* has violated the provisions of his *or her* release, the time from the issuing of the warrant to the date of his *or her* arrest shall not be counted as any part of the time to be served in determining his *or her* final discharge eligibility date from parole if the board in its discretion so orders.
- (4) The Parole Board may at its discretion issue a warrant for any parolee *or offender on postincarceration supervision* when in its judgment the condition of release has been violated.

➔Section 91. KRS 532.043 is amended to read as follows:

- (1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, 529.100 involving commercial sexual activity, 530.020, 530.064(1)(a), 531.310, or 531.320 shall be subject to a period of *postincarceration supervision* ~~conditional discharge~~ following release from:
 - (a) Incarceration upon expiration of sentence; or
 - (b) Completion of parole.
- (2) The period of *postincarceration supervision* ~~conditional discharge~~ shall be five (5) years.
- (3) During the period of *postincarceration supervision* ~~conditional discharge~~, the defendant shall:
 - (a) Be subject to all orders specified by the Department of Corrections; and
 - (b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.
- (4) Persons under *postincarceration supervision* ~~conditional discharge~~ pursuant to this section shall be subject to the supervision of the Division of Probation and Parole *and under the authority of the Parole Board*.
- (5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing *by the Division of Probation and Parole. Notice of the violation shall be sent to the Parole Board to determine whether probable cause exists* ~~to the Commonwealth's attorney in the county of conviction. The Commonwealth's attorney may petition the court~~ to revoke the defendant's *postincarceration supervision* ~~conditional discharge~~ and reincarcerate the defendant as set forth in KRS 532.060.
- (6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after July 15, 1998.

➔Section 92. KRS 17.510 is amended to read as follows:

- (1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
- (2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.
- (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.
- (4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, DNA sample, and photograph. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in

order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. Any registrant who has not provided a DNA sample as of July 1, 2009, shall provide a DNA sample to the appropriate local probation and parole office when the registrant appears for a new photograph to be obtained. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.

- (5) (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprint card, and photograph, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601. The appropriate probation and parole office shall send the DNA sample to the Department of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet.
- (b) The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.
- (c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (6) Any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.
- (7) If a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.
- (8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.
- (9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.
- (10) (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.
- (b)
 - 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.
 - 2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.

- (c) If the electronic mail address or any instant messaging, chat, or other Internet communication name identities of any registrant changes, or if the registrant creates or uses any new Internet communication name identities, the registrant shall register the change or new identity, on or before the date of the change or use or creation of the new identity, with the appropriate local probation and parole office in the county in which he or she resides.
- (d)
 1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.
 2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection or learns of the registrant's new or changed electronic mail address or instant messaging, chat, or other Internet communication name identities under paragraph (c) of this subsection, that office shall forward this information as set forth under subsection (5) of this section.
- (11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (13) (a) The cabinet shall verify the addresses and the electronic mail address and any instant messaging, chat, or other Internet communication name identities of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3). If the cabinet determines that a person has moved or has created or changed any electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person without providing his or her new address, electronic mail address, or instant messaging, chat, or other Internet communication name identity to the appropriate local probation and parole office or offices as required under subsection (10)(a), (b), and (c) of this section, the cabinet shall notify the appropriate local probation and parole office of the new address or electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person. The office shall then forward this information as set forth under subsection (5) of this section. The cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.
- (b) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:
 1. Shall consider revocation of the parole, probation, *postincarceration supervision*, or conditional discharge of any person released under its authority; and
 2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

➔Section 93. KRS 17.520 is amended to read as follows:

- (1) A registrant, upon his or her release by the court, the Parole Board, the cabinet, or any detention facility, shall be required to register for a period of time required under this section.
- (2) (a) Lifetime registration is required for:
 1. Any person who has been convicted of kidnapping, as set forth in KRS 509.040, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
 2. Any person who has been convicted of unlawful confinement, as set forth in KRS 509.020, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
 3. Any person convicted of a sex crime:
 - a. Who has one (1) or more prior convictions of a felony criminal offense against a victim who is a minor; or

- b. Who has one (1) or more prior sex crime convictions;
 - 4. Any person who has been convicted of two (2) or more felony criminal offenses against a victim who is a minor;
 - 5. Any person who has been convicted of:
 - a. Rape in the first degree under KRS 510.040; or
 - b. Sodomy in the first degree under KRS 510.070; and
 - 6. Any sexually violent predator.
- (3) All other registrants are required to register for twenty (20) years following discharge from confinement or twenty (20) years following the maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.
 - (4) If a person required to register under this section is reincarcerated for another offense or as the result of having violated the terms of probation, parole, *postincarceration supervision*, or conditional discharge, the registration requirements and the remaining period of time for which the registrant shall register are tolled during the reincarceration.
 - (5) A person who has pled guilty, entered an Alford plea, or been convicted in a court of another state or territory, in a court of the United States, or in a court-martial of the United States Armed Forces who is required to register in Kentucky shall be subject to registration in Kentucky based on the conviction in the foreign jurisdiction. The Justice and Public Safety Cabinet shall promulgate administrative regulations to carry out the provisions of this subsection.
 - (6) The court shall designate the registration period as mandated by this section in its judgment and shall cause a copy of its judgment to be mailed to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.

➔Section 94. KRS 532.045 is amended to read as follows:

- (1) As used in this section:
 - (a) "Position of authority" means but is not limited to the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health-care provider, or employer;
 - (b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and
 - (c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.
- (2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS 510.050, 510.080, 529.040, 529.070, 529.100 where the offense involves commercial sexual activity, 530.020, 531.310, 531.320, or 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:
 - (a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;
 - (b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;
 - (c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;

- (d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;
- (e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;
- (f) A person convicted of kidnapping a minor in violation of the Kentucky Penal Code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;
- (g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;
- (h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or
- (i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of five (5) years' *postincarceration supervision* ~~conditional discharge~~ required by KRS 532.043.

- (3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of the comprehensive sex offender presentence evaluation of the offender performed by an approved provider, as defined in KRS 17.500 or the Department of Corrections. The court shall use the comprehensive sex offender presentence evaluation in determining the appropriateness of probation or conditional discharge.
- (4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board.
- (5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.
- (7) The comprehensive sex offender presentence evaluation and all communications relative to the comprehensive sex offender presentence evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440. The comprehensive sex offender presentence evaluation shall be filed under seal and shall not be made a part of the court record subject to review in appellate proceedings and shall not be made available to the public.
- (8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any comprehensive sex offender presentence evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel and the Commonwealth's attorney a copy of the comprehensive sex offender presentence evaluation. It shall not be necessary to disclose the sources of confidential information.
- (9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

➔Section 95. KRS 532.055 is amended to read as follows:

- (1) In all felony cases, the jury in its initial verdict will make a determination of not guilty, guilty, guilty but mentally ill, or not guilty by virtue of insanity, and no more.
- (2) Upon return of a verdict of guilty or guilty but mentally ill against a defendant, the court shall conduct a sentencing hearing before the jury, if such case was tried before a jury. In the hearing the jury will determine the punishment to be imposed within the range provided elsewhere by law. The jury shall recommend whether the sentences shall be served concurrently or consecutively.
 - (a) Evidence may be offered by the Commonwealth relevant to sentencing including:
 - 1. Minimum parole eligibility, prior convictions of the defendant, both felony and misdemeanor;

2. The nature of prior offenses for which he was convicted;
 3. The date of the commission, date of sentencing, and date of release from confinement or supervision from all prior offenses;
 4. The maximum expiration of sentence as determined by the division of probation and parole for all such current and prior offenses;
 5. The defendant's status if on probation, parole, *postincarceration supervision*, conditional discharge, or any other form of legal release;
 6. Juvenile court records of adjudications of guilt of a child for an offense that would be a felony if committed by an adult. Subject to the Kentucky Rules of Evidence, these records shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the federal Social Security Act is also prohibited; and
 7. The impact of the crime upon the victim or victims, as defined in KRS 421.500, including a description of the nature and extent of any physical, psychological, or financial harm suffered by the victim or victims;
- (b) The defendant may introduce evidence in mitigation or in support of leniency; and
 - (c) Upon conclusion of the proof, the court shall instruct the jury on the range of punishment and counsel for the defendant may present arguments followed by the counsel for the Commonwealth. The jury shall then retire and recommend a sentence for the defendant.
- (3) All hearings held pursuant to this section shall be combined with any hearing provided for by KRS 532.080.
 - (4) In the event that the jury is unable to agree as to the sentence or any portion thereof and so reports to the judge, the judge shall impose the sentence within the range provided elsewhere by law.

➔Section 96. KRS 532.240 is amended to read as follows:

Any person serving his sentence under conditions of home incarceration shall be responsible for his food, housing, clothing, and medical care expenses, and shall be eligible for government benefits to the same extent as a person on probation, parole, *postincarceration supervision*, or conditional discharge.

➔Section 97. KRS 431.078 is amended to read as follows:

- (1) Any person who has been convicted of a misdemeanor or a violation, or a series of misdemeanors or violations arising from a single incident, may petition the court in which he was convicted for expungement of his misdemeanor or violation record, ***including a record of any charges for misdemeanors or violations that were dismissed or amended in the criminal action.*** The person shall be informed of the right at the time of adjudication.
- (2) ***Except as provided in subsection (8) of Section 21 and subsection (8) of Section 22 of this Act,*** the petition shall be filed no sooner than five (5) years after the completion of the person's sentence or five (5) years after the successful completion of the person's probation, whichever occurs later.
- (3) Upon the filing of a petition, the court shall set a date for a hearing and shall notify the county attorney; the victim of the crime, if there was an identified victim; and any other person whom the person filing the petition has reason to believe may have relevant information related to the expungement of the record. Inability to locate the victim shall not delay the proceedings in the case or preclude the holding of a hearing or the issuance of an order of expungement.
- (4) The court shall order sealed all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, if at the hearing the court finds that:
 - (a) The offense was not a sex offense or an offense committed against a child;

- (b) The person had no previous felony conviction;
 - (c) The person had not been convicted of any other misdemeanor or violation offense in the five (5) years prior to the conviction sought to be expunged;
 - (d) The person had not since the time of the conviction sought to be expunged been convicted of a felony, a misdemeanor, or a violation;
 - (e) No proceeding concerning a felony, misdemeanor, or violation is pending or being instituted against him; and
 - (f) The offense was an offense against the Commonwealth of Kentucky.
- (5) Upon the entry of an order to seal the records, and payment to the circuit clerk of one hundred dollars (\$100), the proceedings in the case shall be deemed never to have occurred; all index references shall be deleted; the persons and the court may properly reply that no record exists with respect to the persons upon any inquiry in the matter; and the person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application. The first fifty dollars (\$50) of each fee collected pursuant to this subsection shall be deposited into the general fund, and the remainder shall be deposited into a trust and agency account for deputy clerks.
- (6) Copies of the order shall be sent to each agency or official named therein.
- (7) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of the records and only to those persons named in the petition.
- (8) This section shall be deemed to be retroactive, and any person who has been convicted of a misdemeanor prior to July 14, 1992, may petition the court in which he was convicted, or if he was convicted prior to the inception of the District Court to the District Court in the county where he now resides, for expungement of the record of one (1) misdemeanor offense or violation or a series of misdemeanor offenses or violations arising from a single incident, provided that the offense was not one specified in subsection (4) and that the offense was not the precursor offense of a felony offense for which he was subsequently convicted. This section shall apply only to offenses against the Commonwealth of Kentucky.

➔Section 98. KRS 532.120 is amended to read as follows:

- (1) An indeterminate sentence of imprisonment commences when the prisoner is received in an institution under the jurisdiction of the Department of Corrections. When a person is under more than one (1) indeterminate sentence, the sentences shall be calculated as follows:
- (a) If the sentences run concurrently, the maximum terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run; or
 - (b) If the sentences run consecutively, the maximum terms are added to arrive at an aggregate maximum term equal to the sum of all the maximum terms.
- (2) A definite sentence of imprisonment commences when the prisoner is received in the institution named in the commitment. When a person is under more than one (1) definite sentence, the sentences shall be calculated as follows:
- (a) If the sentences run concurrently, the terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run; or
 - (b) If the sentences run consecutively, the terms are added to arrive at an aggregate term and are satisfied by discharge of the aggregate term.
- (3) Time spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the **Department of Corrections**~~court imposing sentence~~ toward service of the maximum term of imprisonment ***in cases involving a felony sentence and by the sentencing court in all other cases.*** If the sentence is to an indeterminate term of imprisonment, the time spent in custody prior to the commencement of the sentence shall be considered for all purposes as time served in prison.
- (4) If a person has been in custody due to a charge that culminated in a dismissal, acquittal, or other disposition not amounting to a conviction, the amount of time that would have been credited under subsection (3) of this section if the defendant had been convicted of that charge shall be credited as provided in subsection (3) of this section against any sentence based on a charge for which a warrant or commitment was lodged during the pendency of that custody.

- (5) If a person serving a sentence of imprisonment escapes from custody, the escape shall interrupt the sentence. The interruption shall continue until the person is returned to the institution from which he escaped or to an institution administered by the Department of Corrections. Time spent in actual custody prior to return under this subsection shall be credited against the sentence if custody rested solely on an arrest or surrender for the escape itself.
- (6) As used in subsections (3) and (4) of this section, time spent in custody shall include time spent in the intensive secured substance abuse recovery program developed under KRS 196.285 and may include, at the discretion of the sentencing court, time spent in a different residential substance abuse treatment or recovery facility pursuant to KRS 431.518 or 533.251, if under each option allowed by this subsection, the person has successfully completed the program offered by the intensive secured substance abuse recovery program or the residential substance abuse treatment or recovery facility. If the defendant fails to complete a program, the court may still award full or partial sentence credit if the defendant demonstrates that good cause existed for the failure to complete the program.
- (7) ***In lieu of an award by the Department of Corrections in felony cases, if a presentence report indicates that a defendant has accumulated sufficient sentencing credits under this section to allow for an immediate discharge from confinement upon pronouncement of sentence, the court may confirm the amount of the credit and award the credit at pronouncement.***
- (8) ***An inmate may challenge a failure of the Department of Corrections to award a sentencing credit under this section or the amount of credit awarded by motion made in the sentencing court no later than thirty (30) days after the inmate has exhausted his or her administrative remedies.***

➔Section 99. KRS 439.3401 is amended to read as follows:

- (1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of:
 - (a) A capital offense;
 - (b) A Class A felony;
 - (c) A Class B felony involving the death of the victim or serious physical injury to a victim;
 - (d) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;
 - (e) Use of a minor in a sexual performance as described in KRS 531.310;
 - (f) Promoting a sexual performance by a minor as described in KRS 531.320;
 - (g) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);
 - (h) Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor;
 - (i) Criminal abuse in the first degree as described in KRS 508.100;
 - (j) Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
 - (k) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or
 - (l) Robbery in the first degree.

The court shall designate in its judgment if the victim suffered death or serious physical injury.

- (2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole or imprisonment for life without benefit of probation or parole), or a Class A felony and receives a life sentence, or to death and his sentence is commuted to a life sentence shall not be released on probation or parole until he has served at least twenty (20) years in the penitentiary. Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.
- (3) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony who is a violent offender shall not be released on probation or parole until he has served at least eighty-five percent (85%) of the sentence imposed.

- (4) A violent offender ~~shall~~~~may~~ not be awarded any credit on his sentence authorized by KRS 197.045(1)(b) ~~I.~~ ~~except the educational credit. A violent offender may, at the discretion of the commissioner, receive credit on his sentence authorized by KRS 197.045(3)).~~ In no event shall a violent offender be given credit on his sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.
- (5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.
- (6) This section shall apply only to those persons who commit offenses after July 15, 1998.
- (7) For offenses committed prior to July 15, 1998, the version of this statute in effect immediately prior to that date shall continue to apply.
- (8) The provisions of subsection (1) of this section extending the definition of "violent offender" to persons convicted of or pleading guilty to robbery in the first degree shall apply only to persons whose crime was committed after July 15, 2002.

➔SECTION 100. A NEW SECTION OF KRS 27A IS CREATED TO READ AS FOLLOWS:

- (1) *The Administrative Office of the Courts shall create an application for use by a defendant requesting deferred prosecution under Section 20 of this Act which shall include a space for the defendant to indicate all prior convictions and expungements.*
- (2) *The Chief Justice may authorize the Administrative Office of the Courts to develop, collect, and maintain a listing of persons who have had their records sealed under Sections 20, 21, and 22 of this Act. The list may be utilized by the courts and attorneys practicing in the courts to determine whether the person is eligible to participate in a deferred prosecution under Section 20 of this Act or a treatment or recovery program under Sections 21 or 22 of this Act.*

➔Section 101. KRS 439.330 is amended to read as follows:

- (1) The board shall:
 - (a) Study the case histories of persons eligible for parole, and deliberate on that record;
 - (b) Conduct reviews and hearings on the desirability of granting parole;
 - (c) Impose upon the parolee or conditional releasee such conditions as it sees fit;
 - (d) Order the granting of parole;
 - (e) Issue warrants for persons charged with violations of parole and conduct hearings on such charges, subject to the provisions of KRS 439.341 *and Section 35 of this Act*;
 - (f) Determine the period of supervision for parolees, which period may be subject to extension or reduction after recommendation of the cabinet is received and considered; and
 - (g) Grant final discharge to parolees.
- (2) The board shall adopt an official seal of which the courts shall take judicial notice.
- (3) The orders of the board shall not be reviewable except as to compliance with the terms of KRS 439.250 to 439.560.
- (4) The board shall keep a record of its acts, an electronic record of its meetings, a written record of the votes of individual members, and the reasons for denying parole to inmates. These records shall be public records in accordance with KRS 61.870 to 61.884. The board shall notify each institution of its decisions relating to the persons who are or have been confined therein, and shall submit to the Governor a report with statistical and other data of its work at the close of each fiscal year.

➔Section 102. KRS 439.430 is amended to read as follows:

- (1) Any parole officer having reason to believe that a parolee *or a person on postincarceration supervision pursuant to Section 35 of this Act* has violated the terms of his release may arrest the parolee without a warrant or may deputize any other peace officer to do so by giving him a written statement setting forth that the parolee, in the judgment of the parole officer, has violated the conditions of his release. The written statement delivered with the parolee by the arresting officer to the official in charge of the station house, jail,

workhouse, or other place of detention, shall be sufficient warrant for the detention of the parolee. The parole officer who arrests or causes the arrest of the prisoner shall notify the commissioner or his designee at once of the arrest and detention of the parolee, and shall submit in writing a report showing in what manner there has been a violation of the conditions of release. Thereupon, if the commissioner or his designee believes the parolee should be returned to prison, the commissioner or his designee at once shall submit his recommendations to the board, and, if the board approves, it shall issue a warrant upon which the releasee shall be returned to prison; otherwise the prisoner shall be released upon the order of the commissioner or his designee.

- (2) A written statement, approved by the commissioner or his designee, by a parole officer, and filed with the board setting forth that the parolee in the judgment of the officer has violated the condition of his release, shall be sufficient cause for the board, in its discretion, to issue a warrant for the arrest of the parolee, or for his return to prison.
- (3) A prisoner for whose return a warrant has been issued by the board, shall be deemed a fugitive from justice or to have fled from justice. If it shall appear he has violated the provisions of his release, the time from the issuing of the warrant to the date of his arrest shall not be counted as any part of the time to be served in determining his final discharge eligibility date from parole if the board in its discretion so orders.
- (4) The Parole Board may at its discretion issue a warrant for any parolee when in its judgment the condition of release has been violated.

➔Section 103. (1) In an effort to improve public safety and reduce failure rates of individuals on probation, the Department of Corrections may partner with the Court of Justice and two local courts, one urban circuit court and one rural circuit court to be chosen by the Chief Justice of the Kentucky Supreme Court, to implement a 12-month pilot project similar to the Hawaii Opportunity Probation and Enforcement (HOPE) model to establish a program that:

- (a) Identifies for enrollment in the program through a validated risk assessment instrument individuals who are serving a term of probation and who are at high risk of failing to observe the conditions of supervision and of being returned to incarceration as a result of such failure;
- (b) Identifies the key partners that will be included in the program, including the Chief Judges of the participating judicial circuits and other participating judges in such jurisdiction, Executive Director of the Administrative Office of the Courts, probation and parole administrators, jail and prison administrators, prosecutors, public defenders and defense attorneys, and sheriff or police administrators;
- (c) Notifies probationers of the rules of the pilot project and consequences for violating such rules;
- (d) Monitors probationers for illicit drug use with regular and rapid-result drug screening;
- (e) Monitors probationers for violations of other rules and probation terms, including failure to pay court-ordered financial obligations such as child support or victim restitution;
- (f) Responds to violations of such rules with immediate arrest of the violating probationer, and swift and certain modification of the conditions of probation, including imposition of short jail stays (which may gradually become longer with each additional violation and modification);
- (g) Immediately responds to probationers who have absconded from supervision with service of bench warrants and immediate sanctions;
- (h) Provides rewards to probationers who comply with such rules;
- (i) Targets treatment resources to offenders who request treatment and those who are repeat violators;
- (j) Establishes procedures to terminate program participation by, and initiates revocation to a term of incarceration for, probationers who habitually fail to abide by program rules and pose a threat to public safety;
- (k) Includes regular coordination meetings for the key partners of the pilot project, including the partners identified in paragraph (b) of this subsection; and
- (l) Reduces violation behavior and new crimes, and reduces revocations to prison.

(2) If a pilot project is implemented by the Department of Corrections, the Court of Justice, and two local courts, these entities shall submit an annual report on the results of the pilot project to the Interim Joint Committee on Judiciary one year after implementation of the pilot project. The results shall include at a minimum:

(a) Key process measures, including the number of individuals enrolled in the program, the frequency of drug testing of such individuals, the certainty of sanctions for a violation of the terms of probation, the average period of time from detection of a violation to issuance of a sanction for such violation, and sanction severity;

(b) An unbiased comparison of the outcomes between program participants and similarly situated probationers not in the program, including the positive and negative drug test rates, probation and substance abuse treatment appearance rates, probation term modifications, revocations, arrests, time spent in jail or prison, and total correctional costs incurred; and

(c) The amount of cost savings, if any, resulting from the reduced incarceration achieved through the pilot project.

➔Section 104. KRS 44.065 is amended to read as follows:

- (1) Notwithstanding any other provision of the Kentucky Revised Statutes, and pursuant to the provisions of 31 U.S.C. sec. 3716(b) and (h)(1), the Finance and Administration Cabinet, at the request of any executive, judicial, or legislative agency of the Commonwealth, may enter into a reciprocal agreement with the United States government to offset the claim of any person against the Commonwealth to any debt of that person owed to the United States government which has been certified by the United States government as final, due, and owing, with all appeals and legal actions having been waived or exhausted, and to offset any nontax claim of any person against the United States government to any liquidated debt of that person owed to the Commonwealth.
- (2) Notwithstanding any other provision of the Kentucky Revised Statutes, the Finance and Administration Cabinet, at the request of any executive, judicial, or legislative agency of the Commonwealth, may enter into a reciprocal agreement with any state, as defined in KRS 446.010~~(31)~~, to offset the claim of any person against the Commonwealth to any debt of that person owed to any state which has certified the debt as final, due, and owing, with all appeals and legal actions having been waived or exhausted, and to offset any claim of any person against any state to any liquidated debt of that person owed to the Commonwealth.
- (3) In the case of multiple creditors who have certified liquidated debt against the same person on a claim against the Commonwealth, pursuant to this section and KRS 44.030, the debts of the Commonwealth, counties, cities, urban-county governments, consolidated local governments, and charter county governments shall be credited first in the priority established in KRS 44.030, and if there is any balance due the claimant after settling the whole demands of the Commonwealth, counties, cities, urban-county governments, consolidated local governments, and charter county governments, the balance shall be credited to the liquidated debts certified by the United States government and any other state, as defined in KRS 446.010~~(31)~~, in the order that the claims were filed with the Treasury. If there is a balance due the claimant after satisfaction of all liquidated debts as itemized in this section or any court-ordered payments, the balance shall be paid to the claimant.

➔Section 105. KRS 610.340 is amended to read as follows:

- (1) (a) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause.
- (b) Juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
- (c) Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act shall not be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
- (d) Victim access under this subsection to juvenile court records shall include access to records of adjudications that occurred prior to July 15, 1998.
- (2) The provisions of this section shall not apply to public officers or employees engaged in the investigation of and in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes. Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.

- (3) The provisions of this section shall not apply to any peace officer, as defined in KRS 446.010~~[(25)]~~, who is engaged in the investigation or prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes. Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.
- (4) The provisions of this section shall not apply to employees of the Department of Juvenile Justice or cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes.
- (5) The provisions of this section shall not apply to records disclosed pursuant to KRS 610.320 or to public or private elementary and secondary school administrative, transportation, and counseling personnel, to any teacher or school employee with whom the student may come in contact, or to persons entitled to have juvenile records under KRS 610.345, if the possession and use of the records is in compliance with the provisions of KRS 610.345 and this section.
- (6) No person, including school personnel, shall disclose any confidential record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.
- (7) No person, including school personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain confidential records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.
- (8) No person, including school personnel, not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.
- (9) No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.
- (10) As used in this section the term "KRS Chapters 600 to 645" includes any administrative regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.

➔Section 106. KRS 441.206 is amended to read as follows:

- (1) For the care and maintenance of prisoners charged with or convicted of violations of state law, each county shall receive a contribution from the State Treasury in an amount equal to that paid to the county pursuant to this section in fiscal year 1983-84 or the amount that should have been paid to the county in fiscal year 1983-84 under the conditions set forth in subsection (5) of this section. Any additional moneys appropriated for county jails shall be allocated on the basis of a formula comprised of the following factors:
 - (a) Sixty percent (60%) of the allocation shall be based on the amount of the 1983-84 funding formula each county received, or should have received under the conditions set forth in subsection (5) of this section;
 - (b) Ten percent (10%) of the allocation shall be based on each county's comparative ranking of median household income in inverse order, as determined by the 1980 federal census of population; and
 - (c) Thirty percent (30%) of the allocation shall be based on the proportion of each county's age at risk population (18-34) to the state total, as determined by the 1980 federal census of population.
- (2) Payments of the state contribution for jail operating expenses shall be made ***annually, no later than July 31 of each year,***~~monthly~~ by the Department of Corrections to the county treasurer. The election by a county to close its jail and to contract with another county for the incarceration of prisoners, as permitted by KRS 441.025, shall not affect the state contribution provided for in subsection (1) of this section.
- (3) All state funds paid to a county under this section, any funds paid to a county by the United States government, a city, or another county for the incarceration of prisoners and any interest earned on the funds shall be expended on the incarceration of prisoners, as provided in KRS 441.025. Any funds paid under subsection (1) of this section and any interest earned on the funds shall be expended on the incarceration of prisoners, in accordance with regulations promulgated pursuant to KRS 441.055, within twelve (12) months of the close of the fiscal year in which the funds were received. Any funds received by a county under subsection (1) of this section that are not expended for this purpose shall be returned to the State Treasury.

- (4) A county shall not receive less than twenty-four thousand dollars (\$24,000) pursuant to this section from the State Treasury for the care and maintenance of prisoners charged with or convicted of violations of state law.
- (5) If the capacity of a jail was substantially increased during the years 1980 through 1982 due to construction or renovation, and if, as a result, the amount paid to the county in fiscal year 1983-84 pursuant to this section and to 1982 Ky. Acts ch. 385, sec. 3, was not representative of the true jail population, then the commissioner of the Department of Corrections may, upon proper documentation by the county, permit an estimate of the current capacity of the jail to be used as a basis for calculating the amount that should have been paid to the county in fiscal year 1983-84. The estimate of current capacity shall be used to calculate payments made pursuant to subsection (1) of this section after July 14, 1992, but shall not be used to recalculate past payments.

➔Section 107. KRS 532.050 is amended to read as follows:

- (1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody.
- (2) The report shall be prepared and presented by a probation officer and shall include:
 - (a) An analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, *and* personal habits;~~and~~
 - (b) *A preliminary calculation of the credit allowed the defendant for time spent in custody prior to the commencement of a sentence under Section 98 of this Act;* and
 - (c) Any other matters that the court directs to be included.
- (3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.
- (4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior to determining the sentence or prior to final sentencing for youthful offenders, the court shall order a comprehensive sex offender presentence evaluation of the defendant to be conducted by an approved provider, as defined in KRS 17.500, the Department of Corrections, or the Department of Juvenile Justice if the defendant is a youthful offender. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the comprehensive sex offender presentence evaluation shall be furnished to the court, the Commonwealth's attorney, and to counsel for the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the comprehensive sex offender presentence evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any comprehensive sex offender presentence evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.
- (6) Before imposing sentence, the court shall advise the defendant or his or her counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

➔Section 108. The Department of Corrections shall immediately begin the process of promulgating an administrative regulation implementing the ability of a person providing medical, dental, or psychological care to a prisoner to bill the state for the costs of that care as allowed under subsection (7) of Section 75 of this Act. The regulation shall be designed to minimize the amount of paperwork and time needed to make a completed application

for payment, shall require the utilization of standardized forms on a statewide basis for the submittal of claims, and shall be promulgated in consultation with the Kentucky Association of Counties, the Kentucky County Judge/Executive Association, the Kentucky Hospital Association, the Kentucky Jailers Association, and the Kentucky Medical Association.

➔Section 109. There is hereby appropriated to the Department of Corrections' Corrections Management budget unit \$1,200,000 of General Fund moneys in fiscal year 2011-2012 for a capital project, Expand the Kentucky Offender Management System. There is hereby authorized a transfer of \$1,200,000 of General Fund moneys in fiscal year 2011-2012 from the Department of Corrections' Community Services and Local Facilities budget unit to the Department of Corrections' Corrections Management budget unit for the capital project authorized in this section.

➔Section 110. (1) The 2011 Task Force on the Penal Code and Controlled Substances Act is hereby created for the purposes of monitoring the implementation of the provisions this Act and recommending further needful changes in Kentucky's criminal justice system that protect public safety in a fiscally responsible manner.

(2) The task force shall consist of:

- (a) The Chair of the Senate Judiciary Committee who shall be a co-chair of the task force;
- (b) The Chair of the House of Representatives Judiciary Committee who shall be a co-chair of the task force;
- (c) The Chief Justice of the Supreme Court of Kentucky or a person designated by the Chief Justice and approved by the Legislative Research Commission;
- (d) The Secretary of the Justice and Public Safety Cabinet or a person designated by the Secretary and approved by the Legislative Research Commission;
- (e) A former Commonwealth's attorney designated by the co-chairs and approved by the Legislative Research Commission;
- (f) A former Department of Public Advocacy attorney designated by the co-chairs and approved by the Legislative Research Commission; and
- (g) A member of the public designated by the co-chairs and approved by the Legislative Research Commission.

(3) The task force shall report its findings and recommendations to the Interim Joint Committee on Judiciary and to the Legislative Research Commission no later than November 30, 2011.

(4) Final membership of the task force shall be subject to the consideration and approval of the Legislative Research Commission.

(5) Provisions of this section to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof and to designate a study completion date.

➔Section 111. This Act may be cited as the Public Safety and Offender Accountability Act.

➔Section 112. Section 34 of this Act takes effect January 1, 2012.

➔Section 113. Sections 37 and 49 of this Act take effect July 1, 2013.

➔Section 114. Section 64 of this Act takes effect November 1, 2013.

➔Section 115. Section 67 of this Act takes effect July 1, 2013.

➔Section 116. Whereas the Kentucky Supreme Court declared the statutory procedure for revoking sex offenders on conditional discharge to be unconstitutional, and the effective and efficient protection of the public from crime is a fundamental duty of government and a needless delay in the implementation of this Act impedes that protection, an emergency is declared to exist, and Sections 87 to 91 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor March 3, 2011.

CHAPTER 3

(SB 73)

AN ACT relating to motor vehicle dealers.

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

➔Section 1. KRS 190.046 is amended to read as follows:

- (1) Notwithstanding the terms of any franchise agreement, each motor vehicle manufacturer or distributor, doing business within this Commonwealth, shall assume all responsibility for and shall defend, indemnify, and hold harmless its motor vehicle dealers against any loss, damages, and expenses, including legal costs, arising out of complaints, claims, recall repairs or modifications or factory authorized or directed repairs, or lawsuits resulting from warranty defects, which shall include structural or production defects; defects in the assembly; or design of motor vehicles, parts, accessories; or other functions beyond the control of the dealer, including without limitation, the selection of parts or components for the vehicle. Each manufacturer or distributor shall pay reasonable compensation to any authorized dealer who performs work to repair defects, or to repair any damage to the manufacturer's or distributor's product sustained while the product is in transit to the dealer, when the carrier or the means of transportation is designated by the manufacturer or distributor. Each manufacturer or distributor shall provide to its dealers with each model year a schedule of time allowances for the performance of warranty repair work and services, which shall include time allowances for the diagnosis and performance of warranty work and service time, and shall be reasonable and adequate for the work to be performed.
- (2) In the determination of what constitutes "reasonable compensation" under this section, the principal factor to be considered shall be the amount of money that the dealer is charging its other customers for the same type service or repair work. Other factors may be considered, including the compensation being paid by other manufacturers or distributors to their dealers for work; and the prevailing amount of money being paid or charged by the dealers in the city or community in which the authorized dealer is doing business. "Reasonable compensation" shall include diagnosing the defect; repair service; labor; parts and administrative and clerical costs. The compensation of a dealer shall not be less than the amount charged by the dealer for like services and parts, which minimum compensation for parts shall be dealer cost plus thirty percent (30%) gross profit, to retail customers for nonwarranty service and repairs, or less than the amounts indicated for work on the schedule of warranty compensation required to be filed by the manufacturer with the commission as a part of the manufacturer's license application by KRS 190.030.

~~{(3)—}~~A manufacturer or distributor shall not require unreasonable proof to establish "reasonable compensation."

- (3) (a) *A manufacturer or distributor shall not require a dealer to submit a claim authorized under this section sooner than thirty (30) days after the dealer completes the preparation, delivery, or warranty service authorizing the claim for preparation, delivery, or warranty service.*
- (b) *All claims made by a dealer under this section shall be paid within thirty (30) days after their approval.*
- (c) *All claims shall be either approved or disapproved by the manufacturer or distributor within thirty (30) days after their receipt on a completed form supplied or approved by the manufacturer or distributor.*
- (d) *Any claims not specifically disapproved in writing within thirty (30) days after the receipt of the form shall be considered to be approved and payment shall be made within thirty (30) days thereafter.*
- (e) *A dealer shall not be required to maintain defective parts for more than thirty (30) days after payment of a claim.*
- (f) ~~{for delay reimbursement of payment to the dealer beyond thirty five (35) days from the submission by mail of a valid warranty claim. If a valid warranty claim is not paid within forty five (45) days, the dealer may give the manufacturer one (1) copy of the dealer's related repair order bearing the customer's signature, the dealer's signature, the date the work was completed, the vehicle serial number or identification number, the odometer reading, the date of delivery of the vehicle, a list of the parts and supplies used if applicable, a brief general description of the defect, and the amount of money charged the manufacturer or distributor for the work. If, after fifteen (15) days, the valid warranty claim is still not paid, the dealer may deduct a like amount from any moneys due or owing to the manufacturer or distributor. The dealer shall hold the defective part for inspection by the manufacturer or distributor for~~

~~a period of time not to exceed ninety (90) days from the time the warranty claim is submitted. The manufacturer or distributor shall not unfairly discriminate against any dealer in the application of warranty, policy, and procedure or deny any valid warranty order claim submitted by a franchised dealer within thirty (30) days from completion of the work or longer if existing manufacturer dealer relationships apply. Upon the written request of the dealer for valid reasons, the manufacturer shall extend the submission time. }Any dispute between the dealer and the manufacturer or distributor shall be subject to the provisions of KRS 190.057.~~

- (4) *A manufacturer or distributor shall compensate the dealer for manufacturer-sponsored or distributor-sponsored sales or service promotion events, including but not limited to rebates, programs, or activities in accordance with established written guidelines for such events, programs, or activities, which the manufacturer or distributor shall provide to each dealer.*
- (5) (a) *A manufacturer or distributor shall not require a dealer to submit a claim authorized under subsection (4) of this section sooner than thirty (30) days after the dealer becomes eligible to submit the claim.*
 - (b) *All claims made by a dealer pursuant to subsection (4) of this section for promotion events, including but not limited to rebates, programs, or activities, shall be paid within thirty (30) days after their approval.*
 - (c) *All claims shall be either approved or disapproved by the manufacturer or distributor within thirty (30) days after their receipt on a completed form supplied or approved by the manufacturer or distributor.*
 - (d) *Any claim not specifically disapproved in writing within thirty (30) days after the receipt of this form shall be considered to be approved and payment shall be made within thirty (30) days.*
- (6) *If a dealer submits any claim under this section to a manufacturer or distributor that is incomplete, inaccurate, or lacking any information usually required by the manufacturer or distributor, or if incomplete, inaccurate, or missing information is discovered during an audit, then the manufacturer or distributor shall promptly notify the dealer, and the time limit to submit the claim shall be extended for a reasonable length of time, not less than five (5) business days following notice by the manufacturer or distributor to the dealer, for the dealer to provide the complete, accurate, or lacking information to the manufacturer or distributor. A dealer's failure to comply with the specific requirements of the manufacturer or distributor for processing a claim may not constitute grounds for denial of the claim or reduction of the amount of compensation paid to the dealer if the dealer presents reasonable documentation or other evidence to substantiate the claim.*
- (7) (a) *A manufacturer or distributor may only audit warranty, sales, or incentive claims for a period of twelve (12) months following payment, or the end of a program which does not exceed one (1) year in length, whichever is later, subject to all of the provisions of this section.*
 - (b) *A manufacturer or distributor shall not require documentation for warranty, sales, or incentive claims more than twelve (12) months after the claim was paid or the end of a program which does not exceed one (1) year in length, whichever is later.*
 - (c) *Prior to requiring any charge-back, reimbursement, or credit against a future transaction arising out of an audit, the manufacturer or distributor shall submit written notice to the dealer along with a copy of its audit and the detailed reason for each intended charge-back, reimbursement, or credit.*
 - (d) *The limitations of this subsection do not apply if the manufacturer or distributor can prove fraud on a claim.*

~~{(4) All audits by a manufacturer shall be limited to a period of one (1) year prior to the date of the audit.}~~

Signed by Governor March 4, 2011.

AN ACT proposing to amend the Constitution of Kentucky relating to hunting, fishing, and harvesting wildlife.

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

➔Section 1. IT IS PROPOSED THAT A NEW SECTION BE ADDED TO THE CONSTITUTION OF KENTUCKY TO READ AS FOLLOWS:

The citizens of Kentucky have the personal right to hunt, fish, and harvest wildlife, using traditional methods, subject only to statutes enacted by the Legislature, and to administrative regulations adopted by the designated state agency to promote wildlife conservation and management and to preserve the future of hunting and fishing. Public hunting and fishing shall be a preferred means of managing and controlling wildlife. This section shall not be construed to modify any provision of law relating to trespass, property rights, or the regulation of commercial activities.

➔Section 2. This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under KRS 118.415.

Govenor's signature not required.

CHAPTER 5

(HB 197)

AN ACT relating to motor vehicles.

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

➔Section 1. KRS 186.190 is amended to read as follows:

- (1) (a) *Except as provided for in paragraph (e) of this subsection, when a motor vehicle that has been previously registered changes ownership, the registration plate shall **not** remain upon the motor vehicle, but shall be retained by the seller and may be transferred to another vehicle owned or leased by the seller in accordance with paragraph (b) or (c) of this subsection*~~[as a part of it until the expiration of the registration year]~~.
- (b) *An individual who sells a motor vehicle which has a valid registration plate may transfer that plate to another vehicle of the same classification at the time the individual transfers the vehicle. If the individual does not have a vehicle to transfer the plate to at the time the individual sells a vehicle, the individual may hold the registration plate for the period of registration. At any time during the period of registration, the individual shall notify the county clerk and transfer the plate to a vehicle of the same classification that he or she has obtained prior to operating that vehicle on a public highway. If the plate transfer occurs in the final month in which the existing registration is still valid, the individual shall be required to renew the registration on the newly acquired vehicle.*
- (c) *An individual who trades in a motor vehicle with a valid registration plate during the purchase of a motor vehicle from a licensed motor vehicle dealer shall remove the plate from the vehicle offered in trade. A photocopy of the valid certificate of registration shall be included with the application for title and registration for the purchased vehicle, and the plate shall be retained by the purchaser. The dealer shall equip the purchased vehicle with a temporary tag in accordance with Section 3 of this Act before the buyer may operate it on the highway. When the buyer receives a valid certificate of registration from the county clerk, the buyer shall remove the temporary tag and affix the registration plate to the vehicle.*
- (d) *All vehicle transfers and registration plate transfers shall be initiated within the fifteen (15) day period established under KRS 186.020 and 186A.070.*
- (e) *This subsection shall not apply to transfers between motor vehicle dealers licensed under KRS Chapter 190. A secured party who repossesses a vehicle shall comply with subsection (6) of Section 2 of this Act.*

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

➔Section 2. KRS 186.045 is amended to read as follows:

- (1) A perfected security interest in a motor vehicle that has been satisfied by payment in full shall be deemed to have been discharged if one (1) or both of the following events has occurred:
 - (a) The funds to pay in full and discharge the security interest have been provided to the secured party in the form of a cashier's check, certified check, or wire transfer; or
 - (b) The debt has been paid to a secured party who is no longer in existence or has failed to file the necessary documents to discharge the lien.
- (2) If payment in full has been made under subsection (1)(a) of this section, the discharge of the lien shall be made not later than ten (10) days from the receipt of the payment.
- (3) When a security interest has been paid in full and a termination statement or discharge has not been filed, the debtor may petition the Circuit Court in the county of the debtor's residence to order the discharge of the security interest. The debtor shall present written evidence to the Circuit Court that the security interest has been paid in full. If the evidence presented to the Circuit Court proves to the court's satisfaction that the security interest has been paid in full, the court shall order the county clerk to note the termination on the title and to remove the lien from the Automated Vehicle Information System (AVIS). A copy of the court's order shall immediately be sent to the county clerk in the county where the security interest was originally filed and the county clerk shall discharge the security interest and remove the lien information from AVIS in accordance with the provisions of this section.
- (4) Whenever a security interest has been discharged, other than by proceedings under Part 6 of Article 9 of KRS Chapter 355 or similar proceedings, the secured party shall deliver an authenticated termination statement in the manner required by KRS 355.9-513 and 186A.195 to the county clerk of the county in which the title lien statement was submitted. The secured party shall also deliver a copy of the termination statement to the debtor or the debtor's transferee. For failure to file the termination statement within the allowable time, the secured party shall be subject to the penalty provided in KRS 186.990(1). Except as provided in subsection (3) of this section, within five (5) days after the receipt of such documents, the county clerk shall note the filing in the index, in language prescribed by the cabinet, that the termination statement has been filed. Upon presentation of the owner's title showing a security interest to the county clerk where the termination statement was submitted, and with the copy of the termination statement submitted by the secured party, the clerk shall

discharge the security interest by noting on the title that the termination statement has been filed and place the seal of the county clerk thereon. The clerk shall return the owner's title to the owner. The county clerk shall then file the termination statement in the place from which the title lien statement was removed. Termination statements shall be retained in the clerk's files for a period of two (2) years subsequent to the date of filing a statement, at which time they may be destroyed. The fee for these services are included in the provisions of KRS 186A.190.

- (5) Upon presentation of an owner's title showing a security interest to the county clerk of a county where the termination statement was not delivered, the county clerk shall access the automated system to determine whether a record of termination of the security interest has been entered into the automated system by the county clerk where the termination statement was delivered by the secured party as provided in KRS 186A.210. If a record of termination has been entered into the automated system, the county clerk of the county where the termination statement was not delivered, shall note the discharge of the security interest on the certificate of title by noting that the termination statement has been delivered, the county where it was delivered, and placing the seal of the county clerk thereon and may rely on the automated system to do so. If a record of termination has not been entered into the automated system, the county clerk of the county other than where the termination statement was delivered shall not make any notation upon the certificate of title that the security interest has been discharged or that a termination statement has been delivered to the county where the title lien statement was submitted.
- (6) Whenever any secured party repossesses a vehicle titled in Kentucky, for which a security interest is in existence at the time of repossession, and disposes of the vehicle pursuant to the provisions of KRS Chapter 355, ~~the secured party~~ shall present, within fifteen (15) days after such disposition, *the vehicle's license plate, if the plate has not be retained by the previous owner*, an affidavit in a form prescribed by the department, *proof of notification of all interested parties pursuant to KRS 186A.190 and 355.9-611*, and a termination statement or proof that a termination statement has been filed. The new owner shall pay *to the county clerk* all applicable fees for titling and transferring the vehicle *into his or her name* ~~to the county clerk~~. Upon receipt of such documents, the county clerk who issued the lien shall then omit from the title he makes application for any information relating to the security interest under which the vehicle was repossessed or any security interest subordinate thereto. However, any security interest, as shown by such title which is superior to the one under which the vehicle was repossessed, shall be shown on the title issued by the clerk unless the prior secured party has discharged the security interest in the clerk's office or proof of termination is submitted, if the prior security interest was discharged in another clerk's office.
- (7) Whenever any vehicle brought into Kentucky is required to be titled and the vehicle is then subject to a security interest in another state as shown by the out-of-state documents presented to the clerk, the county clerk is prohibited from processing the application for title on the vehicle unless the owner obtains from the secured party a financing statement or title lien statement and presents same to the clerk along with the fees required in KRS 186A.190. The clerk shall note the out-of-state security interest on the certificate of title. This provision does not apply to vehicles required to be registered in Kentucky under forced registration provisions under KRS 186.145.
- (8) The fees provided for in this section are in addition to any state fee provided for by law.
- (9) Any person violating any provision of this section or any person refusing to surrender a certificate of title registration and ownership or transfer certificate upon request of any person entitled thereto, is subject to the penalties provided in subsection (1) of KRS 186.990.
- (10) The county clerk is prohibited from noting any security interest on a certificate of title on any vehicle subject to the provisions of KRS Chapter 186A if a certificate of title therefor is presented to him which has all the spaces provided thereon for noting security interests fully exhausted. The owner is responsible for ensuring that a discharge is noted on the certificate of title for each security interest and then a duplicate title as provided for in KRS 186A.180 shall be obtained from the clerk by the owner of the vehicle.
- (11) Security interests in vehicles sold to or owned by residents of other states shall be perfected in the state of the nonresident and repossession of the vehicle shall be taken pursuant to the laws of that state, unless:
 - (a) The vehicle is principally operated in Kentucky;
 - (b) The vehicle is properly titled in Kentucky under KRS Chapter 186A; and
 - (c) The security interest is authorized to be noted on the certificate of title by the county clerk under KRS Chapter 186A.

➔Section 3. KRS 186A.100 is amended to read as follows:

- (1) A motor vehicle dealer licensed under KRS 186.070 who sells a vehicle for use upon the highways of this state shall ~~unless the vehicle is bearing a license plate issued therefor in the name of the purchaser at the time it is delivered to the purchaser,~~ equip the vehicle with a temporary tag executed in the manner prescribed below, which shall be valid for **thirty (30)** ~~sixty (60)~~ days from the date the vehicle is delivered to the purchaser. The cost of the tag shall be two dollars (\$2), of which the clerk shall retain one dollar (\$1). A motor vehicle dealer licensed under KRS 186.070 shall apply to the county clerk of the county in which the dealer maintains his principal place of business for issuance of temporary tags. Application shall be made for such tags on forms supplied to the county clerk by the Transportation Cabinet. ***If the purchaser has not received his certificate of registration within thirty (30) days from the date of delivery, the purchaser may obtain another temporary tag from the dealer.***
- (2) The county clerk of any county who receives a proper application for issuance of temporary tags shall record the number of each tag issued upon the application of the dealer for such tags, or if a group of consecutively numbered temporary tags are issued to a dealer in connection with a single application, record the beginning and ending numbers of the group on the application.
- (3) The clerk shall retain, for a period of two (2) years, one (1) copy of the dealer's temporary tag application, and ensure that it reflects the numbers appearing on the tags issued with respect to such application.
- (4) If the owner of a motor vehicle submits to the county clerk a properly completed application for Kentucky certificate of title and registration pursuant to KRS 186A.120, any motor vehicle required to be registered and titled in Kentucky, that is not currently registered and titled in Kentucky, may be equipped with a temporary tag, which shall be valid for thirty (30) days from the date of issuance, issued by the county clerk for the purpose of operating the vehicle in Kentucky while assembling the necessary documents in order to title and register the vehicle in Kentucky. The Transportation Cabinet may establish administrative regulations governing this section.
- (5) The county clerk may issue a temporary tag to the owner of a motor vehicle that is currently registered and titled in Kentucky. A temporary tag authorized by this subsection shall be used for emergency or unusual purposes as determined by the clerk for the purpose of maintaining the owner's current registration. A temporary tag authorized by this subsection may only be issued by the county clerk and shall be valid for a period of between twenty-four (24) hours and seven (7) days, as determined is necessary by the clerk. A county clerk shall not issue a temporary tag authorized by this subsection unless the owner of the motor vehicle applying for the tag presents proof of motor vehicle insurance pursuant to KRS 304.39-080. On and after January 1, 2006, if the motor vehicle is a personal motor vehicle as defined in KRS 304.39-087, proof of insurance shall be determined by the county clerk as provided in KRS 186A.042. A temporary tag issued pursuant to this subsection shall not be reissued by the county clerk for the same owner and same motor vehicle within one (1) year of issuance of a temporary tag.

➔Section 4. KRS 186.232 is amended to read as follows:

- (1) The county clerk shall not transfer the registration on any motor vehicle or trailer against which a tax lien has been filed until the taxes have been paid and the lien has been released.
- (2) The county clerk shall not transfer the registration of any motor vehicle unless the transferee presents proof of insurance in compliance with KRS 304.39-080 and KRS 186.190.
- (3) If a notarized affidavit is required and available under KRS 138.450, the county clerk shall not transfer the registration of a motor vehicle unless the notarized affidavit attesting to the total and actual consideration paid or to be paid for the motor vehicle is presented to the clerk at the time of the transfer. If a notarized affidavit is required but is not available, the county clerk shall contact the Department of Revenue to determine the "retail price" of the vehicle and any taxes due prior to transferring the vehicle.
- (4) ***The county clerk shall not transfer title on a motor vehicle if there are delinquent ad valorem taxes on the motor vehicle.***

➔Section 5. KRS 186.165 is amended to read as follows:

- (1) As used in this section, "owner" means a person who has purchased or leased a motor vehicle that is registered under the provisions of KRS 186.050(1) or (3)(a).
- (2) The provisions of this chapter relating to special license plates to the contrary notwithstanding, if a vehicle has been issued a special license plate and the owner of the vehicle wishes to surrender the plate and exchange it

for a different special license plate, the owner may, at the time he or she renews the vehicle's annual registration, exchange the special plate without being required to obtain a regular registration plate.

- (3) An owner requesting to exchange a special license plate shall be required to surrender the special license plate issued to the vehicle and the appropriate certificate of registration to the county clerk of the county where the person lives. Upon payment of the fee established in subsection (4) of this section, the county clerk shall immediately exchange the special license plate and issue a new special license plate and certificate of registration without placing further requirements upon the owner.
- (4) The fee to exchange a special license plate under this section shall be the fee charged under this chapter for the particular special license plate which is being requested.
- (5) *If a motor vehicle that has been issued a special license plate is sold prior to the expiration of the registration, the owner may, pursuant to Section 1 of this Act, transfer the plate to another vehicle the owner has obtained.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

- (1) *The ability to use the automated motor vehicle information system to carry out the functions of titling and registration of motor vehicles shall be restricted to county clerks and the Transportation Cabinet.*
- (2) *Any other access granted to the automated motor vehicle information system shall be for informational purposes only.*

➔Section 7. This Act takes effect January 1, 2013.

Signed by Governor March 9, 2011.

CHAPTER 6

(HB 200)

AN ACT relating to the commemoration of Kentucky Medal of Honor recipients.

WHEREAS, the Medal of Honor, unofficially known as the "Congressional Medal of Honor," is America's highest military award for valor in combat; and

WHEREAS, the Medal of Honor is typically awarded by the President of the United States, in the name of Congress, to recipients from the Army, Navy, Marine Corps, Air Force, and Coast Guard; and

WHEREAS, the Congressional Medal of Honor Society of the United States of America serves as the keeper of the history of the Medal of Honor; and

WHEREAS, a Medal of Honor is accredited to the state in which the recipient enlisted in the military; and

WHEREAS, according to the Congressional Medal of Honor Society, fewer than 3,500 Medals of Honor have been awarded since the award's creation in 1861; and

WHEREAS, two Congressional Medal of Honor recipients are currently living in Kentucky: Ernest West and Don Jenkins; and

WHEREAS, to honor the Kentucky Congressional Medal of Honor recipients, the Kentucky Department of Veterans' Affairs is urged to offer all recipients, including those who are less than 70 percent service-connected disabled, admission to Kentucky state veterans' nursing homes at no cost;

NOW, THEREFORE,

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

- (1) *To honor those who have been awarded a Congressional Medal of Honor, the United States' highest military award for valor in combat, the Department for Facilities and Support Services shall create a plaque to contain the names of each Kentucky Congressional Medal of Honor recipient.*

- (2) *The Department for Facilities and Support Services shall be responsible for selecting a location on the first floor of the New State Capitol for the plaque required by subsection (1) of this section. The Department for Facilities and Support Services shall also be responsible for the design, installation, and routine maintenance of the plaque. The plaque shall be updated by the Department for Facilities and Support Services within six (6) months of a Congressional Medal of Honor nomination and approval accredited to the Commonwealth of Kentucky.*

Signed by Governor March 9, 2011.

CHAPTER 7

(HB 330)

AN ACT relating to public utilities.

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

➔Section 1. KRS 278.021 is amended to read as follows:

- (1) If the commission~~[determines]~~, after notice and hearing, ***enters an order in which it finds*** that a~~[any]~~ utility is abandoned, the commission may ***bring an action in [petition]*** the Franklin Circuit Court for an order attaching the assets of the utility and placing ***those assets [it]*** under the sole control and responsibility of a receiver.
- (2) ***For purposes of this section, a utility shall be considered abandoned if it:***
 - (a) ***Disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service;***
 - (b) ***Notifies the commission of its intent to abandon the operation of the facilities used to provide service;***
 - (c) ***Fails to comply with an order of the commission in which the commission determined that the utility is not rendering adequate service, specified the actions necessary for the utility to render adequate service, and fixed a reasonable time for the utility to perform such actions, and the failure of the utility to comply with the order presents a serious and imminent threat to the health or safety of a significant portion of its customers; or***
 - (d) ***Fails to meet its financial obligations to its suppliers and is unable or unwilling to take necessary actions to correct the failure after receiving reasonable notice from the commission and the failure poses an imminent threat to the continued availability of gas, water, electric, or sewer utility service to its customers.***
- (3) ***Within twenty (20) days after commencing an action in Franklin Circuit Court, the commission shall file a certified copy of the record of the administrative proceeding in which the commission entered its finding of abandonment.***
- (4) ***Any action brought pursuant to KRS 278.410 for review of an order of the commission containing a finding that a utility is abandoned shall be consolidated with any action brought pursuant to subsection (1) of this section and based upon the same order.***
- (5)~~(2)~~ Any receiver appointed by the court shall file a bond~~[unless the court finds it unnecessary]~~ ***in an amount fixed by the court.*** The receiver shall operate the utility to preserve its assets, ***to restore or maintain a reasonable level of service,*** and to serve the best interests of its customers.
- (6) ***During the pendency of any receivership, the receiver may bring or defend any cause of action on behalf of the utility and generally perform acts on behalf of the utility as the court may authorize.***
- (7) ***The receiver shall control and manage the assets and operations of the utility until the Franklin Circuit Court, after reasonable notice and hearing, orders the receiver to return control of those assets to the utility or to liquidate those assets as provided by law.***
- (8) (a) ***Notwithstanding subsection (1) of this section, the commission may petition the Franklin Circuit Court to appoint temporarily a receiver to operate and manage the assets of an abandoned utility.***

After notice to the utility and a hearing, the court may grant a petition, upon terms and conditions as it deems appropriate, upon a showing by a preponderance of the evidence:

- 1. That a utility has been abandoned;*
 - 2. That the abandonment is an immediate threat to the public health, safety, or the continued availability of service to the utility's customers; and*
 - 3. That the delay required for the commission to conduct a hearing would place the public health, safety, or continued utility service at unnecessary risk.*
- (b) Sixty (60) days after its entry, the order of temporary receivership shall terminate and control and responsibility for the assets and operations of the utility shall revert to the utility without further action of the court unless the commission brings an action under subsection (1) of this section.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) If a gas, water, electric, or sewer utility receives notice of discontinuance or termination of service from one (1) or more of its suppliers for breach or default under the terms of the service contract or tariff and the discontinuance or termination will prevent the provision of gas, water, electric, or sewer utility service to its customers, the utility shall within one (1) business day of receipt of the notice:*
 - (a) Notify the commission in writing of the supplier's notice of discontinuance or termination; and*
 - (b) Furnish a copy of the supplier's notice of discontinuance or termination to the commission.*
- (2) Any gas, water, electric, or sewer utility that intends to terminate service to another utility that is subject to the jurisdiction of the commission shall not terminate service without notifying the commission in writing of its intent to terminate service at least thirty (30) days prior to the date of termination.*

Signed by Governor March 9, 2011.

CHAPTER 8

(HB 242)

AN ACT relating to metals.

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

➔Section 1. KRS 433.890 is amended to read as follows:

- (1) Every recycler, dealer in junk or metals, dealer in secondhand articles, vendor of bottles or rags, collector of or dealer in articles found in ashes, garbage, or other refuse, whether such dealers, collectors, or vendors have established places of business or operate a business of an itinerant nature, shall, with regard to any catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and is marketed as returnable, railroad rails, nonferrous metal or an alloy thereof, or an object containing nonferrous metal or an alloy thereof:*
 - (a) Keep a register that contains:*
 - 1. A photocopy of a valid driver's license or other government-issued identification card or document which contains the name, photograph, and signature of the seller. If the purchaser has a copy of the seller's valid photo identification on file, it shall not be necessary for the purchaser to make another copy of the identification document for each purchase if the purchaser references the number on the identification document in the register at the time of each purchase; and*
 - 2. The state and license number of the motor vehicle used to transport the purchased catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and is marketed as returnable, railroad rail, nonferrous metal or an alloy thereof, or object containing nonferrous metal or an alloy thereof, to the place of purchase, which shall be provided by the seller of the items;*

3. The time and date of the transaction;
 4. A description in the usage of the trade of the kind and weight of the railroad rail, nonferrous metal or an alloy thereof, or object containing the nonferrous metal or an alloy thereof purchased; and
 5. The amount paid for the material and the unit basis of the purchase, such as by ounce or pound, etc.;
- (b) *Not purchase any metal that has been smelted, burned, or melted unless, in addition to the other requirements of this subsection, the seller provides the following and the purchaser maintains a copy thereof:***
1. *A signed certificate of ownership stating that he or she is the owner of the metal and is entitled to sell it; or*
 2. *A signed certificate from the owner of the metal stating that he or she is the owner of the metal and that the person selling the metal is authorized to sell the metal on behalf of the owner;*
- (c)~~(b)~~** Not purchase any catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and is marketed as returnable, railroad rail, nonferrous metal or an alloy thereof, or an object containing nonferrous metal or an alloy thereof from a person who:
1. Is less than eighteen (18) years of age; or
 2. Is unable or refuses to provide the identification and information required in paragraph (a) of this subsection;
- (d)~~(c)~~** Retain the information required by this section for a period of two (2) years, after which time, the information may be retained, destroyed in a manner that protects the identity of the owner of the property and the seller of the property, or transferred to a law enforcement agency specified in paragraph **(g)~~(f)~~** of this subsection;
- (e)~~(d)~~** If the purchaser ceases business, transfer all records and information required by this section to a law enforcement agency specified in paragraph **(g)~~(f)~~** of this subsection;
- (f)~~(e)~~** Permit any peace officer to inspect the register, and if the peace officer deems it necessary to locate specific stolen property, may inspect the catalytic converter, metal beverage and container that is capable of holding more than two (2) liters of beverage is marketed as returnable, railroad rail, nonferrous metal or an alloy thereof, or object containing nonferrous metal or an alloy thereof received during business hours;
- (g)~~(f)~~** Upon written request of the sheriff or chief of police, as appropriate, make a report containing the information required to be retained in the register under paragraph (a) of this subsection in person, in digital format, in writing, or by electronic means within twenty-four (24) hours of the transaction to:
1. The sheriff of the county in which the purchase was made and the sheriff of the county in which the business is located; and
 2. When the purchase was made in a city, county, urban-county, charter county, consolidated local government, or unified local government, to the police department of the city, county, urban-county, charter county, consolidated local government, or unified local government in which the purchase is made and the police department of the city, county, urban-county, charter county, consolidated local government, or unified local government in which the business is located, unless there is no police department in that jurisdiction;
- (h)~~(g)~~** Comply with a written request pursuant to paragraph **(g)~~(f)~~** of this subsection until a written notice to cease sending the reports required by paragraph **(g)~~(f)~~** of this subsection is received by the purchaser. A request may relate to:
1. All records of purchases;
 2. Records of a specific class of metals or items purchased;
 3. Records of purchases during a specific period of time; or
 4. Records of a specific purchase or purchases; and

- (i)~~(h)~~ Retain the property in its original form or a photograph or digital image of the property for a period of three (3) business days from the date of purchase unless notified by a peace officer having reasonable cause to believe that the property may be stolen property, in which case, the property may be seized as evidence by the peace officer or, if not seized, shall be retained for an additional thirty (30) days unless earlier notified by a peace officer that the property may be sold;
- (2) A sheriff or police department receiving records pursuant to this section shall retain the records for two (2) years, after which time, it may either retain or destroy the records in a manner that protects the identity of the owner of the property, the seller of the property, and the purchaser of the property.
- (3) Any record required to be made or reported pursuant to this section may be kept and reported in hard copy or digital or in electronic format.
- (4) This section shall not apply to the purchase, sale, or transfer of:
- (a) A motor vehicle, aircraft, or other item that is licensed by the state or federal government pursuant to a legitimate transfer of title or issuance of a junk title;
 - (b) A firearm, part of a firearm, firearm accessory, ammunition, or ammunition component;
 - (c) A knife, knife parts, accessory or sheath for a knife, or knifemaking products;
 - (d) A nonreturnable used beverage container or food container;
 - (e) Jewelry, household goods containing metal, garden tools, and similar household items, except for a catalytic converter or metal beverage container that is capable of holding more than two (2) liters of liquid and which is marketed as returnable, which takes place at a flea market or yard sale;
 - (f) A single transaction involving a purchase price of ten dollars (\$10) or less, but more than two (2) transactions with the same person involving a purchase price of ten dollars (\$10) or less in one (1) seven (7) day period shall be reportable transactions;
 - (g) Material disposed of as trash or refuse that contains or may contain a catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and is marketed as returnable, railroad rail, nonferrous metals or an alloy thereof, or an object that contains or may contain a railroad rail or nonferrous metals or an alloy thereof, which is collected by a municipal waste department or by a licensed waste hauler and no payment is made to the person from whom the material is collected by the person or agency collecting the material;
 - (h) A catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and marketed as returnable, railroad rail, nonferrous metal or alloy thereof, or an object containing railroad rail, nonferrous metal, or an alloy thereof from a person who has maintained a record pursuant to this section to a person who is to further recycle the metal or object containing the metal;
 - (i) A catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and marketed as returnable, railroad rail, nonferrous metal or an alloy thereof, or object containing nonferrous metal or an alloy thereof under a written contract with an organization, corporation, or association registered with the Commonwealth as a charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school sponsored organization;
 - (j) A purchase, pursuant to a written contract, from a manufacturing, industrial or other commercial vendor that generates catalytic converters, metal beverage containers capable of holding more than two (2) liters of beverage and which are marketed as returnable, railroad rail, nonferrous metal or an alloy thereof, or object containing nonferrous metal in the ordinary course of business;
 - (k) An item purchased by, pawned to, or sold by a pawnbroker licensed pursuant to KRS Chapter 226, engaging in the business authorized by that chapter; or
 - (l) Any ferrous metal item, except for a catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and is marked as returnable, or railroad rails.

Signed by Governor March 9, 2011.

CHAPTER 9

(HB 427)

AN ACT relating to schools and declaring an emergency.

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

➔Section 1. KRS 161.185 is amended to read as follows:

- (1) Except as provided in subsection (2), boards of education shall require a ***certified or classified staff*** member ***who is at least twenty-one (21) years of age*** ~~[of the school faculty or a member of the administrative staff]~~ to accompany students on all school-sponsored or school-endorsed trips. ***Local boards of education may adopt a policy that specifies the job classifications of staff members who may accompany students on trips under this section.***
- (2) Boards of education may permit a nonfaculty coach or nonfaculty assistant, as defined by administrative regulation promulgated by the Kentucky Board of Education under KRS 156.070(2), to accompany students on all school-sponsored or school-endorsed athletic trips. A nonfaculty coach or nonfaculty assistant shall be at least twenty-one (21) years of age, shall not be a violent offender or convicted of a sex crime as defined by KRS 17.165 which is classified as a felony, and shall submit to a criminal record check under KRS 160.380.
- (3) Prior to assuming his or her duties, a nonfaculty coach or nonfaculty assistant shall successfully complete training provided by the local school district. The training shall include, but not be limited to, information on the physical and emotional development of students of the age with whom the nonfaculty coach and nonfaculty assistant will be working, the district's and school's discipline policies, procedures for dealing with discipline problems, and safety and first aid training. Follow-up training shall be provided annually.

➔Section 2. Notwithstanding any other statute to the contrary, the commissioner of education may grant up to the equivalent of ten instructional days for school years 2010-2011 and 2011-2012 for school districts that have missed an average of 20 or more days in the previous three years and use alternative methods of instruction, including virtual learning, on days when the school district is closed for health or safety reasons, on nontraditional days, or during nontraditional time. Average daily attendance for purposes of support education excellence in Kentucky funding during the instructional time granted shall be calculated in compliance with administrative regulations promulgated by the Kentucky Board of Education.

➔Section 3. If the days in the approved calendar designated as makeup days are used the commissioner of education shall grant a request made by a local board of education to waive the makeup of all remaining instructional days scheduled to occur on or after June 21.

➔Section 4. Notwithstanding KRS 158.070 or any other statute or regulation to the contrary, a local board of education may amend its 2010-2011 school calendar by adding not less than 30 minutes to any remaining instructional day in order to make up time missed due to weather or illness. All instructional time added pursuant to this section shall be fully credited toward the calculation of the equivalent of 177 six hour instructional days, and no school calendar amended pursuant to this section shall be deemed an innovative calendar during the 2010-2011 school year.

➔Section 5. Whereas school districts must adjust the school schedule for the remaining part of the school year, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 9, 2011.

CHAPTER 10

(HB 187)

AN ACT relating to special license plates and making an appropriation.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon application to the county clerk of the county of his or her residence, the owner or lessee of a motor vehicle registered under KRS 186.050(1) or (3)(a) may obtain an I Support Veterans special license plate.*
- (2) *Each initial or renewal application for an I Support Veterans special license plate shall be subject to payment of the fees set forth in Section 2 of this Act and the distribution and auditing requirements set forth in KRS 186.164.*
- (3) *The EF portion of the fees collected under Section 2 of this Act for an I Support Veterans special license plate shall be distributed to the Kentucky Department of Veterans' Affairs and are hereby appropriated for purposes that support veterans. These funds shall be in addition to any other appropriations or resources available to the Kentucky Department of Veterans' Affairs.*
- (4) *The I Support Veterans special license plate shall be administered in the same manner as other special license plates as prescribed in Section 2 of this Act.*
- (5) *The printing of the I Support Veterans special license plate shall not be contingent on any minimum number of applications.*

➔Section 2. KRS 186.162 is amended to read as follows:

- (1) As used in this section and in KRS 186.043, 186.164, 186.166,~~and~~ 186.174, **and Section 1 of this Act:**
 - (a) "Special license plate" means a unique license plate issued under this chapter to a group or organization that readily identifies the operator of the motor vehicle or motorcycle bearing the plate as a member of a group or organization, or a supporter of the work, goals, or mission of a group or organization. The term shall not include regular license plates issued under KRS 186.240;
 - (b) "Street rod" means a modernized private passenger motor vehicle manufactured prior to the year 1949, or designed or manufactured to resemble a vehicle manufactured prior to 1949;
 - (c) "SF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by the Transportation Cabinet;
 - (d) "CF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by a county clerk; and
 - (e) "EF" means the portion of an initial or renewal fee to obtain a special license plate that is mandated by this chapter to be dedicated for use by a particular group or organization.
- (2) The initial purchase fee and renewal fee for a special license plate created under this chapter shall be as established in this subsection and includes the name of group or organization and the total initial and renewal fee required for the plate. The amount in parentheses indicates how the total fee is required to be divided:
 - (a) Disabled veterans who receive assistance to purchase a vehicle from the United States Department of Veterans' Affairs, veterans declared by the United States Department of Veterans' Affairs to be one hundred percent (100%) service-connected disabled, and recipients of the Congressional Medal of Honor:
 1. Initial Fee: \$0 (\$0 SF/\$0 CF/\$0 EF).
 2. Renewal Fee: \$0 (\$0 SF/\$0 CF/\$0 EF).
 - (b) Former prisoners of war and survivors of Pearl Harbor:
 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 2. Renewal Fee: \$3 (\$0 SF/\$3 CF/\$0 EF).
 - (c) Members of the Kentucky National Guard and recipients of the Purple Heart:
 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 2. Renewal Fee: \$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - (d) Members of the Civil Air Patrol; active, retired, veteran, reserve, or auxiliary members of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; Merchant Marines who served between December 7, 1941, and August 15, 1945; recipients of the Silver Star Medal, or the Bronze Star Medal

awarded for valor; persons who wish to receive Gold Star Mothers, Gold Star Fathers, or Gold Star Spouses license plates beyond the two (2) exempted from fees under KRS 186.041(6); and disabled veterans who have been declared to be between fifty percent (50%) and ninety-nine percent (99%) service-connected disabled by the United States Department of Veterans' Affairs:

1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 2. Renewal Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (e) Recipients of the Distinguished Service Cross, Navy Cross, or Air Force Cross:
1. Initial Fee: \$3 (\$0 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: \$3 (\$0 SF/\$3 CF/\$0 EF).
- (f) Disabled license plates:
1. Initial Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
- (g) Historic vehicles:
1. Initial Fee for two plates: \$53 (\$50 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: Do not renew annually.
- (h) Members of Congress:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (i) Firefighters:
1. Initial Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
- (j) Emergency management:
1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
- (k) Fraternal Order of Police:
1. Initial Fee: \$45 (\$37 SF/\$3 CF/\$5 EF to the Kentucky FOP Death Benefit Fund).
 2. Renewal Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to the Kentucky FOP Death Benefit Fund).
- (l) Law Enforcement Memorial:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
 2. Renewal Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
- (m) Personalized plates:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
- (n) Street rods:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).

ACTS OF THE GENERAL ASSEMBLY

2. Renewal Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
- (o) Nature plates:
1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
 2. Renewal Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
- (p) Amateur radio:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
- (q) Kentucky General Assembly:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (r) Kentucky Court of Justice:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: \$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (s) Masons:
1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
- (t) Collegiate plates:
1. Initial Fee: \$50 (\$37 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).
 2. Renewal Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).
- (u) Independent Colleges:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Association of Independent Kentucky Colleges and Universities for distribution to the general scholarship funds of the Association's members).
 2. Renewal Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to the Association of Independent Kentucky Colleges and Universities for distribution to the general scholarship funds of the Association's members).
- (v) Child Victims:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the child victims' trust fund established under KRS 41.400).
 2. Renewal Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the child victims' trust fund established under KRS 41.400).
- (w) Kentucky Horse Council:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Horse Council).
 2. Renewal Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the Kentucky Horse Council).
- (x) Ducks Unlimited:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to Kentucky Ducks Unlimited).
 2. Renewal Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Ducks Unlimited).

(y) Spay neuter:

1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to the animal control and care fund established under KRS 258.119).
2. Renewal Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the animal control and care fund established under KRS 258.119).

(z) Gold Star Mothers, Gold Star Fathers, or Gold Star Spouses:

1. Initial Fee: \$0 (\$0 SF/\$0 CF/ \$0 EF).
2. Renewal Fee: \$0 (\$0 SF/\$0 CF/ \$0 EF).
3. A person may receive a maximum of two (2) plates under this paragraph free of charge and may purchase additional plates for fees as established in subsection (2)(d) of this section.

(aa) ***I Support Veterans:***

1. ***Initial Fee:*** \$25 (\$12 SF/\$3 CF/\$10 EF to the Kentucky Department of Veterans' Affairs).
2. ***Renewal Fee:*** \$20 (\$12 SF/\$3 CF/\$5 EF to the Kentucky Department of Veterans' Affairs).

- (3) Any special license plate may be combined with a personalized license plate for a twenty-five dollar (\$25) state fee in addition to all other fees for the particular special license plate established in this section and in KRS 186.164(3). The twenty-five dollar (\$25) fee required under this subsection shall be divided between the cabinet and the county clerk of the county where the applicant is applying for the license plate with the cabinet receiving twenty dollars (\$20) and the county clerk receiving five dollars (\$5).
- (4) Owners and lessees of motorcycles registered under KRS 186.050(2) may be eligible to receive special license plates issued under this section or established under the provisions of KRS 186.164 after the cabinet has received three hundred (300) applications and initial state fees from the sponsoring organization. Applicants for a special license plate for a motorcycle shall be required to pay the fee for a special plate as prescribed in this section or in KRS 186.164. The fee paid for the special plate for a motorcycle shall be in lieu of the registration fee required under KRS 186.050(2).

➔Section 3. KRS 186.166 is amended to read as follows:

- (1) The Transportation Cabinet shall, unless directed otherwise by the General Assembly, perpetually produce the following special license plates: military license plates, U.S. Congressional license plates, firefighter license plates, emergency management license plates, Fraternal Order of Police license plates, Law Enforcement Memorial license plates, street rod license plates, nature license plates, amateur radio license plates, Kentucky General Assembly license plates, Kentucky Court of Justice license plates, Masonic Order license plates, collegiate license plates, independent college and university license plates, child victims' trust fund license plates, Kentucky Horse Council license plates, Ducks Unlimited license plates, Gold Star Mothers license plates, Silver Star Medal license plates, Bronze Star Medal license plates, ~~and~~ spay neuter license plates, ***and I Support Veterans license plates.***
- (2) The design of the plates identified for perpetual production under this section may be revised upon request of a group or organization requesting a design revision under the provisions of KRS 186.164(15).
- (3) The design of a Purple Heart license plate shall not include any representation of the word "Kentucky" that is a registered trademark or slogan which appears on a general issue license plate.

➔Section 4. This Act takes effect on the first day of the month in which the new motor vehicle information system currently under development is operational. The secretary of the Transportation Cabinet shall certify to the Reviser of Statutes the date on which the new system will be operational, and the certification shall be received at least 30 days prior to the date this Act takes effect.

Signed by Governor March 9, 2011.

CHAPTER 11**(HB 122)**

AN ACT relating to membership of the Kentucky Commission on Military Affairs.

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

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

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

6. Health and Family Services;
7. Personnel;
8. Labor;
9. Public Protection; and
10. Tourism, Arts and Heritage;

~~(f)(g)~~ The Attorney General, or **a designated representative**~~[his designee]~~;

~~(g)(h)~~ The commissioner of the Department of Veterans' Affairs or a **designated representative**~~[designee]~~;

~~(h)(i)~~ The executive director of the Kentucky Commission on Military Affairs or a **designated representative**~~[designee]~~;

~~(i)(j)~~ Kentucky's Civilian Aides to the Secretary of the United States Army;

~~(j)(k)~~ Two (2) members of the Kentucky General Assembly, with experience in or an interest in military and defense-related issues, one (1) member to be appointed by the President of the Senate, and one (1) member to be appointed by the Speaker of the House;

~~(k)(l)~~ The commander or the designee of the commander of each of the following as nonvoting, ex officio members:

1. Fort Campbell;
2. Fort Knox;
3. United States Army Accessions Command;
4. Bluegrass Army Depot;
5. Louisville District of the United States Army Corps of Engineers;
6. The One Hundredth Training Division; and
7. Any other installation or organization with a major military mission in the Commonwealth;~~[and]~~

~~(l)(m)~~ Five (5) at-large members appointed by the Governor who shall be residents of counties significantly impacted by military installations; **and**

(m) The Chief Justice or a designated representative.

- (4) The terms of the five (5) at-large members shall be staggered so that two (2) appointments shall expire at two (2) years, one (1) appointment shall expire at three (3) years, and two (2) appointments shall expire at four (4) years, from the dates of initial appointment.
- (5) (a) The commission shall establish an executive committee consisting of the secretary of the Cabinet for Economic Development, the adjutant general of the Commonwealth, the commissioner of the Department of Veterans' Affairs, the executive director of the Kentucky Commission on Military Affairs, and the five (5) at-large members. The chair and vice chair of the Kentucky Commission on Military Affairs shall be appointed by the Governor from among the members of the executive committee.
- (b) The chair and vice chair of the commission shall also serve as chair and vice chair of the executive committee.
- (c) The executive committee shall serve as the search committee for an executive director of the commission and shall have any other authority the commission delegates to it.
- (6) The commission shall meet two (2) times each year, and may meet at other times on call of the chair, to establish the commission's goals and to review issues identified and recommendations made by the executive committee. A majority of the members shall constitute a quorum for the transaction of the commission's business. Members' designees shall have voting privileges at commission meetings.
- (7) Members of the commission shall serve without compensation, but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.

- (8) The commission may establish committees or work groups composed of commission members and citizens as necessary to advise the commission in carrying out its responsibilities, duties, and powers. Citizen members of committees or work groups shall not have a vote.
- (9) The commission may promulgate necessary administrative regulations as prescribed by KRS Chapter 13A.
- (10) The commission may adopt bylaws and operating policies necessary for its efficient and effective operation.
- (11) There shall be an executive director, who shall be the administrative head and chief executive officer of the commission, recommended by the executive committee, approved by the commission, and appointed by the Governor. The executive director shall have authority to hire staff, contract for services, expend funds, and operate the normal business activities of the commission.
- (12) The Kentucky Commission on Military Affairs and its executive committee shall be an independent agency attached to the Office of the Governor.

Signed by Governor March 9, 2011.

CHAPTER 12

(HB 173)

AN ACT relating to hunting and fishing licenses.

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

➔Section 1. KRS 150.170 is amended to read as follows:

- (1) Except as provided in the following subsections of this section, and subject to administrative regulations promulgated under this chapter, no person, resident or nonresident, shall do any act authorized by any kind of license or permit, or assist in any way any person in doing any act provided for in this chapter with respect to wildlife unless he holds the kind of license or permit, resident or nonresident, that authorizes the act. It shall be the specific purpose of this chapter to prohibit the taking or pursuing of any wildlife, protected or unprotected, or the fishing in any stream or body of water whether public or private, without first procuring the license provided for in KRS 150.175, except to the extent as may be otherwise provided in this section.
- (2) A person under sixteen (16) years of age may, without a sport fishing license, take fish by angling, or take minnows by the use of a minnow seine, minnow trap, or dip net.
- (3) A person under twelve (12) years of age shall be exempt from being required to obtain a sport hunting or sport trapping license as required by this chapter.
- (4) The resident owner of farmlands, his spouse, or dependent children, shall, without procuring any sport hunting or sport fishing licenses, have the right to take fish or hunt during the open season, except trapping, on the farmlands of which they are bona fide owners. Tenants or their dependent children residing upon these farmlands shall have the same privilege.
- (5) Residents or nonresidents observing and participating in field trials, training exercises, or other competitions as authorized by the department may observe and participate without obtaining a hunting or guide's license so long as game is not taken.
- (6) Any resident serviceman on furlough of more than three (3) days in this state may, without any Kentucky sport hunting or sport fishing licenses, do any act authorized by the licenses, but while so doing he shall carry on his person proper identification and papers showing his furlough status.
- (7) Resident landowners, their spouses, or dependent children who kill or trap on their lands any wildlife causing damage to the lands or any personal property situated thereon shall not be required to have a hunting or trapping license and may do so during periods other than the open season for the particular species. Tenants or their dependent children residing upon the lands, or other persons approved by the commissioner, shall also have the same privilege. Upon destruction of any wildlife by the above-specified individuals, the act shall be reported to the department or the resident conservation officer for the proper disposition of the carcass. Individuals wishing to use the carcass shall contact personnel of the department to request a disposal tag or other authorizing document.

- (8) If a reciprocal agreement is entered into by the commissioner, with the approval of the commission, and promulgated as an administrative regulation by the department and similar action is taken by the appropriate authority in Missouri, Tennessee, Virginia, West Virginia, Indiana, Ohio, or Illinois, persons holding a resident or nonresident fishing or a resident or nonresident hunting license issued in these states shall be permitted to perform the acts authorized by the license upon certain contiguous waters and land areas adjacent to the common boundaries of the above-mentioned states and the State of Kentucky. A resident of the State of Kentucky shall purchase a proper Kentucky license to conform with the reciprocal agreement.
- (9) *Any member of the Kentucky Army or Air National Guard, Active duty or Reserve Component, in any branch in the United States Armed Forces that is based in the Commonwealth of Kentucky, shall have the right to take fish or hunt on any military property belonging to the Commonwealth without procuring any sport hunting or sport fishing license.*

Signed by Governor March 9, 2011.

CHAPTER 13

(SCR 110)

A CONCURRENT RESOLUTION urging the Kentucky Department of Agriculture to maintain the lines of communication and cooperation with the United States Department of Agriculture (USDA) that it has strengthened in the aftermath of the financial collapse of a large cattle company, and to be vigilant as it monitors Kentucky's livestock industry in the future.

WHEREAS, the livestock industry, consisting mainly of cattle and calf production, is an important segment of Kentucky's agricultural economy, accounting for more than \$571 million in 2009; and

WHEREAS, the industry has evolved from an era when farmers simply shipped their livestock to the local auction market; and

WHEREAS, today, in addition to traditional stockyard auction sales, livestock is marketed through sometimes complex financial transactions, even through video auctions; and

WHEREAS, even though the market is ever-changing, in many ways it has not changed at its core with farmers and small-time producers raising livestock to be marketed with the expectation of being paid fully and in a timely manner for their production efforts; and

WHEREAS, the nationwide livestock market is regulated by the United States Department of Agriculture (USDA) through the enforcement of the Packers and Stockyards Act; and

WHEREAS, the livestock industry in Kentucky, in addition to USDA responsibilities, is regulated by the Kentucky Department of Agriculture; and

WHEREAS, the Kentucky Department of Agriculture, through its regulatory and enforcement powers, in many ways represents a first line of defense to monitor the manner in which the market functions in Kentucky, and has worked tirelessly to protect farmers' interests in many segments of livestock production, and more broadly in production agriculture as a whole; and

WHEREAS, the responsibilities of the USDA and the department took on added importance recently in the aftermath of the financial collapse of a multimillion-dollar, Indiana-based cattle company; and

WHEREAS, the company has failed to pay producers, dozens of them in Kentucky, for an estimated \$130 million in cattle purchased, and did not maintain an adequate bond, according to a complaint filed by the USDA; and

WHEREAS, the financial failure has resulted in potential losses for cattle producers in Kentucky, and has affected companies involved in the livestock business;

NOW, THEREFORE,

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

➔Section 1. The Kentucky Department of Agriculture is urged to maintain the lines of communication and cooperation with the USDA that it has strengthened recently in the aftermath of the financial collapse of a large livestock company, and to be vigilant as it monitors Kentucky's livestock industry as a whole.

➔Section 2. The department, through its Office of State Veterinarian, is urged to implement the recently reauthorized memorandum of understanding with the USDA to the extent possible. The memorandum of understanding describes how the USDA and the Department of Agriculture will cooperate in regulating livestock, poultry, meat-packing, and meat-marketing activities in the state. The memorandum of understanding sets out specific agreements, including regular meetings, at least annually, to discuss common problems, testing responsibilities, information disclosure between the two parties, and the expenditure of funds necessary to carry out respective responsibilities.

➔Section 3. The department is urged to alert the USDA, and other agencies if appropriate, when it suspects financial irregularities, or when it sees other problems occurring in the livestock industry.

➔Section 4. The Clerk of the Senate is directed to send a copy of this Resolution to the Commissioner of the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, KY 40601.

Signed by Governor March 10, 2011.

CHAPTER 14

(SB 76)

AN ACT changing the classification of the City of Pikeville, in Pike County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population in Pikeville, in Pike County, is such as to justify its being classified as a city of the fourth class;

NOW, THEREFORE,

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

➔Section 1. The City of Pikeville, in Pike County, is transferred from the third class to the fourth class of cities.

Signed by Governor March 10, 2011.

CHAPTER 15

(HB 362)

AN ACT relating to ginseng.

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

➔Section 1. KRS 246.650 is amended to read as follows:

As used in KRS 246.660, unless the context clearly requires otherwise:

- (1) "Harvest" means to take any part of the ~~the wild~~ ginseng plant while the plant is living; ~~and~~ **and** ~~the~~
- (2) "~~Wild~~ Ginseng" means any *part of the American ginseng plant known as Panax quinquefolius* ~~ginseng plant growing as nature caused the plant to grow without any assistance from man, but includes any plant grown from seeds of a wild plant replanted within fifty (50) feet of the harvesting point using no implement other than fingers for planting.~~
- (3) "~~Cultivated ginseng~~" means any ginseng plant grown under natural or artificial shade and cultivated according to varying standards of cultivation procedures.

➔Section 2. KRS 246.660 is amended to read as follows:

- (1) (a) The department shall administer a program for ~~wild American~~ ginseng in Kentucky which provides a framework, including a limited harvesting season, in which ~~wild American~~ ginseng shall be eligible for exportation in compliance with federal requirements.
- (b) *Information relating to the purchase or sale of ginseng that is furnished to or acquired by the department shall constitute proprietary information and not be subject to public disclosure, except to the extent the department deems necessary in any administrative or judicial proceeding involving the administration or enforcement of its administrative regulations.*
- (2) (a) The department shall promulgate **administrative** regulations to carry out this program and ~~may cooperate with and~~ enter into agreements with any other agency of this state, any other state, or the federal government to carry out this program. ~~Any regulation promulgated under this section shall be no more restrictive than minimum federal requirements.~~
- (b) *The department shall establish licensing requirements for dealers of ginseng.*
- (c) *The department shall promulgate administrative regulations relating to the ginseng program that establish:*
 - 1. *A comprehensive set of administrative violations and civil penalties each not to exceed one thousand dollars (\$1,000); and*
 - 2. *The procedure for the suspension or revocation of any license or certificate issued by the department.*

➔SECTION 3. A NEW SECTION OF KRS 246.650 TO 246.660 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established in the State Treasury a separate trust and agency account to be known as the Kentucky ginseng fund to be administered by the Department of Agriculture.*
- (2) *Moneys in this fund shall be used to help administer the ginseng program as provided by Section 2 of this Act.*
- (3) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year, including interest, shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.*
- (4) *The fund may receive gifts, grants, federal funds, and any other funds both public and private.*

➔Section 4. KRS 246.990 is amended to read as follows:

- (1) Any person who violates subsection (2) of KRS 246.210, subsection (2) of KRS 246.220, or subsection (1) of KRS 246.420 shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) for the first offense; he shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and be confined in the county jail for not less than sixty (60) days nor more than one hundred and twenty (120) days, for each subsequent offense.
- (2) Any person who violates subsection (3) of KRS 246.220 shall be fined not less than five dollars (\$5) nor more than one hundred dollars (\$100) or be imprisoned for not more than ten (10) days, or both. Each day's hindering or refusal of access shall constitute a separate offense.
- (3) Any person who violates subsection (4) of KRS 246.220 shall be fined not less than two dollars (\$2) nor more than fifty dollars (\$50).
- (4) Any person who violates subsection (5) of KRS 246.220 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (5) Any person who violates subsection (6) of KRS 246.220 shall be fined not less than ten dollars (\$10) nor more than fifty dollars (\$50).
- (6) Any person who violates subsection (7) of KRS 246.220 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned for not more than three (3) months, or both.
- (7) Any owner or operator of a dairy plant who shall fail to comply with the provisions of KRS 246.240 or any part thereof shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars (\$100).

- (8) (a) *Any person who purchases ginseng knowing that the ginseng was taken, acquired, possessed, sold, transported, or purchased in violation of administrative regulations authorized under Section 2 of this Act shall be guilty of a Class A misdemeanor.*
- (b) *The Commissioner or any peace officer may seize and take possession of any ginseng taken, acquired, possessed, sold, transported, or purchased by a person committing a violation of administrative regulations authorized under Section 2 of this Act. Any ginseng seized in accordance with this paragraph shall be impounded by the arresting officer and shall be taken before the court trying the person arrested.*
- (c) *Upon conviction, the court trying the case shall have the discretion of determining whether any of the ginseng seized under paragraph (b) of this subsection shall be declared contraband. Any ginseng seized under paragraph (b) of this subsection is subject to being declared contraband. If any ginseng is declared contraband, the court shall enter an order accordingly. A copy of the order shall be forwarded to the Commissioner and the ginseng shall be placed in the custody of the arresting officer, to be delivered to the Commissioner.*
- (d) *The Commissioner may sell, at the highest market price obtainable, with the approval of the Governor and Finance and Administration Cabinet, all contraband ginseng which comes into his or her possession under the order of any court. All proceeds arising from the sale of contraband ginseng shall be paid into the Kentucky ginseng fund established in Section 3 of this Act. A record of the sale, including the name of the purchaser and the price paid, shall be kept by the Commissioner.*~~*Any person who violates any administrative regulation promulgated by the department under the provisions of KRS 246.660 shall have a civil fine imposed of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).*~~
- (9) Any person who violates subsection (2) of KRS 246.420 shall be disqualified from exhibiting at an exhibition for a first offense, and shall be disqualified for up to five (5) years for a second or subsequent offense.

Signed by Governor March 10, 2011.

CHAPTER 16

(HCR 13)

A CONCURRENT RESOLUTION establishing the Legislative Task Force on Childhood Obesity.

WHEREAS, the obesity epidemic is taking a toll on Kentucky's economy. Obesity costs Kentucky over \$1.2 billion a year in health care expenses, and obese workers file twice as many workers' compensation claims, have seven times higher medical costs from these claims, and lose 13 times more days of work from work injury or work illness than nonobese workers; and

WHEREAS, Kentucky has the fifth highest level of adult obesity in the nation, with 69 percent of adults overweight or obese, the third highest level of overweight high school students, and the third highest overweight levels for low-income children ages two to five years; and

WHEREAS, studies indicate that overweight children have an 80 percent chance of remaining overweight through adulthood; and

WHEREAS, overweight children are more likely to suffer from Type 2 diabetes, high cholesterol, high blood pressure, early maturation, and orthopedic problems; and

WHEREAS, the long-term health consequences of childhood obesity include increased risk of diabetes, stroke, arthritis, heart attack, colon cancer, prostate cancer, and breast cancer; and

WHEREAS, in addition to physiological problems, overweight children often suffer consequences of negative social stereotypes and are more likely than children with healthier weights to have low self-esteem; and

WHEREAS, adequate and appropriate nutrition, active living, and maintaining healthy weight are critical to an individual's health and productivity as well as to Kentucky's future workforce and economic development; and

WHEREAS, it is in the interest of all citizens of the Commonwealth to encourage children to maintain healthy lifestyles for their own future well-being;

NOW, THEREFORE,

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

➔Section 1. The Legislative Research Commission is directed to establish the Legislative Task Force on Childhood Obesity. The task force shall meet at least monthly during the 2011 Interim of the General Assembly.

➔Section 2. The charge of the task force shall include but not be limited to the study of issues relating to childhood obesity. The task force shall consider and recommend to the General Assembly strategies for addressing the problem of childhood obesity and encouraging healthy eating and increased physical activity among children through:

- (1) Early childhood intervention;
- (2) Childcare facilities;
- (3) Before-school and after-school programs;
- (4) Physical education and physical activity in schools;
- (5) Higher nutrition standards in schools;
- (6) Comprehensive nutrition education in schools;
- (7) Increased access to recreational activities for children;
- (8) Community initiatives and public awareness; and
- (9) Other means.

➔Section 3. The task force shall encourage input from pediatric healthcare professionals, public nonprofit organizations, including Partnership for a Fit Kentucky, and professionals that promote healthy lifestyles for children, that address the problems related to childhood obesity, and that encourage healthy eating and increased physical activity among children.

➔Section 4. The task force shall be composed of members appointed by the Speaker of the House of Representatives and the President of the Senate. The Speaker of the House and the President of the Senate shall each appoint five members and one member to serve as co-chair. Final membership of the task force shall be subject to consideration and approval of the Legislative Research Commission.

➔Section 5. The Legislative Research Commission shall provide staff for the task force.

➔Section 6. The task force shall submit a report of its recommendations and any findings to the Legislative Research Commission and the Interim Joint Committee on Health and Welfare by November 30, 2011, and thereafter the task force shall cease to exist.

➔Section 7. Provisions of this Resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Signed by Governor March 15, 2011.

CHAPTER 17

(HB 41)

AN ACT relating to emergency vehicles.

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

➔Section 1. KRS 189.910 is amended to read as follows:

- (1) As used in KRS 189.920 to 189.950, "emergency vehicle" means any vehicle used for emergency purposes by a fire department; any vehicle used for emergency purposes by the State Police, a public police department, Department of Corrections, or sheriff's office; any vehicle used for emergency purposes by a rescue squad; any publicly owned vehicle used for emergency purposes by an emergency management agency; any vehicle used to respond to emergencies or to transport a patient with a critical medical condition if the vehicle is operated by a Cabinet for Health Services-licensed ambulance provider or medical first-response provider; any vehicle commandeered by a police officer; or any motor vehicle with the emergency lights required **or authorized** under KRS 189.920 used by a paid or volunteer fireman, ~~or~~ paid or volunteer ambulance personnel, ~~or~~ a paid or volunteer local emergency management director, **or paid jail personnel** while responding to an emergency or to a location where an emergency vehicle is on emergency call.
- (2) As used in KRS 189.920 to 189.950, "public safety vehicle" means public utility repair vehicle; wreckers; state, county, or municipal service vehicles and equipment; highway equipment which performs work that requires stopping and standing or moving at slow speeds within the traveled portions of highways; and vehicles which are escorting wide-load or slow-moving trailers or trucks.

➔Section 2. KRS 189.920 is amended to read as follows:

- (1) All fire department, rescue squad, or publicly owned emergency management agency emergency vehicles and all ambulances shall be equipped with one (1) or more flashing, rotating, or oscillating red lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and a siren, whistle, or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws.
- (2) All state, county, or municipal police vehicles and all sheriffs' vehicles used as emergency vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and a siren, whistle, or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws.
- (3) By ordinance, the governing body of any city or county may direct that the police or sheriffs' vehicles in that jurisdiction be equipped with a combination of red and blue flashing, rotating, or oscillating lights.
- (4) All public safety vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating yellow lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle. Yellow flashing, rotating, or oscillating lights may also be used by vehicles operated by mail carriers while on duty, funeral escort vehicles, and church buses.
- (5) All Department of Corrections vehicles used as emergency vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle. The Department of Corrections vehicles shall not be equipped with or use a siren, whistle, or bell. The equipment prescribed by this subsection shall be in addition to any other equipment required by motor vehicle laws.
- (6) *(a) If authorized by the legislative body of a county, urban-county, charter county, consolidated local government, or unified local government;*
 1. *All publicly owned county jail and regional jail vehicles used as emergency vehicles may be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle; and*
 2. *An elected jailer or the chief administrator of a county or regional jail not managed by an elected jailer may equip one (1) personally owned vehicle with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle.*
- (b) Publicly owned county jail or regional jail vehicles shall not be equipped with or use a siren, whistle, or bell.*
- (c) The equipment prescribed by this subsection shall be in addition to any other equipment required by the motor vehicle laws.*
- (7) Red flashing lights may be used by school buses.

- (8)(7) No emergency vehicle, public safety vehicle, or any other vehicle covered by KRS 189.910 to 189.950 shall use any light of any other color than those specified by KRS 189.910 to 189.950. Sirens, whistles, and bells may not be used by vehicles other than those specified by KRS 189.910 to 189.950, except that any vehicle may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.
- (9)(8) Vehicles used as command posts at incidents may be equipped with and use when on scene, a green rotating, oscillating, or flashing light. This light shall be in addition to the lights and sirens required in this section.
- (10)(9) A personal vehicle used by a paid or volunteer firefighter, ambulance personnel, or emergency services director who is responding to an emergency shall display the lights required in subsection (1) of this section.

Signed by Governor March 15, 2011.

CHAPTER 18

(HB 74)

AN ACT relating to weights and measures.

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

➔SECTION 1. A NEW SECTION OF KRS 363.510 TO 363.850 IS CREATED TO READ AS FOLLOWS:

The Commissioner may promulgate administrative regulations relating to servicing or inspecting instruments and devices used to measure internal moisture or density levels in unprocessed bulk tobacco as described in Section 2 of this Act.

➔Section 2. KRS 363.510 is amended to read as follows:

When used in KRS ~~363.510~~~~[363.520]~~ to 363.850:

- (1) "Department" means the Kentucky Department of Agriculture.
- (2) "Commissioner" means the Commissioner of Agriculture.
- (3) "Division" means the Division of Regulation and Inspection.
- (4) "Weights and measures" means all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with any ~~of the~~~~[such]~~ instruments and devices.
 - (a) ***The term shall include instruments and devices used to measure internal moisture or density levels in unprocessed bulk tobacco if that moisture or density determination is used as a condition of sale or as part of a contractual sales agreement. [except that]***
 - (b) The term shall not include meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. Electricity, gas, and water meters are specifically excluded from the purview of KRS 363.510 to 363.850, and none of the provisions of KRS 363.510 to 363.850 shall apply to those meters or to any appliances or accessories associated with those meters.
- (5) "Sell" and "sale" mean barter and exchange.
- (6) "Director" means the state director of the Division of Regulation and Inspection.
- (7) "Inspector" means a state inspector of weights and measures.
- (8) "Sealer" and "deputy sealer" mean, respectively, a sealer of weights and measures and a deputy sealer of weights and measures of a city of the first, second, or third class.
- (9) "Intrastate commerce" means all commerce or trade that is begun, carried on, and completed wholly within the limits of the State of Kentucky, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made within the state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

- (10) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive of any auxiliary shipping container enclosing packages that individually conform to the requirements of KRS 363.510 to 363.850. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be considered a commodity in package form.
- (11) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.
- (12) "Nonconsumer package" or "package of nonconsumer commodity" means any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.
- (13) (a) "Barrel," when used in connection with fermented liquor, means a unit of thirty-one (31) gallons.
 (b) "Ton" means a unit of two thousand (2,000) pounds avoirdupois weight.
 (c) "Cord," when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of one hundred twenty-eight (128) cubic feet when the wood is ranked and well stowed.
- (14) "Weight," as used in connection with any commodity, means net weight. If any commodity is sold on the basis of weight, the net weight of the commodity shall be used, and all contracts concerning commodities shall use net weight as their basis of weight.

Signed by Governor March 15, 2011.

CHAPTER 19

(HB 166)

AN ACT relating to the use of Kentucky-grown agricultural products in state resort parks.

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

➔SECTION 1. A NEW SECTION OF KRS 148.830 TO 148.840 IS CREATED TO READ AS FOLLOWS:

- (1) ***Any contract for the provision and sale of food services and agricultural products in state resort park restaurants, gift shops, concessions, and golf courses shall promote the sale of Kentucky-grown agricultural products under the Kentucky Proud™ Program in accordance with KRS 45A.645, 148.830, 148.835, and 260.017.***
- (2) ***Only contracts entered into or renewed after the effective date of this Act shall be required to comply with the provisions of this section.***

➔Section 2. KRS 148.830 is amended to read as follows:

The Department of Parks shall establish a ***promotion program***~~[pilot project]~~ within the Department of Parks to promote the sale of Kentucky-grown agricultural products, as defined in KRS ~~260.016~~~~[45A.630]~~, in state resort park restaurants,~~[and]~~ gift shops, ***concessions, and golf courses***. The promotion program shall operate in conjunction with the Kentucky Proud™ Program in accordance with KRS 260.017. The commissioner of the Department of Parks shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the promotion program no later than October 1, ~~2011~~~~[2002]~~.

➔Section 3. KRS 148.835 is amended to read as follows:

The Department of Parks shall establish a ***promotion program***~~[pilot project]~~ within the Department of Parks to require that if purchasing ~~agricultural~~~~[catfish or horticultural]~~ products, state parks purchase ***Kentucky-grown agricultural***~~[Kentucky farm-raised catfish and Kentucky horticultural]~~ products if the purchasing officer determines that they are available, can be priced on the menu to encourage their sale, and meet the quality standards set by the

Department of Parks. ~~[As used in this section, "horticultural product" means fruit, nuts, vegetables, and herbs.]~~ The commissioner of the Department of Parks shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the ***promotion program*** ~~[purchasing requirement]~~ as set forth in this section ***no later than October 1, 2011*** ~~[as soon as possible after April 23, 2002]~~.

➔Section 4. KRS 148.840 is amended to read as follows:

- (1) The Department of Parks shall establish a steering committee which shall consist of:
 - (a) The secretary of the Finance and Administration Cabinet, or a designee;
 - (b) The Commissioner of Agriculture, or a designee;
 - (c) The commissioner of the Department of Parks, or a designee;
 - (d) The director of the Agriculture Development Board, or a designee;
 - (e) The coordinator of the Kentucky State University Aquaculture Program, or a designee;
 - (f) The chairperson of the horticulture department at the University of Kentucky, or a designee; and
 - (g) Two (2) members of organizations and associations representing the Kentucky farming community, appointed by the Commissioner of Agriculture.
- (2) The steering committee shall plan and assist in the implementation of the promotion program identified in KRS 148.830 ***and 148.835***.
- (3) The steering committee shall recommend by ***October 1, 2011*** ~~[September 1, 2002]~~, the structure and objectives of the promotion program identified in KRS 148.830 ***and 148.835***.
- (4) Upon implementation of the ***promotion program*** ~~[pilot projects]~~ identified in KRS 148.830 and 148.835, the steering committee shall evaluate the ***promotion program*** ~~[pilot projects]~~ and submit an initial report to the Governor, the secretary of the Finance and Administration Cabinet, and the Legislative Research Commission no later than ***July*** ~~[October]~~ 1, ***2012*** ~~[2003]~~, and ***subsequent annual reports*** ~~[a second report]~~ no later than ***July 1 of each year thereafter*** ~~[October 1, 2004]~~.
- (5) The steering committee shall ***continue to meet at least once each year at a date and location to be determined by its members to ensure the continuation of the promotion program*** ~~[terminate on December 31, 2004]~~.

Signed by Governor March 15, 2011.

CHAPTER 20

(HB 202)

AN ACT relating to commercial driver's licenses.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 281A IS CREATED TO READ AS FOLLOWS:

- (1) ***The cabinet may waive the driving skills test for an applicant on active military service, or within ninety (90) days of separation of service, who:***
 - (a) ***Is currently licensed;***
 - (b) ***Has experience driving a vehicle in the military that would require a commercial driver's license to operate as a civilian;***
 - (c) ***Has a good driving record; and***
 - (d) ***Certifies and provides verification that, during the two (2) year period immediately prior to applying for a commercial driver's license, the applicant:***
 1. ***Drove a motor vehicle in the military that was representative of the commercial driver's license class and endorsement for which he or she is applying;***

2. *Has not had his or her operator's license or commercial driver's license suspended, revoked, or canceled, or been disqualified from operating a commercial motor vehicle;*
 3. *Has not been convicted of any of the disqualifying offenses in 49 C.F.R. sec. 383.51(b) while operating a commercial motor vehicle, or of any offense in a noncommercial vehicle that would be disqualifying under 49 C.F.R. sec. 383.51(b) if committed in a commercial motor vehicle;*
 4. *Has not been convicted of more than one (1) serious traffic violation, as defined in 49 C.F.R. sec. 383.5, while operating any type of motor vehicle;*
 5. *Has not been convicted of any violation of state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a traffic accident;*
 6. *Has not been convicted of any motor vehicle traffic violation that resulted in an accident; and*
 7. *Is or was regularly employed in a position in the Armed Forces of the United States requiring operation of a commercial motor vehicle of the group the applicant seeks to drive, and provides evidence of that employment in accordance with subsection (5) of this section.*
- (2) *The skills test waiver process described in subsection (1) of this section shall be completed, and the commercial driver's license issued, within ninety (90) days of separation of service.*
 - (3) *Military personnel who obtain the skills test waiver under this section shall be required to take the knowledge test pursuant to Section 2 of this Act.*
 - (4) *Military personnel who obtain the skills test waiver under this section shall be required to pay the application fee as prescribed by KRS 281A.150, but shall not be charged the skills-testing fee as prescribed by KRS 281A.160.*
 - (5) *The cabinet shall promulgate administrative regulations under KRS Chapter 13A that establish an application form for waiver of the skills test by military personnel. As part of the application process, the applicant shall be required to provide:*
 - (a) *A copy of the applicant's DD-214 form showing the applicant's military occupational specialty; or*
 - (b) *A signed statement by the applicant's commanding officer or transportation officer, on a form provided by the cabinet, attesting to the fact that the applicant meets the requirements of this section.*
- ➔Section 2. KRS 281A.130 is amended to read as follows:
- (1) A person shall not be issued a commercial driver's license unless that person:
 - (a) Is a resident of this state;
 - (b) Holds a valid operator's license;
 - (c) Has complied with the provisions of KRS 281A.300;
 - (d) ***Except as provided in Section 1 of this Act,*** has passed the knowledge and skills tests for driving a commercial motor vehicle which comply with minimum federal standards established by federal regulation enumerated in Title 49, Code of Federal Regulations, Part 383, as adopted by the cabinet; and
 - (e) Has satisfied all other safety requirements including those requirements imposed by state law or federal regulation. The tests shall be prescribed and conducted as set forth in KRS 281A.160.
 - (2) A commercial driver's license, or commercial driver's instruction permit shall not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license or driving privilege is suspended, revoked, or canceled in any state or jurisdiction.
 - (3) A commercial driver's license shall not be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses, which shall be returned to the issuing jurisdiction for cancellation.
 - (4) To ensure that an applicant for a commercial driver's license or instruction permit complies with the requirements of subsections (2) and (3) of this section, the circuit clerk shall verify through the commercial driver's license information system and national driver register that the person applying for a Kentucky CDL does not currently have his or her operator's license or driving privilege suspended or revoked in another

licensing jurisdiction. If the person's operator's license or driving privilege is currently suspended or revoked in another licensing jurisdiction, the circuit clerk shall not issue the person a Kentucky CDL until the person resolves the matter in the other licensing jurisdiction and complies with the provisions of this chapter and KRS Chapter 186.

Signed by Governor March 15, 2011.

CHAPTER 21

(HB 221)

AN ACT relating to grain.

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

➔Section 1. KRS 251.451 is amended to read as follows:

- (1) Each warehouseman shall file with the department a surety bond issued by a surety company authorized to transact business within the Commonwealth of Kentucky, payable to the Commonwealth with the Commissioner as trustee. A warehouseman may file with the department, in lieu of a surety bond, a certificate of deposit payable to the Commissioner, as trustee, an irrevocable letter of credit on forms provided by the Commissioner, or, upon approval by the Commissioner, a warehouse receipt for temporary surety until permanent surety is issued by a surety company. The principal amount of the certificate, letter of credit, or temporary surety shall be the same as that required for a surety bond under this section, and the interest, if any, shall be made payable to the purchaser. The amount of the bond for a warehouseman shall be established by administrative regulation, but in no event, ***except as otherwise authorized by this section***, shall the sum be less than twenty-five cents (\$0.25) per bushel of the total maximum bushel capacity of the warehouse or ***twenty-five thousand dollars (\$25,000)***~~ten thousand dollars (\$10,000)~~, whichever is greater, ***not to exceed one million dollars (\$1,000,000)***.
- (2) The bond shall be conditioned on the faithful performance of duties as an operator and the full and unreserved compliance with the laws of this state and any administrative regulations promulgated by the department, so that the depositors holding warehouse receipts, contracts, or other documented evidence of stored grain may receive the benefit of the bond. The aggregate liability of the surety to all depositors shall in no event exceed the sum of the bond. Neither the issuance of warehouse receipts by a warehouseman to himself for grain owned in whole or in part by him, the commingling of grain owned by the warehouseman with grain stored for others, or any violation by a warehouseman of KRS 251.420 to 251.510 or of the administrative regulations promulgated by the department shall constitute a defense in any action brought upon any bond, and all such bonds shall so provide. Maximum capacity of a warehouse shall be determined by dividing the cubic volume of all bins by two thousand one hundred fifty and forty-two one hundredths (2,150.42) cubic inches. The bond shall be kept in force at all times while the operator is conducting a warehouse. Failure to keep the bond in force shall be cause for revocation of the license and subjects the warehouseman to the criminal penalty provided in KRS 251.990. Each bond shall contain a provision that it may not be canceled by either the surety or the principal except upon sixty (60) days' notice in writing to the department at its offices in Frankfort. The notice shall not affect the liability accrued or that which may accrue under the bond before the expiration of the sixty (60) days. The department may require additional bond where the assets of any warehouseman appear insufficient, when compared to his storage obligations, or to meet the bond requirements of the United States or any agency or corporation controlled by the United States when they have a contract for storage with the warehouseman. The additional bond shall be a dollar amount equal to the insufficiency. Failure to post an additional bond shall constitute grounds for suspension or revocation of a license issued under KRS 251.430.

➔Section 2. KRS 251.720 is amended to read as follows:

- (1) Any person engaged in the business of buying grain from producers for resale, milling, or processing shall first procure a license from the department as required by the board before transacting business. The license shall expire on June 30 and shall be renewed annually by August 1. The annual license fee shall be based on the total annual volume handled as follows:
 - (a) From zero to five thousand nine hundred ninety-nine (5,999) bushels, seventy-five dollars (\$75);

- (b) Six thousand (6,000) to ninety-nine thousand nine hundred ninety-nine (99,999) bushels, one hundred fifty dollars (\$150);
 - (c) One hundred thousand (100,000) to one million nine hundred ninety-nine thousand nine hundred ninety-nine (1,999,999) bushels, three hundred dollars (\$300);
 - (d) Two million (2,000,000) to five million nine hundred ninety-nine thousand nine hundred ninety-nine (5,999,999) bushels, four hundred fifty dollars (\$450);
 - (e) Six million (6,000,000) to nine million nine hundred ninety-nine thousand nine hundred ninety-nine (9,999,999) bushels, six hundred dollars (\$600); or
 - (f) Ten million (10,000,000) bushels and up, seven hundred fifty dollars (\$750).
- (2) The fee for each license shall be used for carrying out the provisions of this chapter.
 - (3) Every person licensed as a grain dealer shall file with the department a surety bond signed by the dealer as principal and by a responsible company authorized to execute surety bonds within the Commonwealth of Kentucky. A grain dealer may file with the department, in lieu of a surety bond, a certificate of deposit payable to the Commissioner, as trustee, or an irrevocable letter of credit on forms provided by the Commissioner. The principal amount of the certificate or letter of credit shall be the same as that required for a surety bond under this section, and the interest, if any, shall be made payable to the purchaser. The bond shall be a principal amount, to the nearest one thousand dollars (\$1,000), equal to ten percent (10%) of the aggregate dollar amount paid by the dealer to producers for grain purchased from them during the dealer's last completed fiscal year, or in the case of a dealer who has been engaged in business as a grain dealer for less than one (1) year or who has not previously been engaged as a grain dealer, ten percent (10%) of the estimated aggregate dollar amount to be paid by the dealer to producers for grain purchased from them during the next fiscal year. The bond shall not be less than twenty-five thousand dollars (\$25,000) *nor more than one million dollars (\$1,000,000)*, except as otherwise authorized by this section.
 - (4) The Commissioner shall, when he questions a grain dealer's ability to pay producers for grain purchased, or when he determines that the grain dealer does not have a sufficient net worth to meet his financial obligations, require a grain dealer to post an additional bond in a dollar amount equal to the insufficiency or shall require an additional certificate of deposit or an irrevocable letter of credit equal to the insufficiency, as deemed appropriate by the Commissioner. Failure to post the additional bond or certificate of deposit or an irrevocable letter of credit constitutes grounds for suspension or revocation of a license issued under this section.
 - (5) The bond or additional bond shall be made payable to the Commonwealth of Kentucky, with the Commissioner as trustee, and shall be conditioned on the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this section. It shall be for the use and benefit of any producer from whom the grain dealer may purchase grain and who is not paid by the grain dealer, and shall not be canceled, except upon at least sixty (60) days' notice in writing to the department. In no event shall the total aggregate liability of a surety exceed the face amount of its bond.
 - (6) An incidental grain dealer whose total purchases of grain from producers during any fiscal year do not exceed an aggregate dollar amount of two hundred fifty thousand dollars (\$250,000) may satisfy the bonding requirements of this section by filing with the department a bond, certificate of deposit, or an irrevocable letter of credit at the rate of one thousand dollars (\$1,000) for each ten thousand dollars (\$10,000) or fraction of ten thousand dollars (\$10,000) with a minimum bond, certificate of deposit, or an irrevocable letter of credit of five thousand dollars (\$5,000), and a current financial statement.
 - (7) Failure of a grain dealer to file a bond, certificate of deposit, or an irrevocable letter of credit and to keep the bond, certificate of deposit, or an irrevocable letter of credit in force or to maintain assets adequate to assure payment to producers for grain purchased from them shall be grounds for the suspension or revocation of a license issued under this section.
 - (8) When the Commissioner has determined that a grain dealer has defaulted payment to producers for grain which he has purchased from them, the Commissioner shall determine, through appropriate legal procedures, the producers and the amount of defaulted payment, and, as trustee of the bond, shall immediately after the determination call for the dealer's surety bond or bonds to be paid to him for distribution to those producers who should receive the benefits. Should the defaulted amount owed producers be less than the principal amount of the bond or bonds, then the surety shall be obligated to pay only the amount of the default.

- (9) Any grain dealer who is also in the business of storing grain and is a warehouseman as defined in KRS 251.610 may be exempted from the licensing fee and bonding requirements of KRS 251.451 as long as his storage capacity and storage obligations are considered in formulating his grain dealer bond requirement.
- (10) The department may refuse to issue a license to any applicant or revoke the existing license of one who furnishes false or misleading information or conceals a material fact on the application or other supporting documents, has been convicted of fraud or deceptive practice, is currently adjudicated incompetent by a court of competent jurisdiction, fails to maintain an asset to liability ratio of one to one (1:1) or fails to post additional surety to cover the deficiency, or for other good cause shown. Any individual denied a license for these reasons shall be given written notice within thirty (30) days of receipt of application. Any applicant who is denied a license or has had his license revoked and feels he has been aggrieved may request a hearing by writing to the Commissioner of Agriculture. Upon request, a hearing shall be conducted in accordance with KRS Chapter 13B.
- (11) All applications for a grain dealer license shall be accompanied by a current financial statement, or an irrevocable letter of credit from a financial institution.
- (12) (a) A grain dealer license shall become invalid upon the cessation of operations, change of partners in a partnership, change of corporate structure of a corporation, sale, or failure to remit license fees or fines. Licensed grain dealers shall immediately notify the department as to any changes and shall surrender the invalid license to the department. In the case of a successor, the successor shall apply for a new license.
- (b) If there is a cessation of operations or sale, the department, when deemed appropriate, may cause an audit and examination to be made. In this case, all records required in this chapter shall be available to the department until the department is satisfied that all obligations have been met.
- (13) In addition to the other provisions required by this section, any person who is engaged in the business of buying grain from producers and who purchases or takes title to grain valued at more than one million dollars (\$1,000,000) within a calendar month shall:
- (a) Notify the department, in writing, by submitting a detailed position report outlining the:
1. Type of grain;
 2. Quantity of each grain, in bushels;
 3. Disposition of the grain, whether paid, forward price contracted, or other; and
 4. Aggregate value of the grain purchased within the calendar month.
- The report shall be submitted to the department within ten (10) days following the close of the calendar month. Failure to submit the report may result in the revocation of the person's license;
- (b) Upon request of the department, submit a balance sheet on a form provided by the department, current through the end of the calendar month. Additional surety shall be required, on a dollar-for-dollar basis, if the total value of purchases of grain exceeds the combined value of the licensee's net worth and existing surety. If the licensee has an asset-to-liability ratio falling below one to one (1:1) or has outstanding payables to producers, other than legitimate forward price contracted grain, over thirty (30) days due and exceeding one million dollars (\$1,000,000), the licensee's license shall be suspended until the deficit is corrected; and
- (c) Be placed on an accelerated audit schedule as determined by the department. If, in the determination of the department, the licensee cannot meet a minimum asset-to-liability ratio of one-half to one (0.5:1), the department shall revoke the license. The department shall also place liens on licensee assets up to the amount of indebtedness to producers. If the department determines the licensee is insolvent, the Commissioner shall have the power to seize assets up to the value of the indebtedness to producers.

Signed by Governor March 15, 2011.

(HB 244)

AN ACT relating to property tax.

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

➔Section 1. KRS 132.810 is amended to read as follows:

- (1) To qualify under the homestead exemption provision of the Constitution, each person claiming the exemption shall file an application with the property valuation administrator of the county in which the applicant resides, on forms prescribed by the department~~of Revenue~~. The assessed value of property on which homestead exemption is claimed shall not be increased because of valuation expressed on the application form filed with the property valuation administrator, and whenever it becomes known that the valuation of property subject to the homestead tax exemption has been increased because of valuation expressed on the application form, adjustment shall be made the following year so that the total tax paid by the taxpayer is the same as if the increase had not been made.
- (2)
 - (a) Every person filing an application for exemption under the homestead exemption provision must be sixty-five (65) years of age or older during the year for which application is made or must have been classified as totally disabled under a program authorized or administered by an agency of the United States government or by any retirement system either within or without the Commonwealth of Kentucky on January 1 of the year in which application is made.
 - (b) Every person filing an application for exemption under the homestead exemption provision must own and maintain the property for which the exemption is sought as his personal residence.
 - (c) Every person filing an application for exemption under the disability provision of the homestead exemption must have received disability payments pursuant to the disability and must maintain the disability classification for the entirety of the particular taxation period.
 - (d)
 1. ~~{Except for a service-connected totally disabled veteran of the United States Armed Forces, }~~Every person filing for the homestead exemption who is totally disabled and is less than sixty-five (65) years of age must apply for the homestead exemption on an annual basis, ***except as provided by subparagraph 2. of this paragraph.***
 2.
 - a. ***A service-connected totally disabled veteran of the United States Armed Forces; or***
 - b. ***A totally and permanently disabled individual found disabled under:***
 - i. ***The applicable rules of the Social Security Administration;***
 - ii. ***The applicable rules of the Kentucky Retirement Systems; or***
 - iii. ***Any other provision of the Kentucky Revised Statutes;***

shall document the disability at the time of application for the homestead exemption and shall not be required to apply for the homestead exemption on an annual basis.

 - (e)
 1. Only one (1) exemption per residential unit shall be allowed even though the resident may be sixty-five (65) years of age and also totally disabled, and regardless of the number of residents sixty-five (65) years of age or older occupying the unit.~~{, but }~~
 2. The sixty-five hundred dollars (\$6,500) exemption ***provided in Section 170 of the Constitution of Kentucky*** shall be construed to mean sixty-five hundred dollars (\$6,500) in terms of the purchasing power of the dollar in 1972.
 3. Every two (2) years thereafter, if the cost of living index of the United States Department of Labor has changed as much as one percent (1%), the maximum exemption shall be adjusted accordingly.
 - (f) The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years. The exemption shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property.

- (g) A mobile home, recreational vehicle, when classified as real property as provided for in KRS 132.751, or a manufactured house shall qualify as a residential unit for purposes of the homestead exemption provision.
- (h) When title to property which is exempted, either in whole or in part, under the homestead exemption is transferred, the owner, administrator, executor, trustee, guardian, conservator, curator, or agent shall report such transfer to the property valuation administrator.
- (3) Notwithstanding any statutory provisions to the contrary, the provisions of this section shall apply to the assessment and taxation of property under the homestead exemption provision for state, county, city, or special district purposes.
- (4) ~~[The provisions of this section shall become effective with the 1982 taxable year and persons eligible for a homestead exemption under this section, who have not previously filed under the age provision of the homestead exemption, shall file applications by December 31 of the taxation period.]~~
 - (a) The homestead exemption for disabled persons shall terminate whenever those persons no longer meet the total disability classification at the end of the taxation period for which the homestead exemption has been granted. In no case shall the exemption be prorated for persons who maintained the total disability classification at the end of the taxation period.
 - (b) Any totally disabled person granted the homestead exemption under the disability provision shall report any change in disability classification to the property valuation administrator in the county in which the homestead exemption is authorized.
 - (c) Any person making application and qualifying for the homestead exemption before payment of his property tax bills for the year in question shall be entitled to a full or partial exoneration, as the case may be, of the property tax due to reflect the taxable assessment after allowance for the homestead exemption.
 - (d) Any person making application and qualifying for the homestead exemption after property tax bills have been paid shall be entitled to a refund of the property taxes applicable to the value of the homestead exemption.
- (5) In this section, "taxation period" means the period from January 1 through December 31 of the year in which application is made, unless the person maintaining the classification dies before December 31, in which case "taxation period" means the period from January 1 to the date of death.

➔Section 2. This Act applies to property assessed on or after January 1, 2012.

Signed by Governor March 15, 2011.

CHAPTER 23

(HB 256)

AN ACT relating to the Kentucky Housing Corporation and declaring an emergency.

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

➔Section 1. KRS 198A.010 is amended to read as follows:

As used in this chapter, the following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

- (1) ***"Area median income" means the greater of the statewide median family income or the median family income for the area in which the residence is located, as calculated each year by the federal Department of Housing and Urban Development for use in determining eligibility for housing programs;***
- (2) "Bonds" or "notes" means the bonds or bond anticipation notes authorized to be issued by the corporation under this chapter but shall not include any fund notes;
- (3)~~(2)~~ "Commonwealth" means the Commonwealth of Kentucky;

- (4)(3) "Corporation" means the Kentucky Housing Corporation created by this chapter;
- (5)(4) "Sponsors" means persons, corporations, associations, partnerships, or other entities, consumer housing cooperatives and limited dividend housing corporations, associations, partnerships, or other entities organized pursuant to the Kentucky Revised Statutes for the primary purpose of providing housing to persons and families of lower and moderate income, and shall include without limitation organizations engaged in the production, origination, and development of residential housing units intended to qualify for financial assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended;
- (6)(5) "Development costs" means the costs approved by the corporation as appropriate expenditures and credits which may be incurred by sponsors of residential housing, prior to commitment and initial advance of the proceeds of a construction loan or of a mortgage loan, including but not limited to:
- (a) Payments for options to purchase properties on the proposed residential housing site, deposits on contracts of purchase, or, with prior approval of the corporation, payments for the purchase of properties;
 - (b) Legal and organizational expenses, including payments of attorney's fees, project manager, clerical, and other staff salaries, office rent, and other incidental expenses;
 - (c) Payment of fees for preliminary feasibility studies and advances for planning, engineering, and architectural work;
 - (d) Expenses for tenant surveys and market analyses;
 - (e) Necessary application and other fees; and
 - (f) Credits allowed by the corporation to recognize the value of service provided at no cost by the sponsors, builders, and/or developers;
- (7)(6) "Fund notes" means the notes authorized to be issued by the corporation under the provisions of KRS 198A.080;
- (8)(7) "Governmental agency" means any city, county, or other political subdivision of the Commonwealth, the Commonwealth and any department, division, or public agency thereof, the federal government or any political subdivision of any other state, any public housing authority or any nonprofit corporation or other entity legally empowered to act on behalf of any of the foregoing to perform the duties of a public housing authority, or any two (2) or more thereof;
- (9)(8) "Housing development fund" means the housing development fund created by KRS 198A.080;
- (10)(9) "Insured construction loan" means a construction loan for land development or residential housing which is secured by a mortgage either insured or guaranteed by or for which there is a commitment to insure or guarantee by:
- (a) The United States of America or any agency or instrumentality thereof; or
 - (b) Any other entity which has been duly approved for the insuring of such loans by the United States of America or by the Commonwealth of Kentucky or any agency or instrumentality thereof;
- (11)(10) "Insured mortgage" or "insured mortgage loan" means a mortgage loan for land development for residential housing or for residential housing either made, insured, or guaranteed by or for which there is a commitment to make, insure, and guarantee by:
- (a) The United States of America or any agency or instrumentality thereof; or
 - (b) Any other entity, including private mortgage insurance, which has been duly approved for the insuring of such loans by the United States of America or by the Commonwealth or any agency or instrumentality thereof and shall also refer to and mean any loan for residential housing not secured by mortgage which is insured or guaranteed to at least eighty-five percent (85%) of its principal amount by the United States of America or any agency or instrumentality thereof;
- (12)(11) "Land development" means the process of acquiring land primarily for residential housing construction for persons and families of lower and moderate income and making, installing, or constructing nonresidential housing improvements, including water, sewer, and other utilities, roads, streets, curbs, gutters, sidewalks, storm drainage facilities, and other installations or works, whether on or off the site, which the corporation deems necessary or desirable to prepare the land primarily for residential housing construction;

- ~~(13)~~~~(12)~~ "Obligations" means any bonds, bond anticipation notes, or fund notes authorized to be issued by the corporation under the provisions of this chapter;
- ~~(14)~~~~(13)~~ "Persons and families of lower and moderate income" shall include only those individuals whose family income combined does not exceed the income requirements defined under Section 143 of the Internal Revenue Code of 1986, as amended;
- ~~(15)~~~~(14)~~ "Residential housing" means a specific work or improvement undertaken primarily to provide dwelling accommodations for persons and families of lower and moderate income, including the acquisition, construction, or rehabilitation of land, buildings, and improvements, and other nonhousing facilities as may be incidental; *and*
- ~~(16)~~~~(15)~~ "Tenant programs and services" means services and activities for persons and families living in residential housing, including the following:
- (a) Counseling on household management, housekeeping, budgeting, and money management;
 - (b) Child care and similar matters;
 - (c) Access to available community services related to job training and placement, education, health, welfare, and other community services;
 - (d) Guard and other matters related to the physical security of the housing residents;
 - (e) Effective management-tenant relations, including tenant participation in all aspects of housing administration, management, and maintenance;
 - (f) Physical improvements of the housing, including buildings, recreational and community facilities, safety measures, and removal of code violations;
 - (g) Advisory services for tenants in the creation of tenant organizations which will assume a meaningful and responsible role in the planning and carrying out of housing affairs; and
 - (h) Procedures whereby tenants, either individually or in a group, may be given a hearing on questions relating to management policies and practices, either in general or in relation to an individual or family.

➔Section 2 KRS 198A.040 is amended to read as follows:

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

- (1) To make or participate in the making of insured construction loans to sponsors of land development or residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that construction loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (2) To make or participate in the making of insured mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (3) To purchase or participate in the purchase of insured mortgage loans made to sponsors of residential housing or to persons of lower and moderate income for residential housing; provided, however, that any such purchase shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (4) To make temporary loans from the housing development fund;
- (5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness;
- (6) To acquire real property, or any interest therein, by purchase, foreclosure, lease, sublease, or otherwise; to own, manage, operate, hold, clear, improve, and rehabilitate such real property; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purpose of the Kentucky Housing Corporation;
- (7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction, land development, mortgage, or temporary loan of any type permitted by this chapter;

- (8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;
- (9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract, or agreement of any kind to which the corporation is a party;
- (10) To acquire, establish, operate, lease, and sublease residential housing for persons and families of lower and moderate income and to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing and where no local housing authorities or other organizations exist to fill such need;
- (11) To include in any borrowing such amounts as may be deemed necessary by the corporation to pay financing charges, interest on the obligations for a period not exceeding two (2) years from their date, consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;
- (12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;
- (13) To provide technical and advisory services to sponsors of residential housing and to residents and potential residents thereof, including but not limited to housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;
- (14) To promote research and development in scientific methods of constructing low cost residential housing of high durability;
- (15) To encourage community organizations to participate in residential housing development;
- (16) To make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, or other organization or entity, necessary to accomplish the purposes of this chapter;
- (17) To accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;
- (18) To sue and be sued in its own name and plead and be impleaded;
- (19) To maintain an office in the city of Frankfort and at such other place or places as it may determine;
- (20) To adopt an official seal and alter the same at pleasure;
- (21) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;
- (22) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the corporation and to fix and pay their compensation from funds available to the corporation therefor, provided that any personal service contracts entered into shall be subject to review by the Government Contract Review Committee of the Legislative Research Commission;
- (23) To invest any funds held in reserve or in sinking fund accounts or any moneys not required for immediate disbursement in obligations guaranteed by the Commonwealth, the United States, or their agencies or instrumentalities; provided, however, that the return on such investments shall not violate any rulings of the Internal Revenue Service regarding the investment of the proceeds of any federally tax exempt bond issue;
- (24) To make or participate in the making of rehabilitation loans to the sponsors or owners of residential housing; provided, however, that any such rehabilitation loan shall be made only upon the determination by the corporation that the rehabilitation loan was not otherwise available wholly or in part from private lenders upon reasonably equivalent terms and conditions;
- (25) To insure or reinsure construction, mortgage, and rehabilitation loans on residential housing; provided, however, that any such insurance, reinsurance, or waiver shall be made only upon the determination by the corporation:

- (a) That such insurance or reinsurance is not otherwise available wholly or in part from private insurers upon reasonably equivalent terms and conditions; and
 - (b) That such loan is a reasonably sound business investment; and provided further that insurance may be waived only where the corporation finds that the amount of the loan does not exceed eighty-five percent (85%) of the development costs, or eighty-five percent (85%) of the value of the property secured by the mortgage as determined by at least two (2) appraisers who are independent of the sponsors, builders, and developers;
- (26) To make grants from appropriated funds, agency and trust funds, and any other funds from any source available to the corporation, to sponsors, municipalities, local housing authorities, and to owners of residential housing for the development, construction, rehabilitation, or maintenance of residential housing and such facilities related thereto as corporation shall deem important for a proper living environment, all on such terms and conditions as may be deemed appropriate by the corporation;
- (27) To make periodic grants to reduce principal and interest payments on mortgages or rentals payable by persons and families of lower and moderate income;
- (28) (a) To make a grant to reduce principal and interest payments on a mortgage or a rental payable by a regular member of the United States Armed Forces who names Kentucky as home of record for military purposes, during that member's deployment on active duty outside the United States, or payable by a member of a state National Guard or a Reserve component who names Kentucky as home of record for military purposes, during that member's federal active duty. To qualify for a grant, a member shall meet reasonable standards established by the corporation, including having family income equal to or less than two hundred percent (200%) of the state or area median income; and
- (b) To provide a member identified in paragraph (a) of this subsection and that member's Kentucky resident spouse with the educational, technical, and ombudsman services that are necessary to maintain a mortgage during that member's federal active duty;~~and~~
- (29) To establish a program to assist persons and families of lower and moderate income to help defray the cost of assessment and decontamination services required under KRS 224.01-410. To qualify for the program, a person shall meet reasonable standards established by the corporation. A person shall not be eligible for the program if convicted of a felony or found by the corporation to be responsible for contamination of the relevant property through methamphetamine production. The corporation shall report on the establishment and use of this program to the Legislative Research Commission by October 1 of each year; **and**
- (30) ***To establish single family mortgage lending programs outside of the mortgage revenue bond funds. To qualify for these programs, a person shall meet reasonable standards established by the corporation and shall have a combined family income that is equal to or less than one hundred seventy-five percent (175%) of the greater of the state or area median income.***

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

➔Section 3 KRS 198A.065 is amended to read as follows:

- (1) The General Assembly of the Commonwealth of Kentucky hereby finds and determines that in order to provide for the greatest possible participation by the corporation in programs for the insurance or guarantee of mortgage loans for the construction or rehabilitation of residential housing projects by the United States of America, or an agency or instrumentality thereof; or by any other entity, including private mortgage insurance, which has been duly approved for these loans by the United States of America or by the Commonwealth or any agency or instrumentality thereof, if the criteria for state approval are specified in administrative regulations promulgated under KRS Chapter 13A by the state agency granting the approval; or for mortgage loans that are insured or reinsured by the corporation under KRS 198A.040(25), it is appropriate and proper that there be provision by which the maximum amounts of income for persons and families of lower and moderate income established by this chapter may be waived in certain circumstances so that the corporation may insure or reinsure mortgage loans or qualify for insurance or guarantee of mortgage loans.
- (2) Notwithstanding the requirements of KRS 198A.010(~~14~~)(~~13~~), 198A.060(1), or any other provisions of law to the contrary, the corporation may, by action of its board of directors, suspend or terminate any income-eligibility requirements established by this chapter, subject to subsection (3) of this section, upon written request of any private mortgage insurance company or any agency or instrumentality of the United States of America which has insured or guaranteed mortgage loans made by the corporation for the construction or

rehabilitation of a specific residential housing project or for any mortgage loan insured or reinsured by the corporation under KRS 198A.040(25), upon a finding by the board of directors of the existence of one (1) or more of the following conditions with respect to that project:

- (a) Serious rental or occupancy problems which threaten the financial stability of the project, defined as a project which cannot meet its debt service obligation from available rental income; or
 - (b) A default as to one (1) or more of the terms of the mortgage loan; or
 - (c) A foreclosure of the mortgage loan; or
 - (d) A conveyance of real estate by a deed in lieu of foreclosure.
- (3) If the corporation suspends or terminates income eligibility requirements relating to a project financed by a loan which is insured or guaranteed by a private mortgage insurance company or the corporation, the corporation shall file with the Legislative Research Commission notice of, and an explanation of the need for, the suspension or termination. The Commission shall refer the notice and explanation to the appropriate interim joint subcommittee for review. The corporation shall also provide to the reviewing subcommittee information relating to the management of, and plans for, the project.

➔Section 4 KRS 198A.090 is amended to read as follows:

- (1) Except as provided in subsection (6) of this section, the corporation may provide for the issuance, at one (1) time or from time to time, of bonds of the corporation if the cumulative outstanding indebtedness of the corporation's bonds does not exceed five billion dollars (\$5,000,000,000), in order to carry out and effectuate its corporate purposes and powers.
- (2) In anticipation of the issuance of bonds, the corporation may provide for the issuance, at one (1) time or from time to time, of bond anticipation notes. The principal of and the interest on the bonds or notes shall be payable solely from the funds provided for the payment. Notes may be made payable from the proceeds of bonds or renewal notes or, if bond or renewal note proceeds are not available, notes may be paid from any available revenues or assets of the corporation.
- (3) The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the corporation at a price and under terms and conditions determined by the corporation. Bonds or notes shall bear interest at a rate determined by the corporation. Notes shall mature at a time not exceeding ten (10) years from their date and bonds shall mature at a time not exceeding forty (40) years from their date, as determined by the corporation. The corporation shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination and the place of payment of principal and interest, which may be any bank or trust company within or without the Commonwealth. If an officer whose signature or a facsimile of whose signature appears on any bonds, notes, or coupons attached to them shall cease to be an officer before the delivery thereof, the signature or facsimile shall be valid and sufficient for all purposes as if he had remained in office until delivery. The corporation may provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the corporation may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Upon the approval of a resolution of the corporation, authorizing the sale of its bonds or notes, the bonds or notes may be sold in a manner, either at public or private sale, and for a price the corporation shall determine to be for the best interest of the corporation and best effectuate the purposes of this chapter, if the sale is approved by the corporation.
- (4) The proceeds of any bonds or notes shall be used solely for the purposes for which they are issued and shall be disbursed in the manner and under the restrictions, if any, the corporation may provide in the resolution authorizing the issuance of bonds or notes or in the trust agreement securing the same.
- (5) Prior to the preparation of definitive bonds, the corporation may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The corporation may also provide for the replacement of any bonds or notes which become mutilated, destroyed, or lost.
- (6) (a) Prior to the issuance of any bonds or notes that are not secured by:
 - 1. Direct obligations or obligations guaranteed by the United States of America; or

2. Obligations of federal agencies to the extent that the obligations are backed by the full faith and credit of the United States of America; or
3. Repurchase agreements with any primary dealer in securities fully secured by obligations described in subparagraphs 1. and 2. of this paragraph if the market value of the security is maintained at one hundred three percent (103%) of the principal amount of the repurchase agreement and the security is held by an independent third-party custodian financial institution; or
4. Insured or guaranteed construction loans or mortgage loans as defined by KRS 198A.010~~[(9) and (10)]~~ **and (11)**; or
5. Guaranty insurance policies which guarantee payment of the principal and interest on the bonds issued by a nationally recognized entity authorized to issue guarantees and rated in the highest rating category by at least one (1) of the nationally recognized rating services;

the corporation shall obtain the approval of the issuance from the General Assembly in accordance with the provisions of KRS 56.870(1), unless the provisions of paragraph (b) of this subsection apply. This requirement shall not apply to refunding bond or note issues which are for the purpose of achieving debt service savings and which do not extend the term of the refunded bonds or notes.

- (b) The corporation may provide for the issuance, at any one (1) time or from time to time, of bonds which do not satisfy the requirements of paragraph (a) of this subsection without approval of the issuance by the General Assembly if the cumulative outstanding indebtedness of the corporation that does not meet the requirements of paragraph (a) of this subsection does not exceed thirty million dollars (\$30,000,000).
 - (c) The corporation shall annually report on its housing and bonding programs to the Interim Joint Committee on Appropriations and Revenue.
- (7) The Finance and Administration Cabinet shall provide to the corporation fiscal consultant services regarding revenue bond management as necessary.

➔Section 5 Whereas in order to assist the Kentucky Housing Corporation to provide more viable home mortgage options to a greater number of Kentuckians as soon as possible, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 15, 2011.

CHAPTER 24

(HB 259)

AN ACT relating to economic development.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 7 of this Act, unless the context requires otherwise:

- (1) *"Cabinet" means the Energy and Environment Cabinet;*
- (2) *"Carbon dioxide" means anthropogenic carbon dioxide of sufficient purity and quality as to not compromise the safety and efficiency of the reservoir to securely contain it;*
- (3) *"Carbon injection well" means a well drilled or converted and operated for the purpose of injecting carbon dioxide into subsurface rock formations for geologic storage;*
- (4) *"Division" means the Division of Oil and Gas within the Department for Natural Resources;*
- (5) *"Geologic storage" means permanent or temporary underground storage of carbon dioxide in a reservoir;*
- (6) *"Permeability" means a measure of the capacity of reservoir strata to accept and transmit fluids, including carbon dioxide;*

- (7) *"Pore space" means the voids in subsurface reservoir strata suitable to contain stored carbon dioxide;*
- (8) *"Pore space owner" means the surface owner unless the pore space has been severed from the surface estate, in which case the pore space owner shall include all persons reasonably known to own an interest in the pore space;*
- (9) *"Reservoir" means a subsurface volume of rock with sufficient porosity and permeability to be suitable for the injection and storage of carbon dioxide, and that has adequate seals to prevent leakage of carbon dioxide;*
- (10) *"Seal" means a subsurface stratum or formation sufficiently impermeable to prevent vertical or lateral movement of injected carbon dioxide out of the storage reservoir;*
- (11) *"Secretary" means the secretary of the Energy and Environment Cabinet;*
- (12) *"Storage facility" means the underground reservoir, underground equipment, and surface buildings and equipment utilized in the storage operation, excluding pipelines used to transport the carbon dioxide to the storage and injection site. The reservoir component of the storage facility shall include a necessary and reasonable areal buffer and subsurface monitoring zones as required by the permit issued by the USEPA for the demonstration carbon injection well;*
- (13) *"Storage operator" means any person holding a permit from the USEPA to operate a storage facility; and*
- (14) *"USEPA" means the United States Environmental Protection Agency.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds and declares that:

- (1) *The geologic storage of carbon dioxide will benefit the environment and the citizens of the Commonwealth;*
- (2) *It is vital that long-term geologic storage of carbon dioxide in the Commonwealth be accomplished without disturbance of surface, mineral, or water resources and that public safety is ensured;*
- (3) *Carbon dioxide has current and potential value and its geologic storage may allow for its orderly withdrawal as necessary for commercial, industrial, or other uses, including for enhanced oil and gas recovery;*
- (4) *Development and deployment of carbon capture and storage technology in the Commonwealth will allow industries to utilize diverse fuel sources, create jobs, contribute to state and local tax bases, and enable Kentucky industries to remain competitive in the global economy; and*
- (5) *Attracting demonstration or pilot scale projects that incorporate carbon storage or projects that integrate carbon capture and storage is an economic development priority that will create jobs for Kentuckians and favorably position the Commonwealth for future leadership and growth in the field of carbon storage.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *The division is authorized to seek primary jurisdiction and authority over matters relating to the geologic storage of carbon dioxide in the Commonwealth once these programs have been developed at the federal level.*
- (2) *The cabinet shall seek one (1) to five (5) demonstration projects for location in the Commonwealth. Projects shall be approved by the secretary or a designee. To be approved, a project shall inject carbon dioxide into pore space that contains no economically recoverable minerals at the time of the injection and shall:*
 - (a) *Incorporate carbon storage or integrate carbon capture and storage technology; or*
 - (b) *Be a carbon capture and storage project that is associated with a project that has otherwise qualified and been approved for incentives under KRS 154.27-010 to 154.27-090, the Incentives for Energy Independence Act.*
- (3) *Within eighteen (18) months of obtaining approval of a demonstration project from the cabinet, the applicant shall file the necessary application for a Class V well with Region 4, U.S. Environmental Protection Agency (USEPA). The applicant must begin work on the demonstration project within eighteen (18) months of the date the Class V well permit is granted by the USEPA. The applicant may request an extension of time from the cabinet. If the requirements of this subsection have not been met within the time allowed and the cabinet has not granted an extension of time, the cabinet may revoke its approval of the demonstration project.*

- (4) *The cabinet shall provide testimony on the program's development annually, beginning in 2012, at meetings of the Interim Joint Committee on Natural Resources and Environment and the Special Subcommittee on Energy unless the chairs of the committees direct otherwise. The testimony shall include specific recommendations for legislative action, including necessary appropriations.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *The storage operator shall negotiate with the pore space owners and acquire rights needed to access the pore space.*
- (2) *If, after good-faith negotiation, the storage operator cannot locate or cannot reach an agreement with all necessary pore space owners, but has secured written consent or agreement from the owners of at least fifty-one percent (51%) of the interest in the pore space for the storage facility, the division shall order the pooling of all pore space included within the proposed storage facility if the division:*
- (a) *Holds a hearing after notice pursuant to KRS Chapter 13B; and*
- (b) *Finds that the requirements of this section and Section 5 of this Act have been met.*

For the purposes of this section, any unknown or nonlocatable owners shall be deemed to have consented or agreed to the pooling, provided that the storage operator has complied with the publication requirements of Section 5 of this Act.

- (3) *A carbon injection well shall be exempt from the provisions of KRS 353.651 and 353.652 and 805 KAR 1:100, regardless of the depth of the well.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *The storage operator shall provide a list to the division of all persons reasonably known to own an interest in pore space proposed to be pooled in an application to the division for a pooling order. A pooling order shall be made only after the division provides notice to all pore space owners proposed to be pooled and after a hearing has been held.*
- (2) *The division shall set and collect a fee adequate to pay expenses associated with the conduct of administrative hearings for pooling of pore space.*
- (3) *If the proposed pooling order concerns pore space with unknown or nonlocatable owners, the storage operator shall publish one (1) notice in the newspaper of the largest circulation in each county in which the pore space is located. The notice shall appear at least twenty (20) days prior to the hearing on the application for the pooling order. The notice shall:*
- (a) *State that an application for a pooling order has been filed with the Division of Oil and Gas in the Department for Natural Resources;*
- (b) *Describe the pore space proposed to be pooled;*
- (c) *In the case of an unknown pore space owner, indicate the name of the last known owner;*
- (d) *In the case of a nonlocatable pore space owner, identify the owner and the owner's last known address;*
- (e) *State that any person claiming an interest in the pore space proposed to be pooled should notify the director of the division and the storage operator at the published address within twenty (20) days of the publication date; and*
- (f) *Give the date, time, and location of the hearing.*
- (4) *A pooling order shall authorize the long-term storage of carbon dioxide beneath the tract or portion. The order shall also authorize, where necessary, the location of carbon injection wells, outbuildings, roads, monitoring equipment, and access to them. The pooling order shall identify the compensation to be paid to unknown, nonlocatable, and nonconsenting pore space owners and the basis for valuation of the pooled interest.*
- (5) *A certified copy of any pooling order shall be entitled to be recorded in the office of the county clerk of the county or counties in which all or any portion of the pooled tract is located. Recordation of the order shall be notice of the order to all persons.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon completion of active injection, the storage operator shall notify the division of the completion and close and plug the carbon injection wells as required by the permit issued by USEPA for the demonstration carbon injection wells.*
- (2) *The storage operator shall monitor the storage facility for leakage and migration for the time period and by the methods required by the permit for the carbon injection wells after completion of active injection and plugging of the carbon injection wells.*
- (3) *The ownership and liability for a storage facility may be transferred to:*
 - (a) *The federal government if a federal program exists; or*
 - (b) *The Finance and Administration Cabinet pursuant to subsections (4) to (6) of this section if a federal program does not exist.*
- (4) *If no federal program exists, and the storage operator seeks to transfer the ownership and liability of a storage facility to the Finance and Administration Cabinet, after completion of the required period of monitoring following completion and plugging, the storage operator shall notify the division of its intent to transfer ownership of the stored carbon dioxide and associated liability to the Finance and Administration Cabinet. The storage operator shall provide evidence to the division of the satisfactory completion of all permit conditions pertaining to the demonstration carbon injection well. Upon receipt and evaluation of satisfactory evidence, the division shall forward the evidence to the Finance and Administration Cabinet with a recommendation for the transfer of ownership of the stored carbon dioxide and liability. The storage operator may then apply to the Finance and Administration Cabinet for the transfer of ownership and liability for the stored carbon dioxide.*
- (5) *Ownership of and liability for the stored carbon dioxide shall remain with the storage operator until the transfer is completed.*
- (6) *Upon receipt of the evidence and recommendation of the division and the application for transfer by the storage operator, the Finance and Administration Cabinet shall take appropriate action to effect a transfer.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *The secretary of the cabinet shall take affirmative steps to initiate discussions with surrounding states to develop a coordinated and unified approach to subsurface migration of stored carbon dioxide and may enter into reciprocal agreements with states that share a border with Kentucky that:*
 - (a) *Affirm that accidental or unforeseen migration of subsurface stored carbon dioxide across state lines shall not be treated by the states as trespass;*
 - (b) *Provide a mechanism for resolution and compensation for unforeseen migration incidents, including necessary monitoring arrangements to track or arrest future migration; or*
 - (c) *Establish a process whereby reservoirs that cross state lines can be created where it is geologically and mutually advantageous to do so.*
- (2) *The cabinet shall report to the Governor and the Legislative Research Commission on the progress of discussions held under this section. The report shall be presented in writing and through testimony to the Special Subcommittee on Energy and the Interim Joint Committee on Natural Resources and the Environment annually unless the chairs of these committees direct otherwise. Reporting shall begin in 2012 and continue until the cabinet is satisfied that all necessary agreements have been reached and has reported that conclusion.*

Signed by Governor March 15, 2011.

CHAPTER 25

(HB 272)

AN ACT relating to peace officer certification and declaring an emergency.

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

➔Section 1. KRS 15.400 is amended to read as follows:

- (1) The effective date of KRS 15.380 to 15.404 shall be December 1, 1998. All peace officers employed as of December 1, 1998, shall be deemed to have met all the requirements of KRS 15.380 to 15.404 and shall be granted certified status as long as they:
 - (a) Remain in continuous employment of the agency by which they were employed as of December 1, 1998, and are employed within ***one hundred (100)***~~sixty (60)~~ days by another law enforcement agency subject to the provisions of KRS 15.380 to 15.404;
 - (b) ***Retired from employment with certified status on or after July 1, 2008, and are reemployed no later than one hundred (100) days from the effective date of this Act by a law enforcement agency subject to KRS 15.380 to 15.404; or***
 - (c)~~(b)~~ ~~(Shall)~~ Have successfully completed an approved basic training course approved and recognized by the Kentucky Law Enforcement Council pursuant to KRS 15.440(1)(d) when seeking employment with another law enforcement agency.
- (2) Any peace officers employed after December 1, 1998, shall comply with all minimum standards specified in KRS 15.380 to 15.404. Persons newly employed or appointed after December 1, 1998, shall have one (1) year within which to gain certified status or they shall lose their law enforcement powers.
- (3) The Open Records Act notwithstanding, the person's home address, telephone number, date of birth, Social Security number, background investigation, medical examination, psychological examination, and polygraph examination conducted for any person seeking certification pursuant to KRS 15.380 to 15.404 shall not be subject to disclosure.

➔Section 2. Whereas it is increasingly difficult to find experienced certified police officers, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon it otherwise becoming a law.

Signed by Governor March 15, 2011.

CHAPTER 26

(HB 302)

AN ACT relating to historic military events and declaring an emergency.

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

➔Section 1. KRS 38.440 is amended to read as follows:

- (1) ***Except as permitted in subsections (2), (3), and (4),*** no persons other than the Kentucky National Guard or Kentucky active militia shall associate together as an armed company or drill or parade with arms without permission from the Governor.
- (2) ~~Benevolent and social organizations may wear swords and~~ Students in educational institutions chartered under the laws of Kentucky, in which military science is part of the course of instruction, may drill and parade with arms in public under the supervision of their instructors.
- (3) ***Veterans' service organizations may wear swords and may drill or parade with arms in public.***
- (4) ***People participating in the reenactment of a historical military event from the French and Indian War, Revolutionary War, War of 1812, United States Civil War, or Spanish-American War may wear swords and may drill or parade with arms in public.***

➔Section 2. Whereas activities planned by the Commission on the War of 1812 Bicentennial will commence in coming months, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 15, 2011.

CHAPTER 27**(HB 303)**

AN ACT relating to the veterans' program trust fund.

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

➔Section 1. KRS 40.460 is amended to read as follows:

- (1) All applications for the bonus shall be submitted to the adjutant general, Commonwealth of Kentucky, in writing, upon forms made available for that purpose, and shall be accompanied by the documentary evidence prescribed by appropriate administrative regulations. Every application shall be certified under the penalties of perjury, and shall contain representations of the claimant or, if he shall have been adjudged incompetent, or be an infant, of his committee or guardian, that:
 - (a) The facts therein stated are true to the best of his knowledge and belief;
 - (b) All documents submitted in support of the application are believed by the claimant to be genuine originals or copies, as the case may be, and that the claimant has no knowledge that the document has been superseded or cancelled;
 - (c) The claimant has not received from another state a bonus or compensation of a like nature as provided by KRS 40.410 to 40.560;
 - (d) The claimant has not received the Kentucky veterans' bonus provided under KRS 40.005 to 40.230 and 40.990;
 - (e) The claimant has neither paid nor agreed to pay, directly or indirectly, any compensation for assistance received in preparing and tendering the application; and
 - (f) The claimant has knowledge of the fine and forfeiture provisions of KRS 40.410 to 40.560;
- (2) The application form shall contain provision for, and each claimant shall elect, one (1) of the following choices:
 - (a) The claimant is eligible for and desires to receive a bonus payment; or
 - (b) The claimant is eligible for a bonus payment but requests that his payment be deposited into a veterans' program trust fund, which is hereby established, the proceeds and interest therefrom to be used for veterans' programs ~~administered by the Department of Veterans' Affairs~~.

Signed by Governor March 15, 2011.

CHAPTER 28**(HB 317)**

AN ACT relating to highway rest areas.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 176 IS CREATED TO READ AS FOLLOWS:

The Department of Highways shall display the following flags at each rest area along the Commonwealth's interstate and turnpike system:

- (1) ***The flag of the United States of America, to honor our country and the democratic ideals of our forefathers;***
- (2) ***The flag of the Commonwealth of Kentucky, as specified by KRS 2.030, to honor the Commonwealth and its citizens; and***

- (3) *The flag of the National League of Families of American Prisoners of War and Missing in Southeast Asia, the black and white banner commonly known as the POW/MIA flag, which symbolizes America's missing service members and our unwavering determination to account for them.*

Signed by Governor March 15, 2011.

CHAPTER 29

(HB 331)

AN ACT relating to business organizations.

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

➔SECTION 1. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *An entity or foreign entity shall be in good standing in order for documents delivered by or on behalf of the entity or foreign entity to be filed by the Secretary of State.*
- (2) *Subsection (1) of this section shall not apply to:*
 - (a) *An application to reinstate subsequent to administrative dissolution;*
 - (b) *A permitted revocation of a voluntary dissolution;*
 - (c) *An application for a certificate of authority filed on behalf of a foreign entity whose prior certificate of authority was revoked; or*
 - (d) *A permitted amendment of the organizational filing of an entity whose period of duration has expired.*
- (3) *Notwithstanding that an entity or foreign entity is not in good standing, the registered agent may deliver for filing and the Secretary of State may file:*
 - (a) *The resignation of the registered agent, the discontinuance of the registered office, or both; or*
 - (b) *A change of registered office filed by the registered agent.*

➔Section 2. KRS 14.025 is amended to read as follows:

- (1) The Department of State shall be divided into two (2) divisions, each headed by a director appointed by the Secretary of State pursuant to KRS 12.050.
- (2) The Division of Administration shall be responsible for fiscal and personnel matters, *elections*, public documents, legal affairs and special projects and commissions.
- (3) The Division of ***Business Filings***:~~Corporations~~
 - (a) Shall be responsible for all functions of the department relating to *business filings, including business entity filings and filings under the Uniform Commercial Code; and*
 - (b) *May promulgate administrative regulations in accordance with KRS Chapter 13A in furtherance of its responsibilities*~~corporations~~.

➔Section 3. KRS 14.105 is amended to read as follows:

- (1) The Secretary of State may accept electronic signatures to meet the filing requirements for a:
 - (a) Corporation as required in KRS Chapter 271B;
 - (b) Nonprofit corporation as required in KRS Chapter 273;
 - (c) Professional service corporation as required in KRS Chapter 274;
 - (d) Limited liability company as required in KRS Chapter 275;
 - (e) Partnership as required in KRS Chapter 362;

- (f) Partnership as required in Subchapter 1 of KRS Chapter 362;
 - (g) Limited partnership as required in Subchapter 2 of KRS Chapter 362;
 - (h) Cooperative corporations and associations as required in KRS Chapter 272;
 - (i) Business trust as required in KRS Chapter 386;
 - (j) Rural electric and rural telephone cooperative corporation as required in KRS Chapter 279; ~~and~~
 - (k) Assumed name filing under KRS Chapter 365; *and*
 - (l) Filing under KRS Chapter 14A.*
- (2) The electronic signature shall satisfy the requirements set forth in KRS 369.101 to 369.120.

➔Section 4. KRS 14A.1-070 is amended to read as follows:

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

- (1) "Business" includes every trade, occupation, and profession;
- (2) "Corporation" means a business corporation governed as to its internal affairs by KRS Chapter 271B, a cooperative or association governed as to its internal affairs by KRS Chapter 272, a nonprofit corporation governed as to its internal affairs by KRS Chapter 273, and a rural electric or rural telephone cooperative corporation governed as to its internal affairs by KRS Chapter 279;
- (3) "Business trust" means a business trust governed as to its internal affairs by KRS Chapter 386;
- (4) "Debtor in bankruptcy" means a person who is the subject of:
 - (a) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - (b) A comparable order under federal, state, or foreign law governing insolvency;
- (5) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;
- (6) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;
- (7) "Entity" means a corporation, business trust, partnership, limited partnership, or limited liability company, governed as to its internal affairs by the laws of the Commonwealth of Kentucky;
- (8) "Foreign business trust" means a business or statutory trust not governed as to its internal affairs by KRS Chapter 386;
- (9) "Foreign corporation" means a corporation as defined in subsection (2) of this section that is not:
 - (a) Organized pursuant to the laws of the Commonwealth of Kentucky; or
 - (b) As to its internal affairs, governed by the laws of the Commonwealth of Kentucky;
- (10) "Foreign entity" means a corporation, not-for-profit corporation, cooperative, association, business or statutory trust, partnership, limited partnership, or limited liability company not:
 - (a) Organized pursuant to the laws of the Commonwealth of Kentucky; or
 - (b) As to its internal affairs, governed by the laws of the Commonwealth of Kentucky;
- (11) "Foreign limited liability partnership" means a partnership that:
 - (a) Is formed under laws other than the laws of this Commonwealth; and
 - (b) Has the status of a limited liability partnership under those laws;
- (12) "Foreign professional service corporation" has the same meaning as in KRS 274.005;
- (13) "Foreign rural electric cooperative" means a rural electric cooperative organized otherwise than under KRS 279.010 to 279.210;

- (14) "Foreign rural telephone cooperative" means a rural telephone cooperative organized otherwise than under KRS 279.310 to 279.990 excepting 279.570;
- (15) ***"Good standing" means that all annual reports which are required to be received from an entity or foreign entity have been delivered to and filed by the Secretary of State, that all other lawfully required statutory documentation has been received and filed, and that all fees, costs, and expenses, including penalties incurred in connection therewith, have been paid;***
- (16) "Limited liability company" has the same meaning as in KRS 275.015;
- (17)~~(16)~~ "Limited liability partnership" means a partnership that has filed a statement of qualification under KRS 362.1-1001 or a registration as a registered limited liability partnership under KRS 362.555 and does not have a similar statement of registration in effect in any other jurisdiction;
- (18)~~(17)~~ "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity or foreign entity;
- (19)~~(18)~~ "Nonprofit corporation," other than in the term "foreign nonprofit corporation," means a nonprofit corporation incorporated pursuant to and governed as to its internal affairs by KRS Chapter 273 or predecessor law;
- (20)~~(19)~~ "Organic act" means the law of a state or other jurisdiction governing the organization and internal affairs of an entity or foreign entity;
- (21)~~(20)~~ "Organized" means organized, incorporated, or formed;
- (22)~~(21)~~ "Organizational filing" means a filing made with the Secretary of State as a precondition to the formation, organization, or incorporation of an entity, including articles of incorporation, articles of organization, and certificates of limited partnership. A statement of qualification filed pursuant to KRS 362.1-1101 or a registration as a limited liability partnership filed pursuant to KRS 362.555 is not an organizational filing;
- (23)~~(22)~~ "Partnership" means an association of two (2) or more persons to carry on as co-owners a business for profit formed under KRS 362.1-202, predecessor law, or comparable law of another jurisdiction;
- (24)~~(23)~~ "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement;
- (25)~~(24)~~ "Person" means an individual, an entity, a foreign entity, or any other legal or commercial entity;
- (26)~~(25)~~ "Principal office" means the address required by this chapter or the organic act to be of record with the Secretary of State as the principal office, the principal place of business address, the designated office of a limited partnership, or the chief executive office of a limited liability partnership;
- (27)~~(26)~~ "Professional service corporation" has the same meaning as in KRS 274.005;
- (28)~~(27)~~ "Professional services" means the personal services rendered by physicians, osteopaths, optometrists, podiatrists, chiropractors, dentists, nurses, pharmacists, psychologists, occupational therapists, veterinarians, engineers, architects, landscape architects, certified public accountants, public accountants, physical therapists, and attorneys;
- (29)~~(28)~~ "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein;
- (30)~~(29)~~ "Qualified person" has the same meaning as in KRS 274.005;
- (31)~~(30)~~ "Registered agent" means a registered agent appointed in accordance with KRS 14A.4-010 or predecessor law, and is synonymous with agent for service of process;
- (32)~~(31)~~ "Regulatory board" means the agency that is charged by law with the licensing and regulation of the practice of the profession which the professional partnership is organized to provide;
- (33)~~(32)~~ "Rural electric cooperative" means a rural electric cooperative governed as to its internal affairs by KRS 279.010 to 279.210;
- (34)~~(33)~~ "Rural telephone cooperative" means a rural telephone cooperative governed as to its internal affairs by 279.310 to 279.990 excepting 279.570;
- (35)~~(34)~~ "Sign" or "signature" includes any manual, facsimile, conformed, or electronic signature; and

~~(36)~~~~(35)~~ "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

➔Section 5. KRS 14A.2-050 is amended to read as follows:

- (1) The Secretary of State ~~shall~~~~may~~ prescribe and furnish on request forms for:
 - (a) An application for a certificate of existence;
 - (b) An application for a certificate of authority;
 - (c) An amended application for a certificate of authority;
 - (d) A certificate of withdrawal;
 - (e) A change of registered office, registered agent, or both;
 - (f) A change of principal address;
 - (g) ***The resignation of the registered agent, the registered office, or both;***
 - (h) An application for a reserved name;
 - ~~(i)~~~~(h)~~ The renewal of a reserved name;
 - ~~(j)~~~~(i)~~ The transfer of a reserved name;
 - (k) ***Name registration;***
 - ~~(l)~~~~(j)~~ The annual report; and
 - ~~(m)~~~~(k)~~ An amendment to the annual report.
- (2) ***The use of the forms referred in paragraphs (e), (f), (g), (h), (i), (k), and (l) of subsection (1) of this section shall be mandatory.*** If the Secretary of State so requires, the use of some or all ***of the other*** forms listed in subsection (1) shall be mandatory.
- (3) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter, but their use shall not be mandatory.

➔Section 6. KRS 14A.3-010 is amended to read as follows:

- (1) Except as authorized by subsections (14), ~~and~~~~(15)~~, ***and (23)*** of this section, the real name of an entity or foreign entity shall be distinguishable from any name of record with the Secretary of State.
- (2) The real name of a corporation or nonprofit corporation shall:
 - (a) 1. Contain the word "corporation," "company," or "limited" or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd." or words or abbreviations of like import in another language, provided, however, that if a nonprofit corporation's name includes the word "company" or the abbreviation "Co.," it may not be immediately preceded by the word "and" or the abbreviation "&"; or
 2. If a professional service corporation, shall contain the words "professional service corporation" or the abbreviation "P.S.C."; and
 - (b) Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by its organic act and its articles of incorporation.
- (3) The real name of a limited liability company shall contain the phrase "limited liability company" or "limited company" or the abbreviation "LLC" or "LC," provided, however, if the company is a professional limited liability company the name shall contain the phrase "professional limited liability company" or "professional limited company" or the abbreviation "PLLC" or "PLC." In the name of either a limited liability company or a professional limited liability company, the word "limited" may be abbreviated as "Ltd." and the word "Company" may be abbreviated as "Co."
- (4) The real name of a limited liability partnership registered pursuant to KRS 362.555 shall contain the phrase "Registered Limited Liability Partnership" or the abbreviation "LLP" as the last words or letters of its name.
- (5) The real name of a partnership subject to KRS 362.1-101 to 362.1-1205, the "Kentucky Revised Uniform Partnership Act (2006)":
 - (a) Shall not contain the word "corporation" or "incorporated" or the abbreviation "Corp." or "Inc."; and

- (b) May contain the word "limited" or the abbreviation "Ltd." only if the partnership has filed a statement of qualification.
- (6) The real name of a limited liability partnership that has filed a statement of qualification pursuant to KRS 362.1-1001 shall end with the phrase "Registered Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviation "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."
- (7) The real name of a limited partnership subject to KRS 362.401 to 362.525, the "Kentucky Revised Uniform Limited Partnership Act ~~{(2006)}~~," shall:
 - (a) Contain the word "Limited" or the abbreviation "Ltd." unless the limited partnership was formed under any statute of the Commonwealth prior to the adoption of the Kentucky Revised Uniform Limited Partnership Act; and
 - (b) Not contain the name of a limited partner unless:
 - 1. That name is also the name of a general partner; or
 - 2. The business of the limited partnership had been carried on under that name before the admission of that limited partner.
- (8) The real name of a limited partnership subject to KRS 362.2-102 to 362.2-1207, the "Kentucky Uniform Limited Partnership Act (2006)," that is not a limited liability limited partnership may contain the name of any partner and shall:
 - (a) Contain the phrase "limited partnership" or "limited" or the abbreviation "L.P.," "LP," or "Ltd."; and
 - (b) Not contain the phrase "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP."
- (9) The real name of a limited partnership subject to KRS 362.2-102 to 362.2-1207, the "Kentucky Uniform Limited Partnership Act (2006)," that is a limited liability limited partnership may contain the name of any partner and shall:
 - (a) Contain the phrase "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP"; and
 - (b) Not contain only the phrase "limited partnership" or the abbreviation "L.P." or "LP."
- (10) Subject to KRS 362.2-1204, subsections (8) and (9) of this section shall not apply to a limited partnership formed under any statute of this Commonwealth prior to July 15, 1988.
- (11) The real name of a rural telephone cooperative corporation:
 - (a) Shall contain the word "Telephone," "Telecommunications," "Company," or "Corporation" and the abbreviation "Inc.," unless in an affidavit made by its president or vice president, and filed with the Secretary of State, or in an affidavit made by a person signing articles of incorporation, consolidation, merger, or conversion which relate to that cooperative, and filed, together with any such articles, with the Secretary of State, it shall appear that the cooperative desires to do business in another state and is or would be precluded therefrom by reason of the inclusion of such words or either thereof in its name; and
 - (b) May include the word "Cooperative."
- (12) The phrase "Rural Electric Cooperative" may not be used in the name of any entity or foreign entity except for one formed under KRS Chapter 279.
- (13) Except as otherwise provided in this section, the word "cooperative" may not be used in the name of any entity doing business for profit in this Commonwealth unless it has complied with the provisions of KRS 272.020 to 272.050.
- (14) An entity may apply to the Secretary of State for authorization to use a name that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying entity; or

- (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this Commonwealth.
- (15) An entity may use the name, including the fictitious name, of another entity that is used in this Commonwealth if the other entity is organized or authorized to transact business in this Commonwealth, and the proposed user entity:
 - (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or
 - (c) Has acquired all or substantially all of the assets, including the business name of the other entity.
- (16) This chapter does not control the use of assumed names.
- (17) The filing of articles of incorporation, articles of organization, a statement of qualification, a certificate of limited partnership, a declaration of trust, an application to transact authority in the Commonwealth, a statement of foreign qualification, a name registration, or name **reservation**~~resurrection~~ under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.
- (18) The provisions of subsection (2)(a) of this section shall not affect the right of any nonprofit corporation existing on June 13, 1968, to continue the use of its name as then in effect.
- (19) The assumption of a nonprofit corporate name in violation of this section shall not affect or vitiate the corporate existence, but the courts of this Commonwealth having equity jurisdiction may, upon the application of the Commonwealth or of any person interested or affected, enjoin such corporation from doing business under a name assumed in violation of this section, although a certificate of incorporation may have been issued.
- (20) This section shall not apply to any domestic or foreign telephone cooperative which became subject to KRS 279.310 to 279.600 by complying with the provisions of KRS 279.470 or which does business in this Commonwealth pursuant to KRS 279.570 and which elects to retain a name which does not comply with this section.
- (21) Nothing in this section shall limit the ability of a professional regulatory board to promulgate rules governing entities and foreign entities under its jurisdiction.
- (22) The real name of a foreign entity will be determined according to KRS 365.015. For entities not covered by that statute, the real name of the foreign entity will be the real name of the entity as so recognized in the jurisdiction of its origination.
- (23) ***The real name of a partnership, other than that of a limited liability partnership as set forth on a statement of qualification or a registration as a limited liability partnership filed pursuant to KRS 362.555 or that of a foreign limited liability partnership as set forth on a statement of foreign qualification, need not be distinguishable from any name of record with the Secretary of State.***

➔Section 7. KRS 14A.6-010 is amended to read as follows:

- (1) Each entity and each foreign entity authorized to transact business in this Commonwealth shall deliver to the Secretary of State for filing an annual report that sets forth:
 - (a) The name of the entity or foreign entity and the state or country under whose law it is organized;
 - (b) The address of its registered office and the name of its registered agent at that office in this Commonwealth;
 - (c) The address of its principal office; and
 - (d) With respect to each:
 - 1. Corporation, not-for-profit corporation, cooperative, or association, whether domestic or foreign:
 - a. The name and business address of the secretary or other officer with responsibility for authenticating the records of the entity;
 - b. The name and business **address** of each other principal officer; and
 - c. The name and business **address** of each director;

2. Manager-managed limited liability company, whether domestic or foreign, the name and business address of each manager;
 3. Limited partnership, whether domestic or foreign, the name and business address of each general partner;
 4. Business trust, whether domestic or foreign, the name and business address of each trustee; and
 5. Professional service corporation, domestic or foreign, a statement that each of the shareholders, not less than one-half (1/2) of the directors, and each of the officers other than secretary and treasurer is a qualified person.
- (2) A professional service corporation formed under the provisions of this chapter, except as this chapter may otherwise provide, shall have the same powers, authority, duties, and liabilities as a corporation formed under KRS Chapter 271B.
 - (3) Information in the annual report shall be current as of the date the annual report is executed on behalf of the entity or foreign entity.
 - (4) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which an entity was organized or a foreign entity was authorized to transact business in this state. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of each following calendar year.
 - (5) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the entity or foreign entity in writing and return the report to it for correction, which notification may be accomplished electronically. For purposes of KRS 14A.2-130 or 14A.2-140, an annual report returned for correction shall not be deemed to have been delivered until it is returned and accepted by the Secretary of State.
 - (6) An entity or foreign entity may amend the information in its last filed annual report by delivery of an amendment to the annual report to the Secretary of State for filing on such form as is provided by the Secretary of State.
 - (7) The requirement to file an annual report shall not apply to:
 - (a) A limited partnership governed as to its internal affairs by the Kentucky Uniform Limited Partnership Act as it existed prior to its repeal by 1988 Ky. Acts ch. 284, sec. 65;
 - (b) A partnership other than a limited liability partnership that has filed a statement of qualification pursuant to KRS 362.1-1102 or a foreign limited liability partnership; or
 - (c) A foreign rural electric cooperative or foreign rural telephone cooperative not required to qualify to transact business by a filing with the Secretary of State.

➔Section 8. KRS 271B.5-010 is amended to read as follows:

~~{(1)}~~ Each corporation shall continuously maintain in this *Commonwealth of* ~~a~~~~state~~:

~~(a) — A} registered office and a{that may be the same as any of its places of business; and~~

~~(b) — A} registered agent that comply with KRS 14A.4-010{, who may be:~~

- ~~1. — An individual who resides in this state and whose business office is identical with the registered office;~~
- ~~2. — A domestic corporation or not for profit domestic corporation whose business office is identical with the registered office;~~
- ~~3. — A foreign corporation or not for profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office;~~
- ~~4. — A domestic limited liability company or a foreign limited liability company authorized to transact business in the state whose business office is identical with the registered office; or~~
- ~~5. — A domestic limited partnership or foreign limited partnership authorized to transact business in the state whose business office is identical with the registered office.~~

- (2) ~~Unless the registered agent signs the document making the appointment, the appointment of the registered agent or a successor registered agent on whom process may be given is not effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment.~~

➔Section 9. KRS 271B.12-010 is amended to read as follows:

- (1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:
 - (a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business;
 - (b) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or
 - (c) Transfer any or all of its property to ***an entity of which all the shares or all of the limited liability company interests or other equity interests are***~~[a corporation all the shares of which are]~~ owned by the corporation.
- (2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) of this section shall not be required.

➔Section 10. KRS 271B.14-330 is amended to read as follows:

- (1) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in KRS 271B.14-300 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.
- (2) ***The effect of the dissolution shall be as set forth in KRS 271B.14-050.***
- (3) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs, ***including as provided in KRS 271B.14-320,*** ~~in accordance with KRS 271B.14-050~~ and the notification of claimants in accordance with KRS 271B.14-060 and 271B.14-070.

➔Section 11. KRS 272.335 is amended to read as follows:

A foreign association may be authorized to transact business in this Commonwealth~~[-]~~ upon compliance with the provisions of KRS ***14A.9-010***~~[14A.6-010]~~.

➔Section 12. KRS 274.055 is amended to read as follows:

- (1) Except as otherwise provided in this section, KRS 271B.6-220 applies to a corporation governed by this chapter.
- (2) The provisions of this chapter shall not alter any law applicable to, or otherwise affect the fiducial, confidential or ethical relationship between a person rendering professional services and a person receiving such services. The corporation shall be jointly and severally liable, with the tortfeasor, to the full value of its assets for any negligent or wrongful acts or actionable misconduct committed by any of its officers, shareholders, agents or employees while they are engaged on behalf of the corporation in the rendering of professional service; provided, however, that no shareholder, director, officer or employee of a professional service corporation shall be personally liable for the negligence, wrongful acts, or actionable misconduct of any other shareholder, director, officer, agent or employee nor shall such shareholder, director, officer or employee be personally liable for the contractual obligations of the corporation.
- (3) Notwithstanding any contrary provisions of law, a corporation organized under this chapter may charge and collect fees for the professional services of its officers, directors, agents or employees, and may compensate those who render such professional services.
- (4) Notwithstanding KRS ***14A.9-050(3)***~~[271B.15-050(3)]~~, any foreign professional service corporation granted a certificate of authority to conduct business within this state and those persons rendering professional services through it shall be subject to this section.

➔Section 13. KRS 275.025 is amended to read as follows:

- (1) The articles of organization shall set forth:
 - (a) A name for the limited liability company that satisfies the requirements of KRS ***14A.3-010***~~[14A.2-050]~~;

- (b) The registered office and initial registered agent that satisfy the requirements of KRS 14A.4-010;
 - (c) The mailing address of the initial principal office of the limited liability company; and
 - (d) A statement that the limited liability company is to be managed by a manager or managers or that the limited liability company is to be managed by its members.
- (2) The term of a limited liability company shall be perpetual unless a period of duration other than perpetual is set forth in the articles of organization.
 - (3) The articles of organization of a professional limited liability company shall designate the professional services to be practiced through the professional limited liability company.
 - (4) The articles of organization may set forth any other matter that under this chapter is permitted to be set forth in an operating agreement not inconsistent with law.
 - (5) A member of a limited liability company shall not have a vested property right resulting from any provision of the articles of organization.
 - (6) If the limited liability company is a nonprofit limited liability company, then the articles of organization shall state that fact and its nonprofit purpose. This provision of the articles of organization shall not be removed from the articles of organization without written notice to the Attorney General of Kentucky given not less than ten (10) business days prior to the filing of the amendment.
 - (7) The fact that the articles of organization are on file with the Secretary of State is notice:
 - (a) That the limited liability company formed by the filing of the articles of organization is a limited liability company formed under the laws of the Commonwealth of Kentucky; and
 - (b) Of all other facts set forth in the articles of organization which are required to be set forth by subsections (1), (3), and ~~(6)~~~~(7)~~ of this section.

➔Section 14. KRS 275.275 is amended to read as follows:

- (1) Subject to subsection (2) of this section, a person may become a member in a limited liability company:
 - (a) In the case of the person acquiring a limited liability company interest directly from a limited liability company, upon compliance with an operating agreement or, if an operating agreement does not so provide in writing, upon the written consent of all members; and
 - (b) In the case of an assignee of the limited liability company interest, as provided in KRS 275.255 and 275.265.
- (2) The effective time of admission of a member to a limited liability company shall be the later of:
 - (a) The date the limited liability company is formed; ~~for~~
 - (b) The time provided in the operating agreement or, if no time is provided, when the person's admission is reflected in the records of the limited liability company; **or**
 - (c) ***The time the member is admitted under KRS 275.285(4).***

➔Section 15. KRS 275.280 is amended to read as follows:

- (1) A person shall disassociate from and cease to be a member of a limited liability company upon the occurrence of one (1) or more of the following events:
 - (a) Subject to the provisions of subsection (3) of this section, the member withdraws by voluntary act from the limited liability company;
 - (b) The member ceases to be a member of the limited liability company as provided in KRS 275.265;
 - (c) The member is removed as a member:
 - 1. In accordance with a written operating agreement;
 - 2. Unless otherwise provided in a written operating agreement, ***if after an assignment there is at least one (1) other member***, when the member assigns all of the member's ~~interest in the~~ limited liability company ***interest***, upon receipt of the written consent of a majority-in-interest of the members who have not assigned their interest; ~~for~~

3. *If after the assignment there are no other members, upon the effective time and date of the assignment; or*
4. Upon resignation as a member;
- (d) Unless otherwise provided in a written operating agreement or by written consent of majority-in-interest of the members, at the time the member:
 1. Makes an assignment for the benefit of creditors;
 2. Files a voluntary petition in bankruptcy;
 3. Is adjudicated bankrupt or insolvent;
 4. Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
 5. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature; or
 6. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's property;
- (e) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, if within one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within one hundred twenty (120) days after the appointment without the member's consent or acquiescence of a trustee, receiver, or liquidator of the member, or of all or any substantial part of the member's properties, the appointment is not vacated or stayed or within one hundred twenty (120) days after the expiration of any stay, the appointment is not vacated;
- (f) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of a member that is an individual:
 1. The member's death; or
 2. The entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage his or her person or estate;
- (g) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;
- (h) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company;
- (i) Unless otherwise provided in a written operating agreement or by written consent of the majority-in-interest of the members remaining at the time, in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the revocation of its articles of incorporation and the lapse of ninety (90) days after notice to the corporation of revocation without a reinstatement of its articles of incorporation; or
- (j) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.
- (2) The members may provide in a written operating agreement for other events the occurrence of which shall result in a person ceasing to be a member of the limited liability company.
- (3) Unless otherwise provided in a written operating agreement:
 - (a) In a member-managed limited liability company a member may resign from a limited liability company upon thirty (30) days' prior written notice to the limited liability company; and

- (b) In a manager-managed limited liability company, a member may not resign without the consent of all other members.
- (4) Upon the effective date of the resignation, the resigning member shall be dissociated from and cease to be a member of the limited liability company and shall be with respect to the resigning member's limited liability company interest an assignee thereof.
- (5) The successor-in-interest of a disassociated member shall be an assignee.

➔Section 16. KRS 275.290 is amended to read as follows:

- (1) The Circuit Court, for the county in which the principal office of the limited liability company is located, or, if none, in the county of the registered office, may dissolve a limited liability company in a proceeding by a member if it is established that it is not reasonably practicable to carry on the business of the limited liability company in conformity with the operating agreement.
- (2) Any decree dissolving the limited liability company pursuant to subsection (1) of this section shall specify the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.
- (3) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the limited liability company's business and affairs in accordance with KRS 275.300 and the notification of claimants in accordance with KRS 275.320 and 275.325.
- (4) ***The effect of dissolution under this section shall be as provided in KRS 275.300(2) and (3).***

➔Section 17. KRS 275.315 is amended to read as follows:

After the dissolution of the limited liability company pursuant to KRS 275.285(2), (3), ***or (4)***, the limited liability company shall file articles of dissolution with the Secretary of State which set forth:

- (1) The name of the limited liability company;
- (2) A statement of the subsection of KRS 275.285 pursuant to which the limited liability company has dissolved;
- (3) The effective date, which shall be a date certain, of the dissolution; and
- (4) Any other information the members or managers filing the articles of dissolution shall deem proper.

➔Section 18. KRS 275.377 is amended to read as follows:

- (1) A ***limited liability company***~~corporation~~ that has been converted pursuant to this chapter shall be for all purposes the same entity that existed before the conversion.
- (2) When a conversion takes effect:
 - (a) All property and contract rights owned by, and all rights, privileges, and immunities of the converting corporation shall remain vested in the converted limited liability company without assignment, reversion, or impairment;
 - (b) All obligations of the converting corporation shall continue as obligations of the converted limited liability company;
 - (c) An action or proceeding pending against the converting corporation may be continued as if the conversion had not occurred, and the name of the converted limited liability company may be substituted in any pending action or proceeding for the name of the converting corporation; and
 - (d) The written operating agreement of the converted limited liability company shall be binding upon each person who becomes a member of the limited liability company.

➔Section 19. KRS 362.2-1101 is amended to read as follows:

As used in KRS 362.2-1101 to 362.2-1113, unless the context otherwise requires:

- (1) "Constituent limited partnership" means a constituent organization that is a limited partnership;
- (2) "Constituent organization" means an organization that is party to a merger;
- (3) "Converted limited partnership" means the limited partnership into which a converting organization converts pursuant to KRS 362.2-1102, 362.2-1103, 362.2-1104, and 362.2-1105;
- (4) ***"Converted organization" means an organization into which another organization has been converted;***

- (5) "Converting limited partnership" means a converting organization that is a limited partnership;
- ~~(6)(5)~~ "Converting organization" means an organization that converts into another organization pursuant to KRS 362.2-1102;
- ~~(7)(6)~~ "General partner" means a general partner of a limited partnership;
- ~~(8)(7)~~ "Governing statute" of an organization means the statute that governs the organization's internal affairs;
- ~~(9)(8)~~ "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other entity having a governing statute. The term includes domestic and foreign entities regardless of whether organized for profit;
- ~~(10)(9)~~ "Organizational documents" means:
- (a) For a domestic or foreign general partnership, its partnership agreement;
 - (b) For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement; and
 - (c) For a domestic or foreign limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute;
- ~~(11)(10)~~ "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership;
- ~~(12)(11)~~ "Personal liability" means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:
- (a) By the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or
 - (b) By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one (1) or more specified persons liable for all or specified debts, liabilities, and obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization; and
- ~~(13)(12)~~ "Surviving organization" means an organization into which one (1) or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger.

➔Section 20. KRS 362.2-1105 is amended to read as follows:

- (1) An organization that has been converted pursuant to KRS 362.2-1101 to 362.2-1113 is for all purposes the same entity that existed before the conversion.
- (2) When a conversion takes effect:
 - (a) All property and contract rights owned by, and all rights, privileges, and immunities of, the converting **organization**~~[partnership or limited partnership]~~ shall remain vested in the converted **organization**~~[partnership or limited partnership]~~ without assignment, reversion, or impairment;
 - (b) All obligations of the converting **organization**~~[partnership or limited partnership]~~ shall continue as obligations of the converted **organization**~~[partnership or limited partnership]~~;
 - (c) An action or proceeding pending against the converting **organization**~~[partnership or limited partnership]~~ may be continued as if the conversion had not occurred, and the name of the converted **organization**~~[partnership or limited partnership]~~ may be substituted in any pending action or proceeding for the name of the converting **organization**~~[partnership or limited partnership]~~; and
 - (d) Any written **organization documents**~~[partnership agreement]~~ of the converted **organization**~~[partnership or limited partnership]~~ shall be binding upon each person who becomes a partner **or member** in the converted **organization**~~[partnership or limited partnership]~~.
- (3) A converted organization that is a foreign entity consents to the jurisdiction of the courts of this Commonwealth to enforce any obligation owed by the converting **organization**~~[limited partnership]~~ if, before the conversion, the converting **organization**~~[limited partnership]~~ was subject to suit in this Commonwealth on that obligation. A converted organization that is a foreign entity and not authorized to transact business in this Commonwealth appoints the Secretary of State as its agent for service of process for purposes of enforcing an

obligation under this subsection. Service on the Secretary of State under this subsection is made in the same manner and with the same consequences as in KRS 14A.9-060(4).

- (4) A person who becomes a general partner in a limited partnership that is not a limited liability limited partnership as a result of a conversion shall be personally liable as a general partner for only those obligations incurred by the limited partnership after the conversion takes effect.

➔Section 21. KRS 386.4422 is amended to read as follows:

A foreign business trust ~~transacting~~~~[qualified to transact]~~ business in this Commonwealth is subject to KRS ~~14A.9-010~~~~[14A.6-010]~~.

➔Section 22. KRS 14A.9-040 is amended to read as follows:

- (1) A foreign entity authorized to transact business in this Commonwealth shall obtain an amended certificate of authority from the Secretary of State if it changes **any information required by KRS 14A.9-030(1)**~~[-~~
 - (a) ~~Its real name;~~
 - (b) ~~The period of its duration;~~
 - (c) ~~The state or country of its organization; or~~
 - (d) ~~Its form of organization].~~
- (2) The requirements of KRS 14A.9-030 for obtaining an original certificate of authority shall apply to obtaining an amended certificate.
- (3) A foreign entity that changes its principal office address shall promptly satisfy the requirements of KRS 14A.5-010.
- (4) A foreign entity that changes its registered office, its registered agent, or both as maintained in this Commonwealth shall promptly satisfy the requirements of KRS 14A.4-020.

➔Section 23. KRS 275.260 is amended to read as follows:

- (1) This section provides the exclusive remedy by which the judgment creditor of a member or the assignee of a member may satisfy a judgment out of the judgment debtor's limited liability company interest.
- (2) On application to a court of competent jurisdiction by a judgment creditor of a member or a member's assignee, a court may charge the judgment debtor's interest in the limited liability company with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of an assignee and shall have no right to participate in the management or to cause the dissolution of the limited liability company. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the limited liability company interest and make all other orders, directions, accounts, and inquiries the judgment ~~debtor~~~~[creditor]~~ might have made or which the circumstances of the case may require to give effect to the charging order.
- (3) A charging order constitutes a lien on and the right to receive distributions made with respect to the judgment debtor's limited liability company interest. A charging order does not of itself constitute an assignment of the limited liability company interest.
- (4) The court may order a foreclosure upon the limited liability company interest subject to the charging order at any time. The purchaser of the limited liability company interest at the foreclosure sale has the rights of an assignee. At any time before foreclosure, the charged limited liability company interest may be redeemed:
 - (a) By the judgment debtor;
 - (b) With property other than limited liability company property, by one (1) or more of the other members; and
 - (c) With limited liability company property, by the limited liability company with the consent of all members whose interest are not so charged.
- (5) This section does not deprive a member or a member's assignee of the benefit of any exemption laws applicable to the member's or assignee's limited liability company interest.
- (6) The limited liability company is not a necessary party to an application for a charging order. Service of the charging order on a limited liability company may be made by the court granting the charging order or as the court should otherwise direct.

➔Section 24. Sections 11, 12, 13, and 21 of this Act shall be retroactive to January 1, 2011.

Signed by Governor March 15, 2011.

CHAPTER 30

(HB 339)

AN ACT relating to unemployment compensation.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 341 IS CREATED TO READ AS FOLLOWS:

An otherwise eligible worker under this chapter shall be ineligible for benefits for any week in a benefit year unless, subsequent to the beginning of the worker's immediately preceding benefit year, he or she returned to work and earned wages in covered employment equal to at least five (5) times his or her weekly benefit rate established for the previous benefit year.

Signed by Governor March 15, 2011.

Legislative Research Commission Note. A manifest clerical or typographical error appearing in the title of this Act has been corrected by the Reviser of Statutes in this publication.

CHAPTER 31

(HB 416)

AN ACT relating to accountancy.

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

➔Section 1. KRS 325.220 is amended to read as follows:

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

- (1) "Board" means the State Board of Accountancy;
- (2) "State" includes and means any state, territory, or insular possession of the United States, or the District of Columbia;
- (3) "Public accountant" means a public accountant issued a license to practice by the Commonwealth of Kentucky under the Public Accounting Act of 1946 as amended;
- (4) "Attest *service*" means providing the following financial statement services:
 - (a) Any audit or other engagement *subject to and* to be performed in accordance with the *current versions of the American Institute of Certified Public Accountants (AICPA) Statements on Auditing Standards (SAS), and Government Auditing Standards issued by the United States Government Accountability Office*;
 - (b) Any review *or compilation* of a financial statement *subject to and* to be performed in accordance with the *current versions of the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services (SSARS)*;
 - (c) Any examination of prospective financial information *or other professional services* to be performed in accordance with the *current versions of the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements (SSAE)*; or
 - (d) Any engagement to be performed in accordance with the Public Company Accounting Oversight Board Auditing Standards;

- (5) ~~["Compilation" means providing a service to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS) by presenting information in the form of financial statements that is the representation of management or owners of an entity without undertaking to express any assurance on the statements;~~
- (6) ~~]~~ "Regulated activities" means the offering to perform or the performance for a client or potential client by a person or firm holding a license issued under this chapter of one (1) or more types of services involving the use of accounting, attest, or compilation services, including the issuance of reports on financial statements, or one (1) or more types of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. This definition shall not prohibit anyone who is not a certified public accountant from performing accounting services, such as the preparation of tax returns or financial statements, for which attestation by the preparer is not required;
- (6)(7) "Firm" means a sole proprietorship, partnership, professional service corporation, or any other form of business organization that is authorized to operate under the laws of this Commonwealth, complies with the provisions of this chapter, and is issued a license to practice by the board or is exempt from having to obtain a license pursuant to KRS 325.301;
- (7) ***"Firm manager" means a licensee of this state or another state designated by a firm to be responsible for the firm complying with the firm registration and firm licensing requirements contained in this chapter and administrative regulations promulgated thereunder;***
- (8) "License" means a license as a certified public accountant or a firm issued pursuant to this chapter;
- (9) "Licensee" means a certified public accountant, firm, or public accountant, holding a license to practice issued under this chapter;
- (10) "Peer review" means a ***practice monitoring process designed to promote quality in accounting and auditing services, and protect the public interest. The process shall comply with standards that are equivalent to or more stringent than the current version of the Standards for Performing and Reporting on Peer Reviews issued by the American Institute of Certified Public Accountants (AICPA)*** ~~[study, appraisal, or review of one (1) or more aspects of the professional work of a person or firm licensed to practice, or excluded from having to obtain a license pursuant to KRS 325.301, and may include a quality assurance or peer review, or any internal review or inspection that is required by professional standards relating to quality control policies and procedures];~~
- (11) ***"Peer review committee" means any person or persons*** ~~[carrying out,]~~ administering ~~[or overseeing]~~ a peer review program ***that is equivalent to or more stringent than a program as outlined in the American Institute of Certified Public Accountants (AICPA)'s current version of the Standards for Performing and Reporting on Peer Reviews, including provisions that provide guidance for administering peer reviews;*** and
- (12) "Substantial equivalency" means a determination by the board or its designee that the education, examination, and experience requirements in the statutes and administrative regulations of another state for the licensing of a certified public accountant are comparable or better than those contained in the Uniform Accountancy Act issued by the American Institute of Certified Public Accountants (AICPA) and National Association of State Boards of Accountancy (NASBA), or that an individual certified public accountant's education, examination, and experience qualifications are comparable or exceed these national standards.

➔Section 2. KRS 325.301 is amended to read as follows:

- (1) The following firms shall obtain a license to practice in this state:
- Any firm with an office located in this state performing attest services ~~[or compilations]~~, as defined in KRS 325.220;
 - Any firm with an office in this state that uses the title "CPA" or other phrase or abbreviation in any manner described in KRS 325.410 to suggest it is a certified public accounting firm; and
 - Any firm that does not have an office located in this state but performs any attest service described in KRS 325.220(4)(a), (c), or (d) for a client with his or her home office in this state or a client who is a resident of this state.
- (2) The following firms shall not be required to obtain a license to practice in this state and may use the title "CPA" in the name of the firm:

- (a) A firm which does not have an office in this state that performs services described in KRS 325.220(4)(b) ~~[(or (5))]~~ for a client having its home office in this state or a client who is a resident of this state if:
 - 1. The firm complies with the requirements contained in subsections (3)(a) and ~~12[(8)]~~ of this section; and
 - 2. All services provided by the firm are performed by an individual with a practice privilege granted under KRS 325.282; and
 - (b) A firm which does not have an office in this state and does not provide ~~attest[the]~~ services, *as defined* ~~described~~ in KRS 325.220, ~~[(4) or (5)]~~ to a client having his or her home office located in this state or a client who is a resident of this state may provide other services that are regulated activities, as *defined* ~~described~~ in KRS 325.220 ~~[(6)]~~, if:
 - 1. The services are provided through an individual granted a practice privilege as described in KRS 325.282; and
 - 2. The firm can legally provide the services in the state where the individual with a practice privilege has his or her principal place of business.
- (3) All firms seeking to obtain a license to practice in this Commonwealth shall meet the following requirements:
- (a) Certified public accountants shall hold fifty-one percent (51%) or more of the ownership of the firm in terms of financial interests and voting rights of all partners, officers, shareholders, members, or managers of the firm;
 - (b) All owners of the firm who are not certified public accountants shall be natural persons actively engaged in the firm's operations and shall satisfy additional requirements *established* ~~as promulgated~~ by the board *through promulgation of an* ~~in~~ administrative *regulation* ~~regulations~~;
 - (c) The name of the firm shall comply with the requirements of KRS 325.380;
 - (d) All certified public accountants who are *sole proprietors*, partners, shareholders, members, officers, directors, or employees of a firm with an office located in this state, who regularly practice in this Commonwealth, shall maintain current licenses to practice issued by the board;
 - (e) Any individual licensee and any individual qualifying for a practice privilege under this chapter who is responsible for supervising attest services and signs or authorizes someone to sign the report on the financial statements on behalf of the firm shall meet the competency requirements *established* ~~as promulgated~~ by the board *through promulgation of an* ~~in~~ administrative regulation; and
 - (f) The firm shall comply with the provisions of this chapter, the administrative regulations promulgated by the board, and all other laws of this Commonwealth applicable to the firm's particular form of business organization.
- (4) Before a firm may practice in this Commonwealth, *the firm manager* ~~it~~ shall:
- (a) Submit an initial application *which contains* ~~to the board for a firm license to practice in this Commonwealth. This application shall be made upon forms approved by the board and signed by the firm manager, who shall also be the certified public accountant in charge of the administrative matters of the firm. The application for a firm license to practice shall include the name of the firm manager, the name of each certified public accountant and nonlicensee with an ownership interest in the firm, the name of each certified public accountant employee of the firm, the location of each office, and any other~~ information *required by* ~~as~~ the board ~~through promulgation of an~~ ~~by duly promulgated~~ administrative regulation ~~may require~~; and
 - (b) ~~With the exception of a sole proprietorship, pay~~ a fee not to exceed two hundred dollars (\$200) *established* ~~set~~ by an administrative regulation promulgated by the board.
- (5) The firm license ~~to practice~~ shall be renewed every two (2) years by the firm *manager* ~~:~~
- (a) *Completing the renewal process according to the procedures as* ~~The application for renewal shall be submitted by the manager of the firm on forms~~ established in administrative *regulation* ~~regulations~~ promulgated by the board; ~~and~~ ~~:~~
 - (b) *Paying the* ~~The~~ renewal fee, *which shall* not ~~to~~ exceed two hundred dollars (\$200), ~~as~~ ~~shall be~~ established by administrative regulation promulgated by the board.

- (6) *A firm license due to expire on July 1, 2011, shall:*
- (a) *Be renewed by the firm manager according to the procedures established by the board through promulgation of an administrative regulation;*
 - (b) *Require payment of a fee not to exceed fifty dollars (\$50) established by the board through promulgation of an administrative regulation; and*
 - (c) *Expire on August 1, 2012.*
- (7) *A firm license that expires on or after August 1, 2012, shall:*
- (a) *Be renewed by the firm manager prior to August 1, 2012;*
 - (b) *Require payment of a fee not to exceed two hundred dollars (\$200) established by the board through promulgation of an administrative regulation;*
 - (c) *Be effective for two (2) years; and*
 - (d) *Be renewed by the firm manager on or before August 1 of each two (2) year period thereafter according to the procedures contained in this subsection and as established by the board through promulgation of an administrative regulation.*
- (8) *If a firm license has been expired for a period of less than one (1) month and the firm has not violated any other provision of this chapter or the accompanying administrative regulations promulgated thereunder, the firm manager may renew the license by:*
- (a) *Satisfying all the requirements of this subsection, including any requirements established by the board through promulgation of an administrative regulation; and*
 - (b) *In addition to the renewal fee, pay a late fee not to exceed one hundred dollars (\$100).*
- (9) *A firm with a license expired for a period of longer than one (1) month after the date of expiration shall cease operating immediately. The firm shall not operate until the board approves the issuance of a new license to the firm.*
- (10) *Effective August 1, 2012, sole proprietors shall comply with the licensing requirements for firms under this section.* ~~The firm license to practice shall be effective for a two (2) year period following the date of its issuance and shall expire on the first day of July in the year of expiration.~~
- (11)~~(7)~~ The **firm** manager~~of the firm~~ shall notify the board *in accordance with procedures*~~on a form~~ established in *an* administrative **regulation**~~regulations~~ promulgated by the board, of any change in its licensing information within thirty (30) days. Any change in the name of a firm shall require the filing of an initial application.
- (12)~~(8)~~ All firms that perform audits, reviews, or compilations shall enroll in and complete on a regular basis an approved peer review program with standards that are equivalent to or better than the peer review program administered by the American Institute of Certified Public Accountants as determined by administrative regulations promulgated by the board. Every firm shall comply with any requirements or restrictions placed on its license as prescribed by the board in response to the results of peer reviews.
- (13)~~(9)~~ Nothing contained in this chapter shall require a certified public accountant or firm of certified public accountants licensed by another state~~or foreign country~~ to obtain a license to practice in this Commonwealth if the certified public accountant or firm of certified public accountants **enters**~~enter~~ this Commonwealth solely to:
- (a) Conduct a peer review of a firm; or
 - (b) Perform attestation work, incidental to an engagement which was initiated with a client located outside of the Commonwealth and has extended into the Commonwealth due to common ownership or existence of a subsidiary, assets, or other operations located within the Commonwealth.

➔Section 3. KRS 325.431 is amended to read as follows:

- (1) The proceedings, records, and workpapers of the **peer** review committee shall be privileged and not subject to discovery, subpoena, or other means of legal process, or introduction into evidence in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding. No member of the **peer** review committee or person involved in the quality review process shall testify in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding as to any matter produced, presented,

disclosed, or discussed during or in connection with the quality review process, or as to any finding, recommendation, evaluation, opinion, or other action of the committee.

- (2) Information, documents, or records that are publicly available shall not be immune from discovery or use in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding merely because they were presented or considered in connection with the quality review process.
- (3) The privilege created in subsection (1) of this section shall not apply to:
 - (a) Materials prepared in connection with a particular engagement merely because they happen to subsequently be presented or considered as part of the quality of review process.
 - (b) Disputes between *peer* review committees and persons or firms subject to a quality review arising from the performance of the quality review.
 - (c) Correspondence and reports of the peer review program obtained by the board from a licensee seeking renewal or an individual or firm seeking to become licensed.
 - (d) A statement obtained by the board from a *peer* review committee to determine if a licensee seeking renewal or an individual or firm seeking to become licensed is enrolled in or is not enrolled in a peer review program.

Signed by Governor March 15, 2011.

CHAPTER 32

(HB 428)

AN ACT relating to school facilities, making an appropriation therefor, and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding KRS 157.620 and any provision included in an enacted executive branch budget, urgent and critical construction needs shall be determined by the Department of Education. The department shall provide a funding allocation to a school district for a school that has been closed to the public because it is structurally unsound as determined by a certified engineer, or is otherwise uninhabitable as determined by the commissioner of education, and has a bond that has not been retired. The commissioner of education shall determine if a school qualifying under this subsection shall receive an allocation and shall determine which of the following options is in the best interest of the Commonwealth:*
 - (a) *To allot funding to the school district to retire the unpaid debt on the structurally unsound or uninhabitable building; or*
 - (b) *To provide the semi-annual debt service payments on the current issue.*
- (2) *If funds are not available for the purpose set out in subsection (1) of this section, the costs shall be deemed a necessary government expense and shall be paid from the general fund surplus account under KRS 48.700 or the budget reserve trust fund under KRS 48.705.*
- (3) *If a school district receives an allotment under subsection (1) of this section and subsequently, as the result of litigation or insurance, receives funds for the original facility, the school district shall reimburse the Commonwealth an amount equal to that received pursuant to subsection (1) of this section. If the litigation or insurance receipts are less than the amount received pursuant to subsection (1) of this section, the district shall reimburse the Commonwealth an amount equal to that received as a result of litigation or insurance less the district's costs and legal fees in securing the judgment or payment. Any funds received in this manner shall be deposited in the budget reserve trust fund account established in KRS 48.705.*

➔Section 2. Notwithstanding KRS 157.620 and Part I, C., 4., (18) of the 2010 (1st Extraordinary Session) Kentucky Acts Chapter 1, the Department of Education shall use funds appropriated pursuant to Part I, C., 4., (18), of the 2010 (1st Extraordinary Session) Kentucky Acts Chapter 1, to provide funding to any school district that has a school that was closed to the public in 2010 because it is structurally unsound as determined by a certified engineer

and has a bond that has not been retired. The commissioner of education shall determine if a school qualifying under this section shall receive an allotment to retire the unpaid debt on the structurally unsound building or shall receive the semi-annual debt service payments on the current issue. If funds are not available for this purpose, the costs shall be deemed necessary government expenses and shall be paid from the general fund surplus account under KRS 48.700 or the budget reserve trust fund under KRS 48.705.

➔Section 3. Whereas schools with urgent and critical construction needs must be renovated or replaced as soon as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 15, 2011.

CHAPTER 33

(HB 429)

AN ACT relating to the Streamlined Sales and Use Tax Agreement.

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

➔Section 1. KRS 139.010 is amended to read as follows:

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

- (1) *"Advertising and promotional direct mail" means direct mail the primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this definition, "product" means tangible personal property, an item transferred electronically, or a service;*
- (2) "Business" includes any activity engaged in by any person or caused to be engaged in by that person with the object of gain, benefit, or advantage, either direct or indirect;
- ~~(3)(2)~~ "Commonwealth" means the Commonwealth of Kentucky;
- ~~(4)(3)~~ "Department" means the Department of Revenue;
- ~~(5)(4)~~
 - (a) "Digital audio-visual works" means a series of related images which, when shown in succession, impart an impression of motion, with accompanying sounds, if any.
 - (b) "Digital audio-visual works" includes movies, motion pictures, musical videos, news and entertainment programs, and live events.
 - (c) "Digital audio-visual works" shall not include video greeting cards, video games, and electronic games;
- ~~(6)(5)~~
 - (a) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds.
 - (b) "Digital audio works" includes ringtones, recorded or live songs, music, readings of books or other written materials, speeches, or other sound recordings.
 - (c) "Digital audio works" shall not include audio greeting cards sent by electronic mail;
- ~~(7)(6)~~
 - (a) "Digital books" means works that are generally recognized in the ordinary and usual sense as books, including any literary work expressed in words, numbers, or other verbal or numerical symbols or indicia if the literary work is generally recognized in the ordinary or usual sense as a book.
 - (b) "Digital books" shall not include digital audio-visual works, digital audio works, periodicals, magazines, newspapers, or other news or information products, chat rooms, or Web logs;
- ~~(8)(7)~~
 - (a) "Digital code" means a code which provides a purchaser with a right to obtain one (1) or more types of digital property. A "digital code" may be obtained by any means, including electronic mail messaging or by tangible means, regardless of the code's designation as a song code, video code, or book code.
 - (b) "Digital code" shall not include a code that represents:

1. A stored monetary value that is deducted from a total as it is used by the purchaser; or
 2. A redeemable card, gift card, or gift certificate that entitles the holder to select specific types of digital property;
- (9)~~(8)~~ (a) "Digital property" means any of the following which is transferred electronically:
1. Digital audio works;
 2. Digital books;
 3. Finished artwork;
 4. Digital photographs;
 5. Periodicals;
 6. Newspapers;
 7. Magazines;
 8. Video greeting cards;
 9. Audio greeting cards;
 10. Video games;
 11. Electronic games; or
 12. Any digital code related to this property.
- (b) "Digital property" shall not include digital audio-visual works or satellite radio programming;
- (10) (a) *"Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipient;*
- (b) *"Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail retailer for inclusion in the package containing the printed material; and*
- (c) *"Direct mail" does not include multiple items of printed material delivered to a single address;*
- (11)~~(9)~~ (a) "Finished artwork" means final art that is used for actual reproduction by photomechanical or other processes or for display purposes.
- (b) "Finished artwork" includes:
1. Assemblies;
 2. Charts;
 3. Designs;
 4. Drawings;
 5. Graphs;
 6. Illustrative materials;
 7. Lettering;
 8. Mechanicals;
 9. Paintings; and
 10. Paste-ups;
- (12)~~(10)~~ (a) "Gross receipts" and "sales price" mean the total amount or consideration, including cash, credit, property, and services, for which tangible personal property, digital property, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:
1. The retailer's cost of the tangible personal property or digital property sold;

2. The cost of the materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, or any other expense of the retailer;
 3. Charges by the retailer for any services necessary to complete the sale;
 4. Delivery charges, which are defined as charges by the retailer for the preparation and delivery to a location designated by the purchaser including transportation, shipping, postage, handling, crating, and packing; and
 5. Any amount for which credit is given to the purchaser by the retailer, other than credit for tangible personal property or digital property traded when the tangible personal property or digital property traded is of like kind and character to the property purchased and the property traded is held by the retailer for resale.
- (b) "Gross receipts" and "sales price" shall include consideration received by the retailer from a third party if:
1. The retailer actually receives consideration from a third party and the consideration is directly related to a price reduction or discount on the sale to the purchaser;
 2. The retailer has an obligation to pass the price reduction or discount through to the purchaser;
 3. The amount of consideration attributable to the sale is fixed and determinable by the retailer at the time of the sale of the item to the purchaser; and
 4. One (1) of the following criteria is met:
 - a. The purchaser presents a coupon, certificate, or other documentation to the retailer to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;
 - b. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser; or
 - c. The purchaser identifies himself or herself to the retailer as a member of a group or organization entitled to a price reduction or discount. A "preferred customer" card that is available to any patron does not constitute membership in such a group.
- (c) "Gross receipts" and "sales price" shall not include:
1. Discounts, including cash, term, or coupons that are not reimbursed by a third party and that are allowed by a retailer and taken by a purchaser on a sale;
 2. Interest, financing, and carrying charges from credit extended on the sale of tangible personal property, digital property, or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
 3. Any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or
 4. The amount charged for labor or services rendered in installing or applying the tangible personal property, digital property, or service sold, provided the amount charged is separately stated on the invoice, bill of sale, or similar document given to the purchaser.
- (d) As used in this subsection, "third party" means a person other than the purchaser;
- ~~(13)~~~~(11)~~ "In this state" or "in the state" means within the exterior limits of the Commonwealth and includes all territory within these limits owned by or ceded to the United States of America;
- ~~(14)~~~~(12)~~ (a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental shall include future options to:
1. Purchase the property; or

2. Extend the terms of the agreement and agreements covering trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. sec. 7701(h)(1).
- (b) "Lease or rental" shall not include:
1. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
 2. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of the required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or
 3. Providing tangible personal property and an operator for the tangible personal property for a fixed or indeterminate period of time. To qualify for this exclusion, the operator must be necessary for the equipment to perform as designed, and the operator must do more than maintain, inspect, or setup the tangible personal property.
- (c) This definition shall apply regardless of the classification of a transaction under generally accepted accounting principles, the Internal Revenue Code, or other provisions of federal, state, or local law;
- ~~(15)(13)~~ (a) "Machinery for new and expanded industry" means machinery:
1. Used directly in a manufacturing or processing production process;
 2. Which is incorporated for the first time into a plant facility established in this state; and
 3. Which does not replace machinery in the plant facility unless that machinery purchased to replace existing machinery:
 - a. Increases the consumption of recycled materials at the plant facility by not less than ten percent (10%);
 - b. Performs different functions;
 - c. Is used to manufacture a different product; or
 - d. Has a greater productive capacity, as measured in units of production, than the machinery being replaced.
- (b) The term "machinery for new and expanded industry" does not include repair, replacement, or spare parts of any kind regardless of whether the purchase of repair, replacement, or spare parts is required by the manufacturer or vendor as a condition of sale or as a condition of warranty.
- (c) The term "processing production" shall include the processing and packaging of raw materials, in-process materials, and finished products; the processing and packaging of farm and dairy products for sale; and the extraction of minerals, ores, coal, clay, stone, and natural gas;
- ~~(16)(14)~~ "Manufacturing" means any process through which material having little or no commercial value for its intended use before processing has appreciable commercial value for its intended use after processing by the machinery. The manufacturing or processing production process commences with the movement of raw materials from storage into a continuous, unbroken, integrated process and ends when the product being manufactured is packaged and ready for sale;
- ~~(17)(15)~~ (a) "Occasional sale" includes:
1. A sale of tangible personal property or digital property not held or used by a seller in the course of an activity for which he or she is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number, scope, and character to constitute an activity requiring the holding of a seller's permit. In the case of the sale of the entire, or a substantial portion of the nonretail assets of the seller, the number of previous sales of similar assets shall be disregarded in determining whether or not the current sale or sales shall qualify as an occasional sale; or
 2. Any transfer of all or substantially all the tangible personal property or digital property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.

- (b) For the purposes of this subsection, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the tangible personal property or digital property of such corporation or other entity;
- (18) (a) *"Other direct mail" means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing;*
- (b) *"Other direct mail" includes but is not limited to:*
 - 1. *Transactional direct mail that contains personal information specific to the addressee, including but not limited to invoices, bills, statements of account, and payroll advices;*
 - 2. *Any legally required mailings, including but not limited to privacy notices, tax reports, and stockholder reports; and*
 - 3. *Other non-promotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including but not limited to newsletters and informational pieces; and*
- (c) *"Other direct mail" does not include the development of billing information or the provision of any data processing service that is more than incidental to the production of printed material;*
- ~~(19)(16)~~ "Person" includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;
- ~~(20)(17)~~ "Permanent," as the term applies to digital property, means perpetual or for an indefinite or unspecified length of time;
- ~~(21)(18)~~ "Plant facility" means a single location that is exclusively dedicated to manufacturing or processing production activities. For purposes of this section, a location shall be deemed to be exclusively dedicated to manufacturing activities even if retail sales are made there, provided that the retail sales are incidental to the manufacturing activities occurring at the location. The term "plant facility" shall not include any restaurant, grocery store, shopping center, or other retail establishment;
- ~~(22)(19)~~ "Prewritten computer software" means:
 - (a) Computer software, including prewritten upgrades, that are not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or portions thereof does not cause the combination to be other than prewritten computer software;
 - (b) Software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the original purchaser; or
 - (c) Any portion of prewritten computer software that is modified or enhanced in any manner, where the modification or enhancement is designed and developed to the specifications of a specific purchaser. When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of the modifications or enhancements the person actually made. In the case of modified or enhanced prewritten software, if there is a reasonable, separately stated charge on an invoice or other statement of the price to the purchaser for the modification or enhancement, then the modification or enhancement shall not constitute prewritten computer software;
- ~~(23)(20)~~ "Purchase" means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property or digital property transferred electronically for a consideration and includes:
 - (a) When performed outside this state or when the customer gives a resale certificate, the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting;
 - (b) A transaction whereby the possession of tangible personal property or digital property is transferred but the seller retains the title as security for the payment of the price; and

- (c) A transfer for a consideration of the title or possession of tangible personal property or digital property which has been produced, fabricated, or printed to the special order of the customer, or of any publication;
- ~~(24)~~~~(21)~~ "Recycled materials" means materials which have been recovered or diverted from the solid waste stream and reused or returned to use in the form of raw materials or products;
- ~~(25)~~~~(22)~~ "Recycling purposes" means those activities undertaken in which materials that would otherwise become solid waste are collected, separated, or processed in order to be reused or returned to use in the form of raw materials or products;
- ~~(26)~~~~(23)~~ (a) "Repair, replacement, or spare parts" means any tangible personal property used to maintain, restore, mend, or repair machinery or equipment.
- (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or industrial tools;
- ~~(27)~~~~(24)~~ (a) "Retailer" means:
 1. Every person engaged in the business of making retail sales of tangible personal property, digital property, or furnishing any services included in KRS 139.200;
 2. Every person engaged in the business of making sales at auction of tangible personal property or digital property owned by the person or others for storage, use or other consumption, except as provided in paragraph (c) of this subsection;
 3. Every person making more than two (2) retail sales of tangible personal property or digital property during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy;
 4. Any person conducting a race meeting under the provision of KRS Chapter 230, with respect to horses which are claimed during the meeting.
- (b) When the department determines that it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property or digital property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers, the department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this chapter.
- (c) 1. Any person making sales at a charitable auction for a qualifying entity shall not be a retailer for purposes of the sales made at the charitable auction if:
 - a. The qualifying entity, not the person making sales at the auction, is sponsoring the auction;
 - b. The purchaser of tangible personal property at the auction directly pays the qualifying entity sponsoring the auction for the property and not the person making the sales at the auction; and
 - c. The qualifying entity, not the person making sales at the auction, is responsible for the collection, control, and disbursement of the auction proceeds.
- 2. If the conditions set forth in subparagraph 1. of this paragraph are met, the qualifying entity sponsoring the auction shall be the retailer for purposes of the sales made at the charitable auction.
- 3. For purposes of this paragraph, "qualifying entity" means a resident:
 - a. Church;
 - b. School;
 - c. Civic club; or
 - d. Any other nonprofit charitable, religious, or educational organization;
- ~~(28)~~~~(25)~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale, sublease, or subrent;

- (29)~~((26))~~ (a) "Ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.
- (b) "Ringtones" shall not include ringback tones or other digital files that are not stored on the purchaser's communications device;
- (30)~~((27))~~ (a) "Sale" means the furnishing of any services included in KRS 139.200; any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property; or digital property transferred electronically for a consideration, and includes:
1. The producing, fabricating, processing, printing, or imprinting of tangible personal property or digital property for a consideration for purchasers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting;
 2. A transaction whereby the possession of tangible personal property or digital property is transferred, but the seller retains the title as security for the payment of the price; and
 3. A transfer for a consideration of the title or possession of tangible personal property or digital property which has been produced, fabricated, or printed to the special order of the purchaser.
- (b) This definition shall apply regardless of the classification of a transaction under generally accepted accounting principles, the Internal Revenue Code, or other provisions of federal, state, or local law;
- (31)~~((28))~~ "Seller" includes every person engaged in the business of selling tangible personal property, digital property, or services of a kind, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and every person engaged in making sales for resale;
- (32)~~((29))~~ (a) "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property or digital property purchased from a retailer.
- (b) "Storage" does not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state;
- (33)~~((30))~~ "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses and includes natural, artificial, and mixed gas, electricity, water, steam, and prewritten computer software;
- (34)~~((31))~~ "Taxpayer" means any person liable for tax under this chapter;
- (35)~~((32))~~ "Transferred electronically" means accessed or obtained by the purchaser by means other than tangible storage media; and
- (36)~~((33))~~ (a) "Use" includes the exercise of any right or power over tangible personal property or digital property incident to the ownership of that property, or by any transaction in which possession is given, or by any transaction involving digital property where the right of access is granted.
- (b) "Use" does not include the keeping, retaining, or exercising any right or power over tangible personal property or digital property for the purpose of:
1. Selling tangible personal property or digital property in the regular course of business; or
 2. Subsequently transporting tangible personal property outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

➔Section 2. KRS 139.105 is amended to read as follows:

- (1) (a) For purposes of the retailer's obligation to pay or collect and remit the taxes imposed by KRS 139.200 and 139.310, the retailer shall source ~~the~~ **retail sales not addressed in subsections (2), (3), and (4) of this section** ~~[sale, excluding sales of communications services and digital property]~~ as follows:

- 1.~~{(a)}~~ Over the counter. When the purchaser receives tangible personal property, ***digital property***, or service at a business location of the retailer, the sale is sourced to that business location;
- 2.~~{(b)}~~ Delivery to a specified address. When a purchaser or purchaser's donee receives tangible personal property, ***digital property***, or service at a location specified by the purchaser, the sale is sourced to that location; or
- 3.~~{(c)}~~ ~~{Delivery }~~Address unknown. When the retailer of a product does not know the address where the tangible personal property, ***digital property***, or service is received, the sale is sourced to the first address listed in this paragraph that is known to the retailer:
 - a.~~{1}~~ The address of the purchaser;
 - b.~~{2}~~ The billing address of the purchaser; ~~{or}~~
 - c.~~{3}~~ ***The address of the purchaser's payment instrument; or***
 - d. The address from which the tangible personal property was shipped; from which the computer software ~~{was }~~delivered electronically or ***the digital property transferred electronically*** was first available for transmission by the retailer; or from which the service was provided, ***disregarding for these purposes any location that merely provided the actual digital transfer of the product sold.***

(b) Nothing included in this subsection shall affect the obligation of a purchaser to remit use tax pursuant to KRS 139.310.

(2) The retailer shall source communications services as follows:

- (a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid wireless calling service, shall be sourced to the customer's or other purchaser's place of primary use;
- (b) A sale of postpaid calling service shall be sourced to the origination point of the telecommunications signal as first identified by either the retailer's telecommunications system or information received by the retailer from its service provider, where the system used to transport the signals is not that of the retailer;
- (c) A sale of prepaid calling service or a sale of a prepaid wireless calling service shall be sourced according to the provisions of subsection (1) of this section. If the sale is of a prepaid wireless calling service and the retailer does not know the address where the service is received, the sale shall be sourced to the first of the following that is known by the retailer:
 1. The address of the customer available from the business records of the retailer;
 2. The billing address of the customer;
 3. The address from which the service was provided; or
 4. The location associated with the mobile telephone number;
- (d) A sale of a private communications service shall be sourced as follows:
 1. Service for a separate charge related to a customer channel termination point shall be sourced to each level of jurisdiction in which the customer channel termination point is located.
 2. Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.
 3. Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged shall be sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.
 4. Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points;
- (e) A sale of an ancillary service is sourced to the customer's place of primary use; and

(f) A sale of other communications services:

1. Sold on a call-by-call basis shall be sourced based on the taxing jurisdiction where the call either originates or terminates and in which the service address is also located; or
2. Sold on a basis other than a call-by-call basis shall be sourced to the customer's or other purchaser's place of primary use.

(3) ~~[The retailer shall source the sale of digital property to the place of primary use. For purposes of this subsection, "place of primary use" means the street address where the end user receives the digital property or from where the end user primarily accesses the digital property.]~~

~~(4) Florist wire sales shall be sourced in accordance with an administrative regulation promulgated by the department. Nothing included in subsection (1), (2), or (3) of this section shall affect the obligation of a purchaser to remit use tax pursuant to KRS 139.310.~~

(4) **Advertising and promotional direct mail and other direct mail shall be sourced as provided in Section 7 of this Act.**

➔ Section 3. KRS 139.260 is amended to read as follows:

For the purpose of the proper administration of this chapter and to prevent evasion of the duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that all gross receipts and all tangible personal property and digital property sold by any person for delivery or access in this state are subject to the tax until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless **the person** ~~he~~ takes from the purchaser a certificate to the effect that the property is either:

- (1) Purchased for resale according to the provisions of KRS 139.270;
- (2) Purchased through a **fully completed** ~~properly executed~~ certificate of exemption **or fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption** in accordance with KRS 139.270; or
- (3) Purchased according to **administrative** regulations **promulgated by** ~~of~~ the department ~~of Revenue~~ governing a direct pay authorization; ~~or~~
- ~~(4) Purchased under a form issued pursuant to KRS 139.777.~~

➔ Section 4. KRS 139.270 is amended to read as follows:

(1) The resale certificate, ~~or~~ certificate of exemption, **or Streamlined Sales and Use Tax Agreement Certificate of Exemption** relieves the retailer or seller from the burden of proof ~~only~~ **if the retailer or seller:**

(a) **Within ninety (90) days after the date of sale:**

1. **Obtains a fully completed resale certificate, certificate of exemption, or Streamlined Sales and Use Tax Agreement Certificate of Exemption; or**
2. **Captures the relevant data elements that correspond to the information that the purchaser would otherwise provide to the retailer or seller on the Streamlined Sales and Use Tax Agreement Certificate of Exemption; and**

(b) **Maintains a file of the certificate obtained or relevant data elements captured in accordance with KRS 139.720** ~~taken in good faith from a person who, at the time of purchasing the tangible personal property or digital property:~~

~~(a) Indicates an intention to sell it in the regular course of business by executing the resale certificate; or~~

~~(b) Indicates that the property purchased will be used in an exempt manner by executing a certificate of exemption.~~

(2) **The** ~~This~~ relief from liability provided to the retailer or the seller in ~~subsection (1) of~~ this section does not apply to a retailer or seller who:

- (a) Fraudulently fails to collect the tax;
- (b) Solicits purchasers to participate in the unlawful claiming of an exemption; or
- (c) Accepts an exemption certificate when the purchaser claims an entity-based exemption when:
 1. The product sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the retailer or seller; and

2. The state in which that location resides provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in that state.

For purposes of this paragraph, "entity-based exemption" means an exemption based on who purchases the product or who sells the product. An exemption available to all individuals shall not be considered an entity-based exemption.

- (3) (a) ~~["Good faith" shall be demonstrated by the retailer or seller if the retailer or seller:~~
 1. ~~Accepts, within ninety (90) days subsequent to the date of sale, a properly completed resale certificate or certificate of exemption; and~~
 2. ~~Maintains a file of the certificate or data elements in accordance with KRS 139.720.~~
 - (b) ~~If the department requests that the seller or retailer substantiate that the sale was a sale for resale or an exempt sale and~~ ~~if~~ the retailer or seller has not *complied with subsection (1) of this section* ~~obtained an exemption certificate or resale certificate or all relevant data elements within ninety (90) days subsequent to the date of sale, in keeping with the good faith standard~~, the seller or retailer *shall be relieved of any liability for the tax on the transaction if the seller or retailer, within one hundred twenty (120) days of the department's request:*
 1. *Obtains a fully completed resale certificate, exemption certificate, or Streamlined Sales and Use Tax Agreement Certificate of Exemption from the purchaser for an exemption that:*
 - a. *Was available under this chapter on the date the transaction occurred;*
 - b. *Could be applicable to the item being purchased; and*
 - c. *Is reasonable for the purchaser's type of business; or*
 2. *Obtains other information establishing that the transaction was not subject to the tax* ~~may offer additional documentation to the department that the transaction is not subject to tax after the ninety (90) day period which the department may consider~~.
 - (b) *Notwithstanding paragraph (a) of this subsection, if the department discovers through the audit process that the seller or retailer had knowledge or had reason to know at the time the information was provided that the information relating to the exemption claimed was materially false, or the seller or retailer otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction, the seller or retailer shall not be relieved of the tax on the transaction. The department shall bear the burden of proof that the seller or retailer had knowledge or had reason to know at the time the information was provided that the information was materially false.*
 - (4) *Notwithstanding subsections (1) and (3) of this section, the seller or retailer may still offer additional documentation that is acceptable by the department that the transaction is not subject to tax and to relieve the seller or retailer from the tax liability.*
 - (5) If the department later finds that the retailer or seller *complied with subsections (1), (3), and (4) of this section*, ~~exercised good faith according to the provisions of subsection (3) of this section~~ but that the purchaser used the property in a manner that would not have qualified for resale status or the purchaser issued a certificate of exemption *or a Streamlined Sales and Use Tax Agreement Certificate of Exemption* and used the property in some other manner or for some other purpose, the department shall hold the purchaser liable for the remittance of the tax and may apply penalties provided in KRS 139.990.
- ➔Section 5. KRS 139.365 is amended to read as follows:
- (1) Notwithstanding KRS 139.340, a commercial printer or mailer engaged in business in this state shall not be required to collect use tax on sales of printing, *advertising and promotional direct mail*, or *other* direct mail ~~advertising materials~~ that are ~~both~~ printed out of state and delivered out of state to the United States Postal Service for mass mailing to third-party Kentucky residents who are not purchasers of the advertising *and promotional direct mail or other direct mail* ~~materials~~ if the commercial printers or mailers:
 - (a) Maintain records relating to those sales to assist the department in the collection of use tax; and
 - (b) File reports as provided by KRS 139.730 if requested by the department.

- (2) If the commercial printer or mailer complies with the provisions of subsection (1) of this section, the purchaser of the printing, **advertising and promotional direct mail**, or **other** direct mail ~~advertising materials~~ shall have the sole responsibility for reporting and paying the use tax imposed by KRS 139.310.

➔Section 6. KRS 139.735 is amended to read as follows:

- (1) The department shall not promulgate any administrative regulation or policy, either written or unwritten, whose provisions are more stringent than ~~the provisions of~~ KRS 139.270 ~~and 103 KAR 31:030~~ regarding the **acceptance of**~~good faith provisions for~~ resale certificates, exemption certificates, **Streamlined Sales and Use Tax Agreement Certificate of Exemptions**, and direct pay authorizations.
- (2) It shall be mandatory upon the department ~~of Revenue~~ during any audit process to honor resale certificates, exemption certificates, **Streamlined Sales and Use Tax Agreement Certificate of Exemptions**, and direct pay authorizations when executed according to ~~the good faith provisions defined and described in~~ KRS 139.270 and **any administrative regulation promulgated by the department concerning direct pay authorizations**~~103 KAR 31:030~~.

➔Section 7. KRS 139.777 is amended to read as follows:

- (1) (a) **This section applies for purposes of uniformly sourcing:**
1. **Advertising and promotional direct mail transactions;**
 2. **Other direct mail transactions; and**
 3. **Bundled transactions that include advertising and promotional direct mail if the primary purpose of the transaction is the sale of advertising and promotional direct mail.**
- (b) **This section does not:**
1. **Impose requirements regarding the taxation of advertising and promotional direct mail or other direct mail or the application of sales for resale or other exemptions; or**
 2. **Apply to any transaction that includes the development of billing information or the provision of any data processing services that is more than incidental, regardless of whether advertising and promotion direct mail is included in the same mailing.**
- (c) **For a transaction characterized as a sale of services, this section applies only if the service is an integral part of the production and distribution of printed material that meets the definition of advertising and promotional direct mail or other direct mail.**
- (2) (a) **A purchaser of advertising and promotional direct mail may provide the retailer with:**
1. ~~A~~**Notwithstanding any other provision of this chapter, a purchaser of direct mail that is not a holder of a** direct pay permit;
 2. **A fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption or other written statement approved, authorized, or accepted by the department; or**
 3. ~~shall provide to the retailer in conjunction with the purchase either a Direct Mail Form or~~**Information to show the jurisdictions to**~~in~~ **which the advertising and promotional direct mail is to be delivered to recipients.**
- (b)~~(a)~~ **If the purchaser provides the retailer with a**~~Upon receipt of the~~ **direct pay permit, a fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption, or other written statement approved, authorized, or accepted by the department:**
1. ~~Mail Form,~~**The retailer, in the absence of bad faith, shall be relieved of all obligations to collect, pay, or remit the applicable tax involving other direct mail to which the direct pay permit, Streamlined Sales and Use Tax Agreement Certificate of Exemption, or written statement apply; and**
 2. **The purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients and shall pay or remit the applicable tax on a direct-pay basis.**~~A Direct Mail Form shall remain in effect for all future sales of direct mail by the retailer to the purchaser until it is revoked in writing.~~
- (c)~~(b)~~ **If the purchaser provides the retailer**~~Upon receipt of~~ **information**~~from the purchaser~~ **showing the jurisdictions to which the advertising and promotional direct mail is delivered to**

recipients, the retailer shall *source the sale and* collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the retailer is relieved of any further obligation to collect the tax on any transaction where the retailer has collected the tax pursuant to the delivery information provided by the purchaser.

- (d)~~(2)~~ If the purchaser of *advertising and promotional* direct mail does not ~~have a direct pay permit and does not~~ provide the retailer with ~~either~~ a direct *pay permit, a fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption, or other written statement approved, authorized, or accepted by the department* ~~Mail Form~~ or delivery information, as *provided* ~~required~~ by subsection (2)(a)~~(1)~~ of this section, the retailer shall *source the sale* ~~collect the tax according~~ to the address from where the *advertising and promotional* direct mail was shipped.
- (e) *Nothing in this subsection shall prohibit the department from disallowing credit for tax paid in another jurisdiction on sales sourced according to this subsection if the advertising and promotional direct mail is delivered to recipients in this state.*
- (3) (a) *The purchaser of other direct mail may provide the retailer with:*
1. *A direct pay permit; or*
 2. *A fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption or other written statement approved, authorized, or accepted by the department.*
- (b) *If the purchaser provides the retailer a direct pay permit, a fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption, or other written statement approved, authorized, or accepted by the department:*
1. *The retailer, in the absence of bad faith, shall be relieved of all obligations to collect, pay, or remit the applicable tax involving other direct mail to which the direct pay permit, Streamlined Sales and Use Tax Agreement Certificate of Exemption, or written statement apply; and*
 2. *The purchaser shall source the sale to the jurisdictions to which the other direct mail is to be delivered to the recipients and shall report and remit the applicable tax on a direct-pay basis.*
- (c) *If the purchaser of other direct mail does not provide the retailer with a direct pay permit, a fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption, or other written statement approved, authorized, or accepted by the department as provided in subsection (3)(a) of this section, the retailer shall source the sale to the location indicated by an address for the purchaser that is available from the retailer's business records that are maintained in the ordinary course of the retailer's business when use of this address does not constitute bad faith.*
- (4) *If both advertising and promotional direct mail and other direct mail are combined in a single mailing, the sale shall be sourced as other direct mail as provided in subsection (3) of this section.*
- (5) Nothing in this section~~subsection~~ shall limit a purchaser's:
- (a) *Obligation for sales or use tax to any state to~~in~~ which the advertising and promotional direct mail or other direct mail is delivered;*
 - (b) *Right under local, state, federal, or constitutional law to a credit for sales or use taxes legally due and paid to other jurisdictions; or*
 - (c) *Right to a refund of sales or use taxes overpaid to any jurisdiction.*
- ~~(3) If a purchaser of direct mail provides the retailer with documentation of direct pay authority, the purchaser shall not be required to provide a Direct Mail Form or delivery information to the retailer.~~
- ~~(4) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail retailer for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.~~
- ➔Section 8. KRS 139.795 is amended to read as follows:
- (1) (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes.

- (b) The certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller, except when the liability for not collecting the sales or use taxes results from the certified service provider's reliance on software certified by the state. Relief from liability shall not be granted if the certified service provider has incorrectly classified an item or transaction into a product-based exemption certified by the state, except when the item or transaction is classified based upon the individual listing of items or transactions within a product definition approved by the governing board or the member state.
- (c) A person that is responsible for the certified automated system is responsible for the functioning of the system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system.
- (2) (a) A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud;
- (b) In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider; and
- (c) A seller is subject to audit for transactions not processed by the certified service provider.
- (3) The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.
- (4) (a) A model 2 seller shall be relieved of liability for not collecting sales and use taxes if the liability resulted from the model 2 seller's reliance on software previously certified by the state. Relief from liability shall not be granted if the certified service provider has incorrectly classified an item or transaction into a product-based exemption certified by the state, except when the item or transaction is classified based upon the individual listing of items or transactions with a product definition approved by the governing board or the member state.
- ~~(b)(5)(a))~~ The department shall notify the certified service provider or model 2 seller if an item or transaction has been incorrectly classified as to its taxability.~~;~~
- ~~(c)(b))~~ The certified service provider or a model 2 seller shall have ten (10) days to revise the classification after the receipt of notice.~~;~~~~and~~
- ~~(d)(e))~~ Upon expiration of the ten (10) days, the certified service provider or the model 2 seller shall be liable for the failure to collect the amount of sales or use taxes due and owing.
- ~~(5)(6))~~ A model 3 seller that has signed a performance agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.
- ~~(6)(7))~~ A purchaser, **purchaser's seller, or certified service provider** shall not be subject to the additional tax, related penalties imposed under KRS 131.180, or related interest provided under KRS 131.183 for having failed to pay the correct amount of sales or use tax on specific transactions if:
 - (a) The purchaser's seller or certified service provider relied on erroneous data provided by the department on tax rates, boundaries, or taxing jurisdiction assignments; **or**
 - (b) ~~The purchaser holds a direct pay authorization and relied on erroneous data provided by the department on tax rates, boundaries, or taxing jurisdiction assignments; or~~
 - ~~(c)~~ The purchaser, purchaser's seller, or purchaser's certified service provider relied on erroneous data in the taxability matrix completed and made available to the public by the department. The relief prescribed in this paragraph for additional tax and related interest provided under KRS 131.183 shall be limited to the department's erroneous classification in the taxability matrix as "taxable" or "exempt," "included in sales price" or "excluded from sales price," or "included in the definition" or "excluded in the definition."
- (7) (a) ***If the department does not provide the seller with at least thirty (30) days' notice from the enactment of a sales and use tax rate change to the effective date of the rate change, the seller shall be relieved of liability for failing to collect tax at the new rate if:***
 1. ***The seller collected tax at the immediately preceding effective rate; and***

2. *The seller's failure to collect tax at the new rate does not extend beyond thirty (30) days after the date of enactment of the new rate.*
- (b) *Notwithstanding paragraph (a) of this subsection, if the department establishes that the seller fraudulently failed to collect tax at the new rate or solicits purchasers based on the immediately preceding effective rate, the relief provided to the seller in paragraph (a) of this subsection shall not apply.*
- (8) *A purchaser shall not be subject to the additional tax, related penalties imposed under KRS 131.180, or related interest provided under KRS 131.183 for failing to pay the correct amount of sales or use tax on specific transactions if the purchaser holds a direct pay authorization and relied on erroneous data provided by the department on the tax rates, boundaries, or taxing jurisdiction assignments.*
- ➔Section 9. KRS 139.990 is amended to read as follows:
- (1) Any person who executes:
- (a) A resale certificate for property in accordance with KRS 139.270 knowing at the time of purchase that such property is not to be resold by him in the regular course of business, for the purpose of evading the tax imposed under this chapter;
 - (b) An exemption certificate *or a Streamlined Sales and Use Tax Agreement Certificate of Exemption* for property in accordance with KRS 139.270, knowing at the time of the purchase that he is not engaged in an occupation that would entitle him to exemption status or any person who does not intend to use the property in the prescribed manner; *or*
 - (c) A direct pay authorization for property not in accordance with *an administrative regulation promulgated by the department governing direct pay authorizations*~~[103 KAR 31:030; or~~
 - ~~(d) A Direct Mail Form issued not in accordance with the provisions of KRS 139.777];~~
- shall be guilty of a Class B misdemeanor.
- (2) A person who engages in business as a seller in this state without a permit or permits as required by this chapter or after a permit has been suspended, and each officer of any corporation which is so engaged in business, shall be guilty of a Class B misdemeanor.
- (3) Any person who violates any of the provisions of KRS 139.220, 139.380, or 139.700 shall be guilty of a Class B misdemeanor.
- (4) Any person who violates any of the regulations promulgated by the department shall be guilty of a Class B misdemeanor.
- (5) Any person, business, or motion picture production company falsifying expenditure reports, applications, or any other statements made in securing the tax credit afforded by KRS 139.538 shall be guilty of a Class D felony. Such motion picture production companies shall be denied any tax credit to which they would otherwise be entitled, and shall be prohibited from applying for any future credit afforded by KRS 139.538.

➔Section 10. This Act takes effect July 1, 2011.

Signed by Governor March 15, 2011.

CHAPTER 34

(HB 433)

AN ACT relating to waste tires.

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

➔SECTION 1. A NEW SECTION OF SUBTITLE 50 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *The Waste Tire Working Group is hereby established and shall be attached to the cabinet for administrative purposes and staff support.*

- (2) *The Waste Tire Working Group shall have the following five (5) members:*
- (a) *The director of the Division of Waste Management or his or her designee who shall be an ex officio member and also serve as chair;*
 - (b) *The manager of the Recycling and Local Assistance Branch within the Division of Waste Management or his or her designee who shall be an ex officio member;*
 - (c) *One (1) representative of the Kentucky Department of Agriculture, to be selected by the Commissioner of Agriculture and appointed by the Governor for an initial term of two (2) years and who may be reappointed; and*
 - (d) *Two (2) representatives of the Solid Waste Coordinators of Kentucky selected by the Solid Waste Coordinators of Kentucky and appointed by the Governor for an initial term of three (3) years and who may be reappointed.*
- (3) *The members of the Waste Tire Working Group identified in paragraphs (c) and (d) of subsection (2) of this section shall receive travel-related expenses but no salary as compensation.*
- (4) *The first meeting of the Waste Tire Working Group shall be no later than August 15, 2011. The working group shall meet at least twice a year or more frequently at the call of the chair.*
- (5) *The Waste Tire Working Group shall:*
- (a) *Provide advice and input to the cabinet regarding:*
 - 1. *The administration and implementation of alternative methods for controlling the local accumulation of waste tires;*
 - 2. *Developing the concept of a core fee for waste tires;*
 - 3. *Improving the manifest system that tracks tires from point of sale to point of disposal;*
 - 4. *Developing ways to assist local governments with direct grants for waste tire disposal; and*
 - 5. *Developing an informational fact sheet on proper waste tire disposal pursuant to subsections (2) and (7) of Section 2 of this Act to be made available on the cabinet's Web site and available in print upon request;*
 - (b) *Serve as an advisory body to the cabinet in the development of a formula that the cabinet will use to apportion the money in the waste tire trust fund established by KRS 224.50-880 for crumb rubber grants, tire amnesties, and tire-derived fuel, and to return a portion of the waste tire funds to local governments during Commonwealth Cleanup Week for waste tire disposal; and*
 - (c) *Provide advice and input to the cabinet on the data development and preparation of the waste tire report mandated under KRS 224.50-872.*

➔Section 2. KRS 224.50-868 is amended to read as follows:

- (1) Until July 31, 2010, a person purchasing a new motor vehicle tire in Kentucky shall pay to the retailer a one dollar (\$1) fee at the time of the purchase of that tire. A new tire is a tire that has never been placed on a motor vehicle wheel rim, but it is not a tire placed on a motor vehicle prior to its original retail sale or a recapped tire. The term "motor vehicle" as used in this section shall mean "motor vehicle" as defined in KRS 138.450. The fee shall not be subject to the Kentucky sales tax.
- (2) When a person purchases a new motor vehicle tire in Kentucky to replace another tire, the tire that is replaced becomes a waste tire subject to the waste tire program. The person purchasing the new motor vehicle tire shall ***be encouraged by the retailer to leave the waste tire with the retailer***~~either offer the retailer that waste tire~~ or meet the following requirements:
 - (a) Dispose of the waste tire in accordance with KRS 224.50-856(1);
 - (b) Deliver the waste tire to a person registered in accordance with the waste tire program; or
 - (c) Reuse the waste tire for its original intended purpose or an agricultural purpose.
- (3) A retailer shall report to the Department of Revenue on or before the twentieth day of each month the number of new motor vehicle tires sold during the preceding month and the number of waste tires received from customers that month. The report shall be filed on forms and contain information as the Department of

Revenue may require. The retailer shall remit with the report ninety-five percent (95%) of the fees collected for the preceding month and may retain a five percent (5%) handling fee.

- (4) A retailer shall:
 - (a) Accept from the purchaser of a new tire, if offered, for each new motor vehicle tire sold, a waste tire of similar size and type; and
 - (b) Post notice at the place where retail sales are made that state law requires the retailer to accept, if offered, a waste tire for each new motor vehicle tire sold and that a person purchasing a new motor vehicle tire to replace another tire shall comply with subsection (2) of this section. The notice shall also include the following wording: "State law requires a new tire buyer to pay one dollar (\$1) for each new tire purchased. The money is collected and used by the state to oversee the management of waste tires, including cleaning up abandoned waste tire piles and preventing illegal dumping of waste tires."
- (5) A retailer shall comply with the requirements of the recordkeeping system for waste tires established by KRS 224.50-874.
- (6) A retailer shall transfer waste tires only to a person who presents a letter from the cabinet approving the registration issued under KRS 224.50-858 or a copy of a solid waste disposal facility permit issued by the cabinet, unless the retailer is delivering the waste tires to a destination outside Kentucky and the waste tires will remain in the retailer's possession until they reach that destination.
- (7) ***The cabinet shall, in conjunction with the Waste Tire Working Group, develop the informational fact sheet to be made publicly available on the cabinet's Web site and available in print upon request. The fact sheet shall identify ways to properly dispose of the waste tire and present information on the problems caused by improper waste tire disposal.***

➔Section 3. KRS 224.50-872 is amended to read as follows:

The cabinet shall report to the General Assembly no later than January 15 ***each year***~~[, 2010,]~~ on the effectiveness of the waste tire program in developing markets for waste tires, the ***amount of revenue generated and the*** effectiveness of the fee established in KRS 224.50-868 in funding the cabinet's implementation of the waste tire program, to include any waste tire amnesty program established by the cabinet as provided for in KRS 224.50-880(1)(b),~~[and]~~ whether the fee should be extended, ***comparative data on the number of waste tires generated each year, the number disposed of, the number of orphan tire piles, and the cost of tire disposal by counties in the Commonwealth***~~[beyond July 31, 2010].~~

➔Section 4. KRS 224.50-874 is amended to read as follows:

- (1) A recordkeeping system shall be implemented for a waste tire from the time it becomes a waste tire to the time it is disposed, recycled, or used as tire-derived fuel.
- (2) A retailer, an automotive recycling dealer, and a person required to register as an accumulator, transporter, or processor who transfers waste tires to another person shall obtain a receipt for the waste tires. ***The final processor or a transporter who arranges for disposal or recycling out-of-state shall return a copy of the receipt for disposal or recycling to the retailer within thirty (30) days of receiving the waste tires. If the retailer does not receive the receipt from the final processor or transporter showing proof of who took final custody of the waste tires and disposed of the tires in accordance with KRS 224.50-856 (1) and (2), the retailer shall notify the Division of Waste Management.***
- (3) A person filling out a receipt shall provide the following information:
 - (a) That person's name, address, company and signature;
 - (b) The number of waste tires or their passenger tire equivalents accepted;
 - (c) The date the waste tires were transferred; and
 - (d) The name and address of the person transferring the waste tires.
- (4) A person who fills out a receipt shall keep a copy for three (3) years.

➔Section 5. KRS 224.50-880 is amended to read as follows:

- (1) A waste tire trust fund is established in the state treasury. The fund shall be used by the cabinet for the following purposes:
 - (a) Properly managing waste tires;

- (b) Paying the ~~cabinet's costs in implementing the waste tire program to include~~ costs associated with any waste tire amnesty program established by the cabinet that permits waste tires to be turned in without incurring fees, charges, or penalties;
- (c) Paying the Department of Revenue's costs of assessing and collecting the fee established by KRS 224.50-868;
- (d) Entering into the agreements described in KRS 224.50-876; and
- (e) Awarding the grants described in KRS 224.50-878.

The cabinet shall utilize no more than twenty-five percent (25%) of the funds for the administrative costs related to implementing the waste tire program. All remaining funds shall be utilized, in accordance with KRS 224.50-850 to 224.50-880, for waste tire amnesty programs, crumb rubber grants, tire-derived fuel programs, and other projects that will manage waste tires as appropriate to protect human health, safety, and the environment, or to develop markets for waste tires.

- (2) All interest earned on money in the fund shall be credited to the fund.
- (3) Money unexpended at the end of a fiscal year shall not lapse to the general fund.
- (4) Any money remaining in the waste tire trust fund established by KRS 224.50-820 shall be transferred to the fund established by this section.

Signed by Governor March 15, 2011.

CHAPTER 35

(HB 442)

AN ACT relating to nurse licensure.

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

➔Section 1. KRS 314.011 is amended to read as follows:

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

- (1) "Board" means Kentucky Board of Nursing;
- (2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A;
- (3) "Nurse" means a person who is licensed or holds the privilege to practice under the provisions of this chapter as a registered nurse or as a licensed practical nurse;
- (4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:
 - (a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and
 - (b) Planning, implementation, and evaluation based on nationally accepted standards of nursing practice;
- (5) "Registered nurse" means one who is licensed or holds the privilege under the provisions of this chapter to engage in registered nursing practice;
- (6) "Registered nursing practice" means the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:
 - (a) The care, counsel, and health teaching of the ill, injured, or infirm;
 - (b) The maintenance of health or prevention of illness of others;

- (c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced practice registered nurse and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses. Components of medication administration include but are not limited to:
 - 1. Preparing and giving medications in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;
 - 2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
 - 3. Intervening when emergency care is required as a result of drug therapy;
 - 4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
 - 5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
 - 6. Instructing an individual regarding medications;
 - (d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care; and
 - (e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses;
- (7) "Advanced practice registered nurse" means a certified nurse practitioner, certified nurse anesthetist, certified nurse midwife, or clinical nurse specialist, who is licensed to engage in advance practice registered nursing pursuant to KRS 314.042 and certified in at least one (1) population focus;
- (8) "Advanced practice registered nursing" means the performance of additional acts by registered nurses who have gained added knowledge and skills through an approved organized postbasic program of study and clinical experience; who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced practice registered nursing as a certified nurse practitioner, certified nurse anesthetist, certified nurse midwife, or clinical nurse specialist; and who certified in at least one (1) population focus. The additional acts shall, subject to approval of the board, include but not be limited to prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced practice registered nurses who engage in these additional acts shall be authorized to issue prescriptions for and dispense nonscheduled legend drugs as defined in KRS 217.905 and to issue prescriptions for but not to dispense Schedules II through V controlled substances as classified in KRS 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, and 218A.130, under the conditions set forth in KRS 314.042 and regulations promulgated by the Kentucky Board of Nursing on or before August 15, 2006.
- (a) Prescriptions issued by advanced practice registered nurses for Schedule II controlled substances classified under KRS 218A.060 shall be limited to a seventy-two (72) hour supply without any refill. Prescriptions issued under this subsection for psychostimulants may be written for a thirty (30) day supply only by an advanced practice registered nurse certified in psychiatric-mental health nursing who is providing services in a health facility as defined in KRS Chapter 216B or in a regional mental health-mental retardation services program as defined in KRS Chapter 210.
 - (b) Prescriptions issued by advanced practice registered nurses for Schedule III controlled substances classified under KRS 218A.080 shall be limited to a thirty (30) day supply without any refill. Prescriptions issued by advanced practice registered nurses for Schedules IV and V controlled substances classified under KRS 218A.100 and 218A.120 shall be limited to the original prescription and refills not to exceed a six (6) month supply.
 - (c) Limitations for specific controlled substances which are identified as having the greatest potential for abuse or diversion, based on the best available scientific and law enforcement evidence, shall be established in an administrative regulation promulgated by the Kentucky Board of Nursing. The regulation shall be based on recommendations from the Controlled Substances Formulary Development Committee, which is hereby created. The committee shall be composed of two (2) advanced practice registered nurses appointed by the Kentucky Board of Nursing, one (1) of whom shall be designated as

a committee co-chair; two (2) physicians appointed by the Kentucky Board of Medical Licensure, one (1) of whom shall be designated as a committee co-chair; and one (1) pharmacist appointed by the Kentucky Board of Pharmacy. The initial regulation shall be promulgated on or before August 15, 2006, and shall be reviewed at least annually thereafter by the committee.

Nothing in this chapter shall be construed as requiring an advanced practice registered nurse designated by the board as a certified nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation;

- (9) "Licensed practical nurse" means one who is licensed or holds the privilege under the provisions of this chapter to engage in licensed practical nursing practice;
- (10) "Licensed practical nursing practice" means the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:
 - (a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist;
 - (b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board;
 - (c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced practice registered nurse and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;
 - (d) Teaching, supervising, and delegating except as limited by the board; and
 - (e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;
- (11) "School of nursing" means a nursing education program preparing persons for licensure as a registered nurse or a practical nurse;
- (12) "Continuing education" means offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge;
- (13) "Nursing assistance" means the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse;
- (14) "Sexual assault nurse examiner" means a registered nurse who has completed the required education and clinical experience and maintains a current credential from the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the Justice and Public Safety Cabinet in ~~consultation~~^{consultation} with the Sexual Assault Response Team Advisory Committee pursuant to KRS 216B.400(4);
- (15) "Competency" means the application of knowledge and skills in the utilization of critical thinking, effective communication, interventions, and caring behaviors consistent with the nurse's practice role within the context of the public's health, safety, and welfare;
- (16) "Credential" means a current license, registration, certificate, or other similar authorization that is issued by the board;
- (17) "Dispense" means:
 - (a) To receive and distribute noncontrolled legend drug samples from pharmaceutical manufacturers to patients at no charge to the patient or any other party; or
 - (b) To distribute noncontrolled legend drugs from a local, district, and independent health department, subject to the direction of the appropriate governing board of the individual health department;
- (18) "Dialysis care" means a process by which dissolved substances are removed from a patient's body by diffusion, osmosis, and convection from one (1) fluid compartment to another across a semipermeable membrane;

- (19) "Dialysis technician" means a person who is not a nurse, a physician assistant, or a physician and who provides dialysis care in a licensed renal dialysis facility under the direct, on-site supervision of a registered nurse or a physician;
- (20) ~~["Clinical internship" means a supervised nursing practice experience which involves any component of direct patient care;~~
- ~~(21)]~~"Population focus" means the section of the population within which the advanced practice registered nurse has targeted to practice. The categories of population foci are:
- (a) Family or individual across the lifespan;
 - (b) Adult health and gerontology;
 - (c) Neonatology;
 - (d) Pediatrics;
 - (e) Women's health and gender-related health; and
 - (f) Psychiatric mental health; and

~~(21)~~~~(22)~~ "Conviction" means but is not limited to:

- (a) An unvacated adjudication of guilt;
- (b) Pleading no contest or nolo contendere or entering an Alford plea; or
- (c) Entering a guilty plea pursuant to a pretrial diversion order;

Regardless of whether the penalty is rebated, suspended, or probated.

➔Section 2. KRS 314.041 is amended to read as follows:

- (1) An applicant for a license to practice as a registered nurse shall file with the board a written application for a license and submit evidence, verified by oath, that the applicant:
 - (a) Has completed the basic curriculum for preparing registered nurses in an approved school of nursing and has completed requirements for graduation therefrom;
 - (b) Has fulfilled the requirements of KRS 214.615(1);~~and~~
 - (c) Is able to understandably speak and write the English language and to read the English language with comprehension; *and*
 - (d) ***Has passed the jurisprudence examination approved by the board as provided by subsection (4) of this section.***
- (2) An applicant shall be required to pass ***a licensure***~~an~~ examination in any subjects as the board may determine~~and, beginning January 1, 2006, complete the clinical internship in accordance with subsection (4) of this section~~. Application for licensure by examination shall be received by the board at the time determined by the board by administrative regulation.
- (3) Upon request, an applicant who meets the requirements of subsection (1) of this section shall be issued a provisional license that shall expire no later than six (6) months from the date of issuance.~~[This period of time may be extended at the discretion of the board upon the provisional licensee showing that he or she has a temporary physical or mental inability to complete the clinical internship within six (6) months. The provisional licensee shall provide evidence as requested by the board to substantiate this inability.]~~
- (4) ***The jurisprudence examination shall be prescribed by the board and be conducted on the licensing requirements under this chapter and board regulations and requirements applicable to the nursing profession in this Commonwealth. The board shall promulgate an administrative regulation in accordance with KRS Chapter 13A establishing the provisions to meet this requirement***~~[The clinical internship shall last a minimum of one hundred twenty (120) hours and shall be completed within six (6) months of the issuance of the provisional license, unless an extension has been granted by the board pursuant to subsection (3) of this section. The board shall promulgate an administrative regulation in accordance with KRS Chapter 13A to establish procedures applicable to the documentation of completion of the internship. The internship may be completed during a clinical orientation period in a practice setting].~~

- (5) An individual who holds a provisional license shall have the right to use the title "registered nurse applicant" and the abbreviation "R.N.A." An R.N.A. shall only work under the direct supervision of a registered nurse and shall not engage in independent nursing practice.
- (6) Upon the applicant's successful completion of all requirements for registered nurse licensure, the board may issue to the applicant a license to practice nursing as a registered nurse, if in the determination of the board the applicant is qualified to practice as a registered nurse in this state.
- (7) The board may issue a license to practice nursing as a registered nurse to any applicant who has passed the *licensure examination and the jurisprudence examination* prescribed by the board or ~~their~~^{its} equivalent and been licensed as a registered nurse under the laws of another state, territory, or foreign country, if in the opinion of the board the applicant is qualified to practice as a registered nurse in this state. ~~{ An applicant who has not practiced as a registered nurse in another state or territory for at least one hundred twenty (120) hours within the first year following graduation from a school of nursing shall be required to complete the clinical internship in accordance with subsection (4) of this section. The board shall promulgate an administrative regulation in accordance with KRS Chapter 13A establishing the provisions to meet this requirement. }~~
- (8) The applicant for licensure to practice as a registered nurse shall pay a licensure application fee, and *licensure* examination fees if applicable, as set forth in a regulation by the board promulgated pursuant to the provisions of KRS Chapter 13A.
- (9) Any person who holds a license to practice as a registered nurse in this state shall have the right to use the title "registered nurse" and the abbreviation "R.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a registered nurse. No person shall practice as a registered nurse unless licensed under this section.
- (10) (a) ~~{ Until November 1, 2006, those persons previously licensed by the board and not engaged in the practice of nursing in the Commonwealth of Kentucky, but desiring to maintain the right to use the title "R.N." may apply and be granted inactive status by the board in accordance with regulations promulgated by the board. Inactive status shall be renewed in accordance with regulations promulgated by the board in accordance with KRS Chapter 13A and those persons granted inactive status shall not be governed by the continuing competency provisions contained in this chapter. A registered nurse on inactive status may petition the board for a renewal of a license to actively practice and shall complete the requirements as established in KRS Chapter 314 and by regulation of the board. Inactive status licenses shall not be issued for renewal after October 31, 2006. }~~
 - (b) ~~{ }~~ On November 1, 2006, and thereafter, a registered nurse who is retired, upon payment of a one-time fee, may apply for a special license in recognition of the nurse's retired status. A retired nurse may not practice nursing but may use the title "registered nurse" and the abbreviation "R.N."
 - (b) ~~{ (e) }~~ A retired registered nurse who wishes to return to the practice of nursing shall apply for reinstatement.
 - (c) ~~{ (d) }~~ The board shall promulgate an administrative regulation pursuant to KRS Chapter 13A to specify the fee required in paragraph (a) of this subsection ~~{ (b) }~~ and reinstatement under paragraph (b) ~~{ (e) }~~ of this subsection.
- (11) Any person heretofore licensed as a registered nurse under the licensing laws of this state who has allowed the license to lapse by failure to renew may apply for reinstatement of the license under the provisions of this chapter. *A person whose license has lapsed for one (1) year or more shall pass the jurisprudence examination approved by the board as provided in subsection (4) of this section.*
- (12) A license to practice registered nursing may be limited by the board in accordance with regulations promulgated by the board and as defined in this chapter.
- (13) A graduate of an approved prelicensure registered nurse program who has not successfully completed the licensure examination for registered nurses shall be eligible for admission to the licensure examination for licensed practical nurses following successful completion of a board-approved practical nursing role delineation course. This course shall include content on the roles and responsibilities of a licensed practical nurse and direct supervised clinical instruction.
- (14) A person who has completed a prelicensure registered nurse program and holds a current, active licensed practical nurse license from another jurisdiction may apply for licensure by endorsement as a licensed practical nurse in this state.

➔Section 3. KRS 314.051 is amended to read as follows:

- (1) An applicant for a license to practice as a licensed practical nurse shall file with the board a written application for a license verified by oath, that the applicant:
 - (a) Has fulfilled the requirements of KRS 214.615(1);
 - (b) Has completed the required educational program in practical nursing at an approved school of nursing and has completed requirements for graduation therefrom;~~and~~
 - (c) Is able to understandably speak and write the English language and to read the English language with comprehension; *and*
 - (d) *Has passed the jurisprudence examination approved by the board as provided by subsection (4) of this section.*
- (2) The applicant for licensure to practice as a licensed practical nurse shall pay a licensure application fee, and *licensure* examination fees if applicable, as set forth in a regulation by the board.
- (3) An applicant shall be required to pass *a licensure*~~an~~ examination in any subjects the board may determine~~and, beginning January 1, 2006, complete the clinical internship in accordance with subsection (5) of this section~~. Application for licensure by examination shall be received by the board at the time determined by the board by administrative regulation.
- (4) *The jurisprudence examination shall be prescribed by the board and be conducted on the licensing requirements under this chapter and board regulations and requirements applicable to the nursing profession in this Commonwealth. The board shall promulgate an administrative regulation in accordance with KRS Chapter 13A establishing the provisions to meet this requirement.*
- (5) Upon request, an applicant who meets the requirements of subsection (1) of this section shall be issued a provisional license that shall expire no later than six (6) months from the date of issuance.~~This period of time may be extended at the discretion of the board upon the provisional licensee showing that he or she has a temporary physical or mental inability to complete the clinical internship within six (6) months. The provisional licensee shall provide evidence as requested by the board to substantiate this inability.~~
- ~~(5) The clinical internship shall last a minimum of one hundred twenty (120) hours and shall be completed within six (6) months of the issuance of the provisional license, unless an extension has been granted by the board pursuant to subsection (4) of this section. The board shall promulgate an administrative regulation in accordance with KRS Chapter 13A to establish procedures applicable to the documentation of completion of the internship. The internship may be completed during a clinical orientation period in a practice setting.~~
- (6) An individual who holds a provisional license shall have the right to use the title "licensed practical nurse applicant" and the abbreviation "L.P.N.A." An L.P.N.A. shall only work under the direct supervision of a nurse and shall not engage in independent nursing practice.
- (7) Upon the applicant's successful completion of all requirements for licensed practical nurse licensure, the board may issue to the applicant a license to practice as a licensed practical nurse if, in the determination of the board, the applicant is qualified to practice as a licensed practical nurse in this state.
- (8) The board may issue a license to practice as a licensed practical nurse to any applicant who has passed the *licensure* examination *and the jurisprudence examination* prescribed by the board or ~~their~~^{its} equivalent, and has been licensed or registered as a licensed practical nurse or a person licensed to perform similar services under a different title, under the laws of another state, territory or foreign country if, in the opinion of the board, the applicant meets the requirements for a licensed practical nurse in this state.~~An applicant who has not practiced as a licensed practical nurse in another state or territory for at least one hundred twenty (120) hours within the first year following graduation from a school of nursing shall be required to complete the clinical internship in accordance with subsection (5) of this section. The board shall promulgate an administrative regulation in accordance with KRS Chapter 13A establishing the provisions to meet this requirement.~~
- (9) Any person who holds a license to practice as a licensed practical nurse in this state shall have the right to use the title "licensed practical nurse" and the abbreviation "L.P.N." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is a licensed practical nurse. No person shall practice as a licensed practical nurse unless licensed under this chapter.

- (10) (a) ~~Until November 1, 2005, those persons previously licensed by the board and not engaged in the practice of nursing in the Commonwealth of Kentucky, but desiring to maintain the right to use the title "L.P.N." may apply and be granted inactive status by the board in accordance with regulations promulgated by the board. Inactive status shall be renewed in accordance with administrative regulations promulgated by the board in accordance with KRS Chapter 13A, and those persons granted inactive status shall not be governed by the continuing competency provisions contained in this chapter. A licensed practical nurse on inactive status may petition the board for a renewal of a license to actively practice and shall complete the requirements as established in this chapter and by regulation of the board. Inactive status licenses shall not be issued for renewal after October 31, 2005.~~
- (b) ~~Beginning November 1, 2005, for a licensed practical nurse who is retired, upon payment of a one-time fee, the board may issue a special license to a licensed practical nurse in recognition of the nurse's retired status. A retired nurse may not practice nursing but may use the title "licensed practical nurse" and the abbreviation "L.P.N."~~
- (b) ~~(c)~~ A retired licensed practical nurse who wishes to return to the practice of nursing shall apply for reinstatement.
- (c) ~~(d)~~ The board shall promulgate an administrative regulation pursuant to KRS Chapter 13A to specify the fee required in paragraph (a) of this subsection ~~(b)~~ and reinstatement under paragraph (b) ~~(c)~~ of this subsection.
- (11) Any person heretofore licensed as a practical nurse under the licensing laws of this state who has allowed the license to lapse by failure to renew may apply for reinstatement of the license under the provisions of this chapter. ***A person whose license has lapsed for one (1) year or more shall pass the jurisprudence examination approved by the board as provided in subsection (4) of this section.***
- (12) A license to practice practical nursing may be limited by the board in accordance with regulations promulgated by the board and as defined in this chapter.
- ➔ Section 4. KRS 314.073 is amended to read as follows:
- (1) ~~[Except for the first licensure renewal following the issuance of an original license by the board,]~~ As a prerequisite for license renewal, all individuals licensed under provisions of this chapter shall be required to document continuing competency during the immediate past licensure period as prescribed in regulations promulgated by the board.
 - (2) The continuing competency requirement shall be documented and reported as set forth by the board in administrative regulations promulgated in accordance with KRS Chapter 13A.
 - (3) The board shall approve providers of continuing education. The approval may include recognition of providers approved by national organizations and state boards of nursing with comparable standards. Standards for these approvals shall be set by the board in administrative regulations promulgated in accordance with the provisions of KRS Chapter 13A.
 - (4) The board shall work cooperatively with professional nursing organizations, approved nursing schools, and other potential sources of continuing education programs to assure that adequate continuing education offerings are available statewide. The board may enter into contractual agreements to implement the provisions of this section.
 - (5) The board shall be responsible for notifying applicants for licensure and licensees applying for license renewal, of continuing competency requirements.
 - (6) The continuing competency requirements shall include the completion of the course described in KRS 214.610(1) at least one (1) time every ten (10) years, but the board may in its discretion require completion of the course more frequently.
 - (7) As a part of the continuing education requirements that the board adopts to ensure continuing competency of present and future licensees, the board shall ensure practitioners licensed under KRS Chapter 314 complete a one-time training course of at least one and one-half (1.5) hours covering the recognition and prevention of pediatric abusive head trauma, as defined in KRS 620.020. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours. Current practicing nurses shall demonstrate completion of this course by December 31, 2013.

- (8) In order to offset administrative costs incurred in the implementation of the mandatory continuing competency requirements, the board may charge reasonable fees as established by regulation in accordance with the provisions of KRS Chapter 13A.
- (9) The continuing competency requirements shall include at least five (5) contact hours in pharmacology continuing education for any person registered as an advanced practice registered nurse.

Signed by Governor March 15, 2011.

CHAPTER 36

(HB 460)

AN ACT relating to auctioneer services.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 426 IS CREATED TO READ AS FOLLOWS:

- (1) *If real or personal property is sold at public sale under any order or decree of any court in this state then, upon the request of a creditor or mortgage holder, the court under whose jurisdiction the sale is to be made may secure the services of an auctioneer licensed in this state to conduct the public sale, fix the auctioneer's fee, and order the fee to be paid out of the proceeds of the sale. The fee:*
 - (a) *Shall not exceed six percent (6%) of the sale price on sales of real property;*
 - (b) *Shall not exceed twenty percent (20%) of the sale price on sales of personal property; and*
 - (c) *Shall not include the fees and expenses provided for by rule of the Supreme Court under KRS 31A.010(4) that are incurred by the master commissioner for the sale.*
- (2) *Upon the request of the creditor or mortgage holder, when property is ordered to be sold by a court the master commissioner, as described in KRS Chapter 31A, shall employ a licensed auctioneer to handle the sale upon terms and conditions acceptable to the creditor or mortgage holder.*
- (3) *If real property is sold at a public sale conducted by a licensed auctioneer, then the sale shall be conducted on the site of real property to be sold.*
- (4) *If the master commissioner is also a licensed auctioneer, then the master commissioner shall not receive any extra fee for acting as an auctioneer, but shall receive fees in his or her capacity as master commissioner or special commissioner under KRS 31A.010(4).*
- (5) *Nothing contained in this section shall waive any provision of KRS 426.160, 426.200, or 426.560.*

Signed by Governor March 15, 2011.

CHAPTER 37

(HJR 19)

A JOINT RESOLUTION designating honorary names for various roads and bridges and directing the placement of honorary roadside signs.

WHEREAS, from time to time, the General Assembly has seen fit to honor various Kentuckians by naming portions of state highways and erecting commemorative roadway signs in their honor; and

WHEREAS, these Kentuckians have come from all walks of life, held a multitude of jobs, and had a variety of reasons that they were deserving of the honor; and

WHEREAS, these individuals have included former Governors, decorated veterans, slain law enforcement officers, local elected officials, astronauts, doctors, educators, distinguished athletes, and civic leaders; and

WHEREAS, every citizen of the Commonwealth owes a great debt of gratitude to the patriotic men and women killed and wounded in service to their country in times of great need; and

WHEREAS, the General Assembly has often honored the veterans of this state by naming portions of several roads, from interstates to small two-lane country roads, in their honor; and

WHEREAS, the General Assembly again sees fit to honor a group of individuals who have made the lives of their fellow Kentuckians better and brought honor and respect to the Commonwealth;

NOW, THEREFORE,

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

➔Section 1. The Transportation Cabinet shall honor the service, sacrifice, and memory of Sergeant First Class John D. Morton by designating the portion of Kentucky Route 15 in Powell County as the "SFC John D. Morton Memorial Highway," and shall, within 30 days of the effective date of this Resolution, erect appropriate signage designating this section of Kentucky Route 15 as the "SFC John D. Morton Memorial Highway."

➔Section 2. The Transportation Cabinet shall honor the memory of William H. "Larry" Tackett by designating the bridge on Kentucky Route 1506 in South Williamson as the "William H. "Larry" Tackett Memorial Bridge" and shall, within 30 days of the effective date of this Resolution, erect signs at both ends of the bridge specified in this Section that read "William H. "Larry" Tackett Memorial Bridge."

➔Section 3. The Transportation Cabinet shall honor the memory of Cloyd Williams and John Lee Fox by designating Kentucky Route 214 in Monroe County as the "Cloyd Williams and John Lee Fox Memorial Highway," and shall, within 30 days of the effective date of this Resolution, erect signs at each end of the route specified in this section, and at intervals in between that read "Cloyd Williams and John Lee Fox Memorial Highway."

➔Section 4. The Transportation Cabinet is hereby directed to honor April Helton by erecting signs on both entrances into Knox County on United States Highway 25E, that read "Home of 2010 Kentucky Middle School Science Teacher of the Year, April Helton." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at the locations specified in this section that read "Home of 2010 Kentucky Middle School Science Teacher of the year, April Helton." The signs erected under this section shall remain in place for at least one year from the date of their placement.

➔Section 5. The Transportation Cabinet is hereby directed to honor Ella Beth Gray by erecting signs on both entrances into Knox County on United States Highway 25E, that read "Home of 2010 Tiny Miss Kentucky, Ella Beth Gray." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at the locations specified in this section that read "Home of 2010 Tiny Miss Kentucky, Ella Beth Gray." The signs erected under this section shall remain in place for at least one year from the date of their placement.

➔Section 6. The Transportation Cabinet shall honor the accomplishments of hall of fame jockey Steve Cauthen by designating Kentucky Route 14, from the intersection with Interstate 71 (mile point 2.18) to near the intersection with Interstate 75 (mile point 8.055), as the "Steve Cauthen Highway", and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 7. The Transportation Cabinet is hereby directed to designate United States Route 641 South in Marshall County, also known as the Benton Bypass, the "J.R. Gray Bypass," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 8. The Transportation Cabinet is hereby directed to designate the bridge at the intersection of Kentucky Route 38 and Kentucky Route 2430 in Harlan County as the "Cloverfork Veterans Memorial Bridge." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at each end of the bridge identified in this section that read "Cloverfork Veterans Memorial Bridge."

➔Section 9. The Transportation Cabinet shall honor the memory of Officer Gary E. Kidwell by erecting signs on United States Highway 150, at the Rockcastle and Lincoln County line where Kentucky Highway 150 intersects with Copper Creek Road that read "In Memory of Officer Gary E. Kidwell." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect appropriate signs at the locations identified in this section.

➔Section 10. The Transportation Cabinet is hereby directed to honor Rylie Jo Makenzie Maggard by erecting signs on both sides of Kentucky Route 421 at the floodgates in Harlan County that read "Home of 2008 Kentucky State Festival Pageant Grand Supreme Rylie Jo Makenzie Maggard." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs along the locations specified in this section that

read "'Home of 2008 Kentucky State Festival Pageant Grand Supreme Rylie Jo Makenzie Maggard.'" The signs erected under this section shall remain in place for at least one year from the date of their placement.

➔Section 11. The Transportation Cabinet is hereby directed to honor the life and memory of fallen Bowling Green master police officer David Whitson by designating Kentucky Route 80 in Warren County as the "David Whitson Memorial Highway." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs that read "David Whitson Memorial Highway" at each end of the route identified in this section, and at appropriate intervals along the route.

➔Section 12. The Transportation Cabinet is hereby directed to designate the bridge on Kentucky Route 172 over Upper Laurel Creek near Kentucky Route 469 in Johnson County (Bridge Number 058B00014N) as the "Paul and Frances Keaton Bridge." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at each end of the bridge identified in this section that read "Paul and Frances Keaton Bridge."

➔Section 13. The Transportation Cabinet is hereby directed to designate the bridge off of Kentucky Route 321 over Paint Creek onto James Trimble Boulevard in Johnson County as the "Proctor Brown Memorial Bridge." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at each end of the bridge identified in this section that read "Proctor Brown Memorial Bridge."

➔Section 14. The Transportation Cabinet is hereby directed to honor Tim Masthay, former University of Kentucky football player and member of the 2011 Super Bowl Champion Green Bay Packers, by erecting signs on both entrances into the city of Murray on United States Highway 641 that read "Home of Tim Masthay, 2011 Super Bowl Champion." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at the locations specified in this section that read "Home of Tim Masthay, 2011 Super Bowl Champion." The signs erected under this section shall remain in place for at least one year from the date of their placement.

➔Section 15. The Transportation Cabinet shall honor the life, service, and accomplishments of the nation's 40th president, Ronald Wilson Reagan, by designating Interstate 275, for its entire length inside the boundaries of the Commonwealth, as the "Ronald Reagan Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 16. The Transportation Cabinet is hereby directed to designate Kentucky Route 7 in Letcher County, from the Perry County line at mile point 0 to its intersection with Kentucky Route 15 at the western limits of Isom at mile point 13.497 as the "Ruben Watts Memorial Highway." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs that read "Ruben Watts Memorial Highway" at each end of the route identified in this section, and at appropriate intervals in between.

➔Section 17. The Transportation Cabinet shall designate the portion of United States Highway 60 from the intersection of KY 1, mile point 24.80, to KY 207, mile point 30.54, the "Firefighter Leslie Keith Gillum Memorial Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs identifying this portion of highway as the "Firefighter Leslie Keith Gillum Memorial Highway."

➔Section 18. The Transportation Cabinet shall designate the portion of United States Highway 60 from KY 207, mile point 30.54, to the Carter/Boyd County line, mile point 34.84, the "Captain Warne Hall Memorial Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs identifying this portion of highway as the "Captain Warne Hall Memorial Highway."

➔Section 19. The Transportation Cabinet shall honor the Wolf family by designating the bridge on 31E from KY 509 to Whitesides Drive as the "Wolf Bridge." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at both ends of the bridge specified in this section that read "Wolf Bridge."

➔Section 20. The Transportation Cabinet is hereby directed to designate Kentucky Route 1120 within the city limits of Bellevue, as the "SPC Russell Madden Memorial Parkway." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs that read "SPC Russell Madden Memorial Parkway" at each end of the route specified in this section and at appropriate intervals in between.

➔Section 21. The Transportation Cabinet shall memorialize the service and contributions of former KSP Trooper Joseph "Leo" Mudd by designating Kentucky Route 88 in Grayson County, from its intersection with Kentucky Route 1214 (mile point 2.426) to its intersection with Kentucky Route 226 (mile point 5.962), as the "Leo Mudd Memorial Highway," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 22. The Transportation Cabinet shall extend the "Don J. Jenkins Highway" to include all of United States Route 231 in Butler County, and shall, within 30 days of the effective date of this Resolution, erect appropriate

signs denoting this designation. The signs erected under this section shall include an indication that Don Jenkins is a recipient of the Congressional Medal of Honor.

➔Section 23. The Transportation Cabinet shall memorialize the service and contributions of former Westport volunteer fire chief Chris Stock by designating Kentucky Route 524 in Oldham County from 18 Mile Creek Road to 2nd Street in the community of Westport, as the "Chris Stock Memorial Highway," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation."

➔Section 24. The Transportation Cabinet shall honor the memory of Roy Ratliff by designating the unnamed twin bridge on Kentucky Route 1428 in the city of Martin as the "Roy Ratliff Memorial Bridge," and shall, within 30 days of the effective date of this Resolution, erect signs at both ends of the bridge specified in this section that read "Roy Ratliff Memorial Bridge."

Signed by Governor March 16, 2011.

CHAPTER 38

(HCR 37)

A CONCURRENT RESOLUTION supporting federal legislation to require the United States Environmental Protection Agency (EPA) to consider affordability and the financial capabilities of communities when implementing its Combined Sewer Overflow (CSO) control measures.

WHEREAS, EPA and respective state agencies are charged with enforcing the Clean Water Act and requiring and approving long-term control plans to meet EPA's CSO control requirements; and

WHEREAS, federal law and EPA regulations mandate that local communities comply with the federal requirements, but very little federal funding is available to assist communities to comply with these mandates; and

WHEREAS, to comply with these federal mandates, communities are forced to pass on the costs of conforming to federal law to consumers by increasing taxes, utility rates, or both; and

WHEREAS, across the country, local sanitary and storm water utility rates are growing rapidly as communities undertake efforts to implement costly repairs and replacement of decades-old wastewater infrastructure to meet federal standards; and

WHEREAS, the "Combined Sewer Overflow Control Policy" issued by EPA in 1994, and incorporated into the federal Clean Water Act in 2000 (33 U.S.C. secs. 1251 et seq.), emphasizes the need for flexibility in the development and implementation of CSO long-term control plans, including when EPA reviews community decisions as to the affordability and cost-effectiveness of CSO control measures; and

WHEREAS, as further guidance for the "Combined Sewer Overflow Control Policy," in 1997, EPA published "Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development" ("CSO Guidance") which outlined the need to consider affordability and ability to pay when enforcing compliance with EPA's CSO control measures under federal law and related regulations; and

WHEREAS, EPA's guidance purportedly provides for consideration of the community's ability to pay when it reviews plans to achieve compliance, but the General Assembly finds that EPA, in practice, does not adequately take into consideration the costs to the community and its ability to pay when enforcing CSO measures under federal laws and regulations; and

WHEREAS, in 2008 and 2009, the bipartisan Clean Water Affordability Act was filed in the United States Senate, which would have provided further guidance and federal funding to assist communities in meeting EPA's CSO standards, and specifically would have mandated that EPA update and enforce "CSO Guidance" regarding affordability when reviewing long-term control plans for CSO compliance; and

WHEREAS, during the 2010 Regular Session, the General Assembly passed House Bill 504, which required the Energy and Environment Cabinet, to the extent allowable under state and federal law, to consider numerous affordability and feasibility factors when issuing permits and approving long-term control plans for wet-weather discharges from CSOs;

NOW, THEREFORE,

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

➔Section 1. The General Assembly recognizes the staggering costs that communities across the Commonwealth face when implementing long-term control plans to achieve CSO compliance as mandated by the EPA and that limited federal funding has been made available to assist with achieving compliance.

➔Section 2. The General Assembly requests federal legislation that ensures adequate federal funding, allows for more flexibility in rate structures, or both, to assist communities in implementing their long-term control plans as required by federal law, and in some cases, by court order.

➔Section 3. The General Assembly supports legislation, such as the Clean Water Affordability Act filed during the 110th and 111th United States Congresses, to mandate that EPA revise the "CSO Guidance" to more thoroughly consider the financial impact on communities from implementing long-term control plans to achieve CSO compliance and to determine reasonable limits beyond which no community should be required to pay to achieve compliance.

➔Section 4. The General Assembly urges EPA, while legislation described in Section 3 is being considered, to take immediate action to revise its practices so that it utilizes more flexibility in addressing CSO issues as provided by the "Combined Sewer Overflow Control Policy," and the Clean Water Act.

➔Section 5. The Clerk of the House of Representatives shall send a copy of this Resolution to each member of Kentucky's Congressional delegation.

Signed by Governor March 16, 2011.

CHAPTER 39

(HCR 114)

A CONCURRENT RESOLUTION urging greater awareness of the need to use specially designed medical alert bands by persons using blood thinners to prevent fatal head injuries.

WHEREAS, millions of blood thinners, or anti-coagulants, are prescribed for a variety of medical conditions in the United States; and

WHEREAS, blood thinners are vital to maximizing the effectiveness of many medical treatments and surgical procedures; and

WHEREAS, even minor head injuries can turn serious rapidly, especially when a person is using a blood thinner; and

WHEREAS, there may be no external physical symptoms when an epidural hemorrhage occurs reducing blood flow to the brain; and

WHEREAS, health care providers, pharmacies, patients, and caregivers are often unaware of the dangers associated with the use of blood thinners and any kind of head injury; and

WHEREAS, the American Heart Association, the Brain Injury Association, and the Centers for Disease Control and Prevention are among the many groups urging health care providers to recognize the need for medical alert bands and urging patients to wear those bands; and

WHEREAS, immediate medical care after an accident is more likely and can save the lives of people using blood thinners if they are wearing a specially designed medical alert band; and

WHEREAS, the medical alert bands will be easily available and affordable through the Shannon Alert Website and use of medical alert bands by people using blood thinners would be greatly increased if they were available in the future for free with prescriptions for blood thinners; and

WHEREAS, Shannon Elizabeth Mudd, 17, who was on blood thinners for treatment of cancer fell and hit her head, but was not taken to hospital immediately and died four weeks later; and

WHEREAS, the life of Shannon Elizabeth Mudd may have been saved if the need for emergency care because of her use of blood thinners had been known; and

WHEREAS, the goal of the Shannon Alert is to strongly encourage the use of specially designed medical alert bands for persons using blood thinners and to raise awareness of the need for immediate medical care of persons wearing these bands;

NOW, THEREFORE,

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

➔Section 1. Both the Kentucky Senate and the House of Representatives strongly urge greater awareness of the need to use specially designed medical alert bands by persons using blood thinners to prevent fatal head injuries, and the need for immediate medical care for persons using blood thinners who experience even a minor head injury. The General Assembly encourages health care providers and pharmacists to strongly recommend that persons prescribed blood thinners wear medical alert bands and educate patients, caregivers, and health care providers about the need for immediate medical care for persons using blood thinners who experience even a minor head injury.

➔Section 2. A copy of this Resolution shall be transmitted to Angela Mudd, 321 Clover Cove Drive, Shepherdsville, Kentucky 40165.

Signed by Governor March 16, 2011.

CHAPTER 40

(HCR 138)

A CONCURRENT RESOLUTION urging Congress to direct more resources and attention to providing treatment to combat military personnel and combat veterans suffering from Posttraumatic Stress Disorder (PTSD) and other combat-related stress disorders.

WHEREAS, the most common mental health problems faced by returning troops are Posttraumatic Stress Disorder, depression, and other combat-related stress disorders; and

WHEREAS, the wars in Afghanistan and Iraq are the longest combat operations since Vietnam, and the stress of being in a war zone combined with the stress of being away from home for long periods of time can increase the chance of having PTSD or other mental health problems; and

WHEREAS, in 2009, more than 330 members of the United States Armed Forces nationwide committed suicide, and it is estimated that for every death, at least five members of the United States Armed Forces were hospitalized for attempting to take their own lives; and

WHEREAS, the United States Department of Veterans Affairs, the Department of Defense, and many other entities are working to identify and address the issues of combat veterans and combat military personnel suffering from PTSD and other combat-related stress disorders; and

WHEREAS, the Department of Defense has established Warrior Transition Units at Fort Knox and Fort Campbell designed to offer extensive assistance to service members and their families; and

WHEREAS, the United States Department of Veterans Affairs has a PTSD program at each of Kentucky's VA Medical Centers; and

WHEREAS, to ensure that combat veterans get the assistance they need, the General Assembly through legislation required Pretrial Service Officers, as part of their interview process, to ask whether an individual has been in combat and, if so, to provide contact information for services available to combat veterans; and

WHEREAS, the General Assembly has supported members of the United States Armed Forces and the National Guard by encouraging all to seek assistance through the National Guard's Joint Services Support Portal, which is designed to provide "a one stop shop" for programs and support services available to all military personnel and their families; and

WHEREAS, mental trauma is not as easily identifiable as the physical trauma suffered by combat military personnel and combat veterans, and may require additional resources to identify and treat; and

WHEREAS, while support and treatment programs are available to combat veterans and combat military personnel suffering from PTSD or other combat-related stress disorders, there are many service members who are still not receiving sufficient treatment; and

WHEREAS, the service members who willingly sacrifice their safety for the freedom of all Americans deserve to have access to all the resources and support services necessary for them to reintegrate into society;

NOW, THEREFORE,

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

➔Section 1. The Kentucky General Assembly urges the 112th Congress of the United States to direct more attention and resources to providing efficient and comprehensive mental health treatment to combat military personnel and combat veterans.

➔Section 2. The Kentucky General Assembly hereby directs that a copy of this Resolution be sent to each member of the Kentucky's congressional delegation.

Signed by Governor March 16, 2011.

CHAPTER 41

(HB 12)

AN ACT relating to evidence.

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

➔Section 1. KRS 422.300 is amended to read as follows:

- (1) *As used in KRS 422.300 to 422.330, "state" has the same meaning as in KRS 421.360.*
- (2) Medical charts or records of any hospital licensed under *either* KRS 216B.105 *or a similar law of another state or the United States* that are susceptible to photostatic reproduction may be proved as to foundation, identity and authenticity without any preliminary testimony, by use of legible and durable copies, certified in the manner provided herein by the employee of the hospital charged with the responsibility of being custodian of the originals thereof. Said copies may be used in any trial, hearing, deposition or any other judicial or administrative action or proceeding, whether civil or criminal, in lieu of the original charts or records which, however, the hospital shall hold available during the pendency of the action or proceeding for inspection and comparison by the court, tribunal or hearing officer and by the parties and their attorneys of record.

Signed by Governor March 16, 2011.

CHAPTER 42

(HB 33)

AN ACT relating to publications of state agencies.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 57 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
 - (a) *"Publication" means any annual or biennial report, book, pamphlet, newsletter, bulletin, map, calendar, or brochure, of a documentary or informational nature, whether or not required by statute. The term does not include news releases; notices, agendas, or minutes of meetings; or budgets and budget recommendations; and*

- (b) *"State agency" means any executive branch organizational unit or administrative body, as defined in KRS 12.010, or any agency of the legislative branch of state government.*
- (2) *A state agency shall not mail a publication to any person who has not requested a copy of the publication unless the unsolicited mailing is:*
- (a) *Used to market or advertise an agency, event, site, program, or service; or*
- (b) *Determined, in writing, to be essential to the performance of the agency's statutory mission by:*
1. *The Governor, if the state agency is in the executive branch; or*
 2. *The General Assembly or the Legislative Research Commission, if the state agency is in the legislative branch.*
- (3) *The Governor may delegate responsibility under subsection (2) of this section to the secretaries of the program cabinets for publication of state agencies within or attached to their respective cabinets.*
- (4) *If any provision of the Kentucky Revised Statutes requires a state agency to submit a publication annually or biennially to the Legislative Research Commission or to the General Assembly, the state agency shall submit that publication online rather than on paper or by means of any other printed medium.*

➔Section 2. KRS 12.110 is amended to read as follows:

- (1) The Governor shall prepare and submit to the Legislative Research Commission annual reports of the finances and operations of the state and such other reports as the General Assembly may prescribe or as the Governor may desire. The head of each statutory department shall make to the Governor an annual report and may at any time be required by the Governor to make any special report concerning the work under his charge, with his observations and recommendations thereon and pertinent statistics concerning the work of the department, each of which the Governor shall transmit to the Legislative Research Commission **online**, with such comments as ~~the Governor~~ **he** may desire to make. All such annual reports shall observe the fiscal year of the state as the reporting year, and shall be published **only** to the extent ordered in writing by the Governor **in accordance with Section 1 of this Act.** ~~Twenty five (25) copies of each report shall be filed with the Legislative Research Commission for availability to the members of the General Assembly upon request. Additional copies of any report shall be made available to the Legislative Research Commission at no charge if the requests for said report exceed twenty five (25).~~
- (2) Agencies shall file all annual and biennial reports required by law to be made by agencies with the Governor, and a copy thereof in the office of the Secretary of State, which shall be preserved as a public record.

Signed by Governor March 16, 2011.

CHAPTER 43

(HB 52)

AN ACT relating to elder and vulnerable adult abuse, neglect, and financial exploitation and making an appropriation therefor.

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

➔Section 1. KRS 209.990 is amended to read as follows:

- (1) Anyone knowingly or wantonly violating the provisions of KRS 209.030(2) shall be guilty of a Class B misdemeanor as designated in KRS 532.090. Each violation shall constitute a separate offense.
- (2) Any person who knowingly abuses or neglects an adult is guilty of a Class C felony.
- (3) Any person who wantonly abuses or neglects an adult is guilty of a Class D felony.
- (4) Any person who recklessly abuses or neglects an adult is guilty of a Class A misdemeanor.
- (5) Any person who knowingly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class C felony.

- (6) Any person who wantonly or recklessly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class D felony.
- (7) Any person who knowingly, wantonly, or recklessly exploits an adult, resulting in a total loss to the adult of three hundred dollars (\$300) or less in financial or other resources, or both, is guilty of a Class A misdemeanor.
- (8) *If a defendant is sentenced under subsection (5), (6), or (7) of this section and fails to return the victim's property as defined in KRS 218A.405 within thirty (30) days of an order by the sentencing court to do so, or is thirty (30) days or more delinquent in a court-ordered payment schedule, then the defendant shall be civilly liable to the victim of the offense or the victim's estate for treble damages, plus reasonable attorney fees and court costs. Any interested person or entity, as defined in KRS 387.510, shall have standing to bring a civil action on the victim's behalf to enforce this section. The sentencing judge shall inform the defendant of the provisions of this subsection at sentencing.*

➔Section 2. KRS 381.280 is amended to read as follows:

- (1) If the husband, wife, heir-at-law, beneficiary under a will, joint tenant with the right of survivorship or the beneficiary under any insurance policy takes the life of the decedent *or victimizes the decedent by the commission of any felony under KRS Chapter 209* and *in either circumstance* is convicted thereof ~~of a felony~~, the person so convicted forfeits all interest in and to the property of the decedent, including any interest he *or she* would receive as surviving joint tenant, and the property interest *or insurable interest* so forfeited descends to the decedent's other heirs-at-law, *beneficiaries, or joint tenants*, unless otherwise disposed of by the decedent. *A judge sentencing a person for a offense that triggers a forfeiture under this section shall inform the defendant of the provisions of this section at sentencing.*
- (2) *A forfeiture under subsection (1) of this section:*
 - (a) *Shall not apply in cases involving the commission of any felony under KRS Chapter 209 where the will, deed, or insurance policy was executed prior to the effective date of this Act;*
 - (b) *Shall not apply in cases where the decedent, with knowledge of the person's disqualification, reaffirmed the right of the husband, wife, heir-at-law, beneficiary under a will, joint tenant with the right of survivorship, or insurance policy beneficiary to receive the property by executing a new or modified will or codicil, insurance policy or policy modification, or deed; and*
 - (c) *Shall not apply in cases of a felony under KRS Chapter 209 committed prior to the effective date of this Act.*
- (3) *If, after the provisions of this section are applied, there are no other heirs-at-law, beneficiaries, or joint tenants of the decedent as to all or part of the interest forfeited, the forfeited interest shall escheat to the state under KRS Chapter 393. The Department of the Treasury shall, after liquidation of the interest, pay the proceeds into the elder and vulnerable adult victims trust fund established in Section 4 of this Act.*
- (4) *Legal, real estate and insurance professionals shall make reasonable efforts to advise their clients of the provisions of this section prior to the execution of documents affected by the provisions of this section.*

➔Section 3. KRS 381.280 is amended to read as follows:

- (1) If the husband, wife, heir-at-law, beneficiary under a will, joint tenant with the right of survivorship or the beneficiary under any insurance policy takes the life of the decedent and is convicted thereof of a felony, the person so convicted forfeits all interest in and to the property of the decedent, including any interest he would receive as surviving joint tenant, and the property interest so forfeited descends to the decedent's other heirs-at-law, unless otherwise disposed of by the decedent.
- (2) *Legal, real estate and insurance professionals shall make reasonable efforts to advise their clients of the provisions of Section 2 of this Act as effective January 1, 2012, prior to the execution of documents affected by the provisions of this section.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

- (1) *The elder and vulnerable victims trust fund is created as a separate revolving fund in the Office of the State Treasurer.*
- (2) *The moneys in the trust fund shall be expended only as provided in this section and are hereby appropriated for those purposes.*

- (3) *The State Treasurer shall credit to the trust fund all amounts received for this purpose, including appropriations, grants, gifts, and any amounts received under Section 2 of this Act.*
- (4) *The State Treasurer shall invest trust fund money in the same manner as surplus funds are invested. Earnings shall be credited to the trust fund.*
- (5) *Notwithstanding KRS 45.229, any moneys remaining in the trust fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.*
- (6) *Money shall be disbursed from the trust fund only for the purpose of providing funding to one (1) or more public or private nonprofit organizations, including government organizations, in the development or operation of elder or vulnerable adult abuse, neglect, or financial exploitation prevention or intervention programs. An organization shall be eligible to receive funding only if:*
 - (a) *The organization agrees to provide at least a twenty-five percent (25%) match of the total project amount requested, which may consist of monetary or in-kind contributions;*
 - (b) *The organization demonstrates a willingness and ability to provide program models and consultation to other organizations and communities regarding program development and maintenance; and*
 - (c) *The organization funds:*
 - 1. *Programs which provide advocacy, crisis counseling, financial guardianship, or other similar services to victims of elder or vulnerable adult abuse, neglect, or financial exploitation;*
 - 2. *Law enforcement, prosecution, or court-based programs that enhance case investigations, prosecutions, or victim assistance in criminal cases involving elder or vulnerable adult abuse, neglect, or financial exploitation;*
 - 3. *Programs which develop and implement public education and awareness campaigns on elder and vulnerable adult abuse, neglect, or financial exploitation by making use of electronic and print media to inform the public about the nature of these crimes and available resources such as victims rights, legal remedies, agency services, and prevention strategies; or*
 - 4. *Research initiatives that provide greater insight into the dynamics of elder and vulnerable adult abuse, neglect, or financial exploitation and guidance on best practices for intervention or prevention strategies.*
- (7) (a) *Fiscal, programmatic, and disbursement authority over trust fund money shall be provided by the Justice and Public Safety Cabinet, which shall develop a review panel system to award grants from the trust fund on an annual basis. Panel members shall be individuals with knowledge and operational experience in elder and vulnerable adult abuse, neglect, or financial exploitation and shall be drawn from the law enforcement, court, prosecution, and victim advocacy communities.*
 - (b) *In disbursing money from the trust fund, the panel shall not disburse to any one (1) program more than twenty-five percent (25%) of the total funds available for disbursement and shall seek to distribute meaningful awards to as many programs as possible throughout the Commonwealth.*
- (8) *The Justice and Public Safety Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 209 IS CREATED TO READ AS FOLLOWS:

 - (1) *Any person convicted of a felony under this chapter shall be disqualified from being appointed or serving as a guardian, limited guardian, conservator, limited conservator, executor, administrator, fiduciary, personal representative, attorney-in-fact, or health care surrogate as to the victim of the offense or the victim's estate. The sentencing judge shall inform the defendant of the provisions of the section at sentencing.*
 - (2) *Any interested person or entity, as that phrase is defined in KRS 387.510, shall have standing to contest the appointment or continued service of a person subject to the prohibition established in subsection (1) of this section.*
 - (3) *Actions of a guardian, limited guardian, conservator, limited conservator, executor, administrator, fiduciary, personal representative, attorney-in-fact, or health care surrogate disqualified from acting in that capacity due to the provisions of subsection (1) of this section shall remain valid as to third parties acting in good faith and without knowledge of the person's disqualification.*

➔Section 6. Section 2 of this Act shall take effect on January 1, 2012.

Signed by Governor March 16, 2011.

CHAPTER 44

(HB 119)

AN ACT relating to the training of city government officials.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 64 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 3 of this Act:

- (1) *"City" means:*
 - (a) *Any city of any class;*
 - (b) *An urban-county government that does not participate in the county officers training program under KRS 64.5275; and*
 - (c) *A consolidated local government that does not participate in the county officers training program under KRS 64.5275;*
- (2) *"City officer" means:*
 - (a) *Any individual elected to a city office existing under KRS Chapter 83A;*
 - (b) *Any individual elected to a city office existing under KRS Chapter 67A or 67C, if the respective government does not participate in the county officers training program under KRS 64.5275;*
 - (c) *Any individual appointed to fill a vacancy in an elected city office as defined under paragraph (a) or (b) of this subsection; and*
 - (d) *Any individual serving in a nonelected city office as defined by KRS 83A.080 that is designated by the city as eligible for participation in the city officers training program in the ordinance adopted pursuant to Section 2 of this Act;*
- (3) *"Training unit" means fifteen (15) clock hours of attendance or participation in qualifying courses during a calendar year; and*
- (4) *"Training incentive multiplier" means a number of one (1) to (4) that is used to calculate the final training incentive to be paid to a city officer eligible to participate in the training incentive program.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 64 IS CREATED TO READ AS FOLLOWS:

- (1) *Any city may elect, by adopting an ordinance meeting the requirements of this section, to establish an incentive program for city officers to obtain educational training related to their duties and responsibilities as city officers and the functions of city governments.*
- (2) *The ordinance shall apply to all elected city officers within the city, and the city may allow any nonelected city officer holding an office existing or created under KRS 83A.080 to participate in the incentive program.*
- (3) *The ordinance shall designate a base training incentive payment amount that shall be awarded to the city officer for the completion of a training unit during service as a city officer within the city. This base incentive payment amount shall be no less than one hundred dollars (\$100) and no more than five hundred dollars (\$500). The training incentive payment amount established in the ordinance shall not be adjusted by any index reporting changes to consumer prices or any other method to account for inflation.*
- (4) *The ordinance shall require city officers to complete a number of continuing education hours equal to at least one (1) training unit during each calendar year in order to receive a training incentive payment.*
- (5) *The ordinance shall state that the city shall award the training incentive payment to the city officer for the completion of a training unit during the calendar year. The training incentive payment awarded shall be the*

base training incentive payment multiplied by the training incentive multiplier earned by the city officer. The city officer shall accumulate no more than one (1) training incentive multiplier per calendar year of continuous service, for a maximum of four (4) training incentive multipliers.

- (6) *The ordinance shall provide that a city officer who fails to earn at least one (1) training unit in any calendar year shall receive no training incentive payment for that calendar year and shall have his or her training incentive multiplier reset to one (1) for the following year.*
- (7) *The ordinance may permit the city officer to carry forward no more than fifteen (15) hours of excess credit hours earned in one (1) calendar year to apply to the minimum fifteen (15) hours training unit required in the next calendar year. "Excess hours" means credit hours earned beyond fifteen (15) during a single calendar year.*
- (8) *The ordinance shall require the city officer to present proof of his or her completion of the annual training unit and shall establish the time that the city officers shall receive their training incentive payments.*
- (9) *Each city shall, in the ordinance establishing the city officers training program, establish a policy regarding the reimbursement to the city officer, or payment to the provider for the city officer's attendance of an event hosting a course where the officer seeks to earn credit.*
- (10) *The ordinance shall specify criteria for the presentation of proof of attendance by city officers and the criteria for the evaluation of a course's relevance to the duties and functions of city officers and the functions of city governments. In addition to other courses that may be deemed relevant by the city, courses that provide instruction on statutory powers and duties of cities and city officers, intergovernmental relationships, municipal finance and budgeting, municipal taxation, ethics, open records, open meetings, economic development, or municipal police powers shall satisfy the criteria established in the ordinance.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 64 IS CREATED TO READ AS FOLLOWS:

- (1) *A city may, by ordinance, elect to repeal the training incentive program.*
- (2) *The training incentive payments provided under Section 2 of this Act shall not be included in the calculation for a retirement allowance for any city officer participating in the County Employees Retirement System set out in KRS 78.510 to 78.852.*
- (3) *Training incentive payments provided under Section 2 of this Act shall not be considered compensation and shall not be required to be included in the ordinance establishing the compensation of elected city officers under KRS 67C.129, 67C.131, 83A.070, or when applicable, KRS 64.610.*
- (4) *Training incentive payments provided under Section 2 of this Act shall not be a factor in setting elected city officers' maximum compensation under KRS 83A.075(2).*
- (5) *Nothing in Sections 1 to 3 of this Act shall be construed to prohibit a city from enacting or establishing alternative incentives for the continuing education and training of its elected officers or employees.*

➔Section 4. KRS 78.510 is amended to read as follows:

As used in KRS 78.510 to 78.852, unless the context otherwise requires:

- (1) "System" means the County Employees Retirement System;
- (2) "Board" means the board of trustees of the system as provided in KRS 78.780;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (5) "Examiner" means the medical examiners as provided in KRS 61.665;

- (6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.510 to 78.852;
- (7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;
- (12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon. For members who begin participating on or after September 1, 2008, "accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by KRS 61.702(2)(b);
- (13) "Creditable compensation" means all salary, wages, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation", including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, sick leave except as provided in KRS 78.616(5), and other items determined by the board shall be excluded. Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time. ***Creditable compensation shall not include training incentive payments for city officers paid as set out in Sections 1 to 3 of this Act;***
- (14) "Final compensation" means:
 - (a) For a member who begins participating before September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
 - (b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75),

final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance;

- (c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;
 - (d) For a member who begins participating on or after September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit; or
 - (e) For a member who begins participating on or after September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) complete fiscal years he was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7.5) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
 - (16) "Retirement allowance" means the retirement payments to which a member is entitled;
 - (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables adopted by the board. In cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member, unless the member has chosen the Social Security adjustment option as provided for in KRS 61.635(8), in which case the member's actual age shall be used. No disability retirement option shall be less than the same option computed under early retirement;
 - (18) "Normal retirement date" means the sixty-fifth birthday of a member unless otherwise provided in KRS 78.510 to 78.852;
 - (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year. The "fiscal year" shall be the limitation year used to determine contribution and benefits limits as set out in 26 U.S.C. sec. 415;
 - (20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.510 to 78.852;
 - (21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:
 - (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed nine (9) months, except for employees of school boards, in which case the period of time shall not exceed six (6) months;
 - (b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;

- (c) Temporary, also referred to as probationary, positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or
 - (d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;
- (22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);
- (23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall not be considered a recipient, except for purposes of KRS 61.623;
- (27) "Person" means a natural person;
- (28) "School term or year" means the twelve (12) months from July 1 through the following June 30;
- (29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula in KRS 61.5525, except the determination of the actuarial cost for classified employees of a school board shall be based on their final compensation, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;
- (31) "Participating" means an employee is currently earning service credit in the system as provided in KRS 78.615;
- (32) "Month" means a calendar month;
- (33) "Membership date" means the date upon which the member began participating in the system as provided in KRS 78.615;
- (34) "Participant" means a member, as defined by subsection (8) of this section, or a retired member, as defined by subsection (23) of this section;
- (35) "Qualified domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, that:
- (a) Is issued by a court or administrative agency; and
 - (b) Relates to the provision of child support, alimony payments, or marital property rights to an alternate payee; and
- (36) "Alternate payee" means a spouse, former spouse, child, or other dependent of a participant, who is designated to be paid retirement benefits in a qualified domestic relations order.

Signed by Governor March 16, 2011.

CHAPTER 45

(HB 121)

AN ACT relating to crimes and punishments and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of trafficking in naphthylprovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone when he or she knowingly and unlawfully traffics in naphthylprovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone.*
- (2) *Trafficking in naphthylprovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone is a Class A misdemeanor.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of possession of naphthylprovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone when he or she knowingly and unlawfully possesses naphthylprovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone.*
- (2) *Possession of naphthylprovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone is a Class B misdemeanor, except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of manufacturing naphthylprovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone when he or she knowingly and unlawfully manufactures naphthylprovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone.*
- (2) *Unlawfully manufacturing naphthylprovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone is a Class A misdemeanor.*

➔Section 4. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Health and Family Services, the controlled substances listed in this section are included in Schedule I:

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, or salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxadine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacymorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine.
- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphanol; Methylmorphine; Methylhydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

- (3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, or salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; *naphthylprovalerone*; *3,4-methylenedioxyprovalerone*; *3,4-methylenedioxymethylcathinone*; *4-methylmethcathinone*; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including but not limited to Methcathinone, Cat, and Ephedrone); synthetic cannabinoid agonists or piperazines; salvia.
- (4) Any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: gamma hydroxybutyric acid.

➔Section 5. KRS 217.065 is amended to read as follows:

Except for violations of KRS 218A.350, a drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If in package form unless it bears a label containing:
 - (a) The name and place of business of the manufacturer, packer, or distributor, except that, in the case of a prescription drug, it shall bear the name and place of business of the manufacturer, and the name and place of business of the packer, or distributor, if other than the manufacturer; and
 - (b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the secretary;
- (3) If any word, statement, or other information required by or under authority of KRS 217.005 to 217.215 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, *naphthylprovalerone*, *3,4-methylenedioxyprovalerone*, *3,4-methylenedioxymethylcathinone*, *4-methylmethcathinone*, synthetic cannabinoid agonists or piperazines, salvia, morphine, opium, paraldehyde, peyote, or sulfonmethane, or any chemical derivative of such substance, which derivative has been by the secretary after investigation, found to be, and by regulations under KRS 217.005 to 217.215 designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning -- May be habit-forming";
- (5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:
 - (a) The common or usual name of the drug, if such there be; and
 - (b) In case it is fabricated from two (2) or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including whether active or not the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided that to the extent that compliance with this subsection is impracticable, exemptions shall be established by regulations promulgated by the secretary;
- (6) Unless its labeling bears:
 - (a) Adequate directions for use; and
 - (b) Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided that where

any requirement of subsection (a) of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirements;

- (7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided that the method of packing may be modified with a consent of the cabinet. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia;
- (8) If it has been found by the cabinet to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the secretary shall by *administrative* regulations require as necessary for the protection of public health. No such *administrative* regulation shall be established for any drug recognized in an official compendium until the secretary shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements;
- (9)
 - (a) If it is a drug and its container is so made, formed, or filled as to be misleading; or
 - (b) If it is an imitation of another drug; or
 - (c) If it is offered for sale under the name of another drug;
- (10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;
- (11) If:
 - (a) It is a drug intended for use by man which is a habit forming drug to which subsection (4) of this section applies; or because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner, and is not dispensed upon a prescription unless prior to dispensing its label bears the statement "Caution: Federal law prohibits dispensing without prescription"; or
 - (b) It is a drug or device and its label (as originally packed) directs that it is to be dispensed or sold only on prescription, unless it is dispensed or sold on a prescription of an authorized practitioner and its label (as dispensed) bears the name and place of business of the dispenser or seller, the serial number and date of such prescription, and the name of such licensed practitioner. Such prescriptions shall not be refilled except on the specific authorization of the prescribing practitioner; provided that where any requirement of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirement;
- (12) A drug sold on a prescription of a practitioner (except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be exempt from the requirements of this section if:
 - (a) Such practitioner is licensed by law to administer such drug; and
 - (b) Such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such practitioner.
- (13) It is not the intention of subsection (2)(a) of this section as amended herein to require the name and place of business of the wholesaler to appear upon the label of the package unless otherwise required by this section.

➔Section 6. KRS 218A.1401 is amended to read as follows:

- (1) A person is guilty of selling controlled substances to a minor when he *or she*, being eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any quantity of a controlled substance other than *naphthylprovalerone*, *3,4-methylenedioxypyrovalerone*, *3,4-methylenedioxymethylcathinone*, *4-methylmethcathinone*, synthetic cannabinoid agonists, ~~or~~ piperazines, or salvia to any person under eighteen (18) years of age.
- (2) Selling controlled substances to a minor is a Class C felony for a first offense, and a Class B felony for each subsequent offense, unless a more severe penalty for trafficking in controlled substances is applicable, in which case the higher penalty shall apply.

➔Section 7. KRS 218A.141 is amended to read as follows:

Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance, *other than* trafficking in *naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone*, synthetic cannabinoid agonists, ~~or~~ piperazines, ~~or~~ salvia, or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

- (1) Pay the costs of disposal of the controlled substances;
- (2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;
- (3) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and
- (4) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

➔Section 8. KRS 218A.1411 is amended to read as follows:

- (1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) ~~feet~~^{yards} of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.
- (2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to *naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone*, synthetic cannabinoid agonists, ~~or~~ piperazines, or salvia.

➔Section 9. KRS 218A.1413 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:
 - (a) He *or she* knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; or specified in KRS 218A.1412; or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, *naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone*, phencyclidine, synthetic cannabinoid agonists or piperazines, salvia, or marijuana; or
 - (b) He *or she* knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:
 1. Enhancing performance in an exercise, sport, or game; or
 2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.
- (2) Any person who violates the provisions of subsection (1) of this section shall:
 - (a) For the first offense be guilty of a Class D felony.
 - (b) For a second or subsequent offense be guilty of a Class C felony.

➔Section 10. KRS 218A.1416 is amended to read as follows:

- (1) A person is guilty of possession of a controlled substance in the second degree when he *or she* knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, *naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone*, phencyclidine, synthetic cannabinoid agonists, ~~or~~ piperazines, salvia, or marijuana.
- (2) Possession of a controlled substance in the second degree is:
 - (a) For a first offense a Class A misdemeanor.

(b) For a second or subsequent offense a Class D felony.

➔Section 11. KRS 218A.276 is amended to read as follows:

- (1) Any person found guilty of possession of marijuana pursuant to KRS 218A.1422, *naphthylprovalerone*, *3,4-methylenedioxyprovalerone*, *3,4-methylenedioxymethylcathinone*, or *4-methylmethcathinone* pursuant to *Section 2 of this Act*, ~~for possession of~~ synthetic cannabinoid agonists or piperazines pursuant to KRS 218A.1427, or salvia pursuant to KRS 218A.1451 may be ordered to a facility designated by the secretary of the Cabinet for Health and Family Services where a program of education, treatment, and rehabilitation not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated facility shall present himself *or herself* for registration and initiation of a treatment program within five (5) days of the date of sentencing. If without good cause, the person fails to appear at the designated facility within the specified time, or if any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his *or her* treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than ninety (90) days or a fine of not more than two hundred fifty dollars (\$250), or both. Upon discharge of the person from the facility by the secretary of the Cabinet for Health and Family Services, or his *or her* designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his *or her* designee, shall notify the sentencing court of the date of such discharge from the facility.
- (2) The secretary of the Cabinet for Health and Family Services, or his *or her* designee, shall inform each court of the identity and location of the facility to which a person sentenced by that court under this chapter shall be initially ordered.
- (3) In the case of a person ordered to a facility for treatment and rehabilitation pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself *or herself* to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.
- (5) The secretary of the Cabinet for Health and Family Services, or his *or her* designee, may authorize transfer of the person from the initially designated facility to another facility for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating facility.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the facility shall arrange otherwise.
- (7) None of the provisions of this chapter shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.
- (8) In the case of any person who has been convicted of possession of marijuana, *naphthylprovalerone*, *3,4-methylenedioxyprovalerone*, *3,4-methylenedioxymethylcathinone*, *4-methylmethcathinone*, ~~for possession of~~ synthetic cannabinoid agonists, ~~or~~ piperazines, or salvia, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

➔Section 12. KRS 218A.410 is amended to read as follows:

- (1) The following are subject to forfeiture:
 - (a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state;
 - (b) Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state;
 - (c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its authorized agent, of the person in

occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he *or she* is the holder thereof, constitutes authority for the seizure and forfeiture of the plants;

- (d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband;
- (e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter;
- (f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;
- (g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection;
- (h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:
 - 1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
 - 2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his *or her* knowledge or consent;
 - 3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he *or she* neither had knowledge of nor consented to the act or omission; and
 - 4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana, *naphthylprovalerone*, *3,4-methylenedioxypyrovalerone*, *3,4-methylenedioxymethylcathinone*, *4-methylmethcathinone*,~~{or}~~ synthetic cannabinoid agonists,~~{or}~~ piperazines, or salvia;
- (i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;
- (j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him *or her* to have been committed or omitted without his *or her* knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph; and
- (k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana, *naphthylprovalerone*, *3,4-methylenedioxypyrovalerone*, *3,4-methylenedioxymethylcathinone*, *4-methylmethcathinone*,~~{or}~~ synthetic cannabinoid agonists,~~{or}~~ piperazines, or salvia, except that property shall be forfeited under this paragraph, to the extent of an

interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.

- (2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he *or she* is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.
- (3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

➔Section 13. KRS 218A.992 is amended to read as follows:

- (1) Other provisions of law notwithstanding, any person who is convicted of any violation of this chapter who, at the time of the commission of the offense and in furtherance of the offense, was in possession of a firearm, shall:
 - (a) Be penalized one (1) class more severely than provided in the penalty provision pertaining to that offense if it is a felony; or
 - (b) Be penalized as a Class D felon if the offense would otherwise be a misdemeanor.
- (2) The provisions of this section shall not apply to a violation of KRS 218A.210, 218A.1426, 218A.1427, 218A.1428, 218A.1450, 218A.1451, ~~or~~ 218A.1452, **Section 1, 2, or 3 of this Act.**

➔Section 14. KRS 530.064 is amended to read as follows:

- (1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:
 - (a) Illegal sexual activity; or
 - (b) Illegal controlled substances activity other than activity involving marijuana, ***naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone***, synthetic cannabinoid agonists or piperazines, or salvia as defined in KRS 218A.010;

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

- (2) Unlawful transaction with a minor in the first degree is a:
 - (a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
 - (b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
 - (c) Class A felony if the minor so used incurs physical injury thereby.

➔Section 15. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
 - (a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or
 - (b) The patient or research subject at the direction and in the presence of the practitioner;
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;

- (4) "Child" means any person under the age of majority as specified in KRS 2.015;
 - (5) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;
 - (6) (a) "Controlled substance analogue," except as provided in subparagraph (b) of this subsection, means a substance:
 - 1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
 - 2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
 - 3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
 - (b) Such term does not include:
 - 1. Any substance for which there is an approved new drug application;
 - 2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
 - 3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance;
 - (7) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance;
 - (8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
 - (9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user;
 - (10) "Distribute" means to deliver other than by administering or dispensing a controlled substance;
 - (11) "Drug" means:
 - (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
 - (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;
 - (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
 - (d) Substances intended for use as a component of any article specified in this subsection.
- It does not include devices or their components, parts, or accessories;
- (12) "Good faith prior examination," as used in KRS Chapter 218A and for criminal prosecution only, means an in-person medical examination of the patient conducted by the prescribing practitioner or other health-care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. "In-person" includes telehealth examinations. This subsection shall not be applicable to hospice providers licensed pursuant to KRS Chapter 216B;

- (13) "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:
- (a) Poses an explosion hazard;
 - (b) Poses a fire hazard; or
 - (c) Is poisonous or injurious if handled, swallowed, or inhaled;
- (14) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture;
- (15) "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine;
- (16) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer;
- (17) "Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:
- (a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice;
 - (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
 - (c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice;
- (18) "Marijuana" means all parts of the plant *Cannabis* sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances;
- (19) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only, means an accounting of a patient's medical background, including but not limited to prior medical conditions, prescriptions, and family background;
- (20) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only, means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health-care needs. "Medical order" may or may not include a prescription drug order;
- (21) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only, means a record, other than for financial or billing purposes, relating to a patient, kept by a practitioner as a result of the practitioner-patient relationship;
- (22) "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;
- (23) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
 - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;

- (c) Opium poppy and poppy straw;
 - (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
 - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection;
- (24) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;
- (25) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds;
- (26) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (27) "Physical injury" has the same meaning it has in KRS 500.080;
- (28) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (29) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, advanced practice registered nurse as authorized under KRS 314.011, or other person licensed, registered, or otherwise permitted by state or federal law to acquire, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced practice registered nurse authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;
- (31) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal prosecution only, means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his designee has conducted at least one (1) good faith prior examination;
- (32) "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, optometric practitioner, or advanced practice registered nurse, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (33) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;
- (34) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (35) "Salvia" means *Salvia divinorum* or Salvinorin A and includes all parts of the plant presently classified botanically as *Salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of that plant, and every compound, manufacture, derivative, mixture, or preparation of that plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation of that plant, its seeds, or extracts. The term shall not include any other species in the genus *salvia*;
- (36) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the

purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;

- (37) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;
- (38) "Serious physical injury" has the same meaning it has in KRS 500.080;
- (39) "Synthetic cannabinoid agonists or piperazines" means any chemical compound that contains Benzylpiperazine; Trifluoromethylphenylpiperazine; 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexamabinol; *(1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone (JWH-200)*; *1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250)*; or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term shall not include synthetic cannabinoids that require a prescription, are approved by the United States Food and Drug Administration, and are dispensed in accordance with state and federal law;
- (40) "Telehealth" has the same meaning it has in KRS 311.550;
- (41) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
 - 1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
 - 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
 - 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
- (42) "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance;
- (43) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and
- (44) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

➔Section 16. Whereas, the substances specified in Sections 1 to 15 of this Act are dangerous substances that are currently legal to sell and possess in this state, and whereas it is necessary to prohibit the sale or possession of this substance immediately in an effort to prevent stockpiling of them by individuals for future use, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 16, 2011.

CHAPTER 46

(HB 129)

AN ACT relating to the publication of legal advertisements.

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

➔Section 1. KRS 424.130 is amended to read as follows:

- (1) Except as otherwise provided in KRS 424.110 to 424.370 and notwithstanding any provision of existing law providing for different times or periods of publication, the times and periods of publications of advertisements required by law to be made in a newspaper shall be as follows:
 - (a) When an advertisement is of a completed act, such as an ordinance, resolution, regulation, order, rule, report, statement, or certificate and the purpose of the publication is not to inform the public or the members of any class of persons that they may or shall do an act or exercise a right within a designated period or upon or by a designated date, the advertisement shall be published one (1) time only and within thirty (30) days after completion of the act. However, a failure to comply with this paragraph

shall not subject a person to any of the penalties provided by KRS 424.990 unless such failure continues for a period of ten (10) days after notice to comply has been given him by registered letter.

- (b) When an advertisement is for the purpose of informing the public or the members of any class of persons that on or before a certain day they may or shall file a petition or exceptions or a remonstrance or protest or objection, or resist the granting of an application or petition, or present or file a claim, or submit a bid, the advertisement shall be published at least once, but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the occurrence of the act or event.
- (c) When an advertisement is for the purpose of informing the public and the advertisement is a notice of delinquent taxes, or notice of the sale of tax claims, the advertisement shall be published *either*:

1. Once a week for three (3) consecutive weeks; or

2. One (1) time, preceded by a one-half (1/2) page notice of advertisement the preceding week. The one-half (1/2) page advertisement shall include notice that a list of uncollectible delinquent taxes is also available for public inspection in accordance with KRS 424.330 during normal business hours at the business address of the city or county and on an identified Internet Web site. The advertisement shall include the business address of the city or county and the Uniform Resource Locator (URL) for the Internet Web site where the document can be viewed. The Internet Web site shall be affiliated with the city or county and contain other information about the city or county government. The delinquent tax list shall be posted on the Internet Web site for a minimum of thirty (30) days and shall be updated weekly.

The provisions of this paragraph shall not be construed to require the advertisement of notice of delinquent state taxes which are collected by the state.

- (d) Any advertisement not coming within the scope of paragraph (a), (b), or (c) of this subsection, such as one for the purpose of informing the public or the members of any class of persons of the holding of an election, or of a public hearing, or of an examination, or of an opportunity for inspection, or of the due date of a tax or special assessment, shall be published at least once but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the occurrence of the act or event, or in the case of an inspection period, the inspection period commences.
 - (e) If the particular statute requiring that an advertisement be published provides that the day upon or by which, or the period within which, an act may or shall be done or a right exercised, or an event may or shall take place, is to be determined by computing time for the day of publication of an advertisement, the advertisement shall be published at least once, promptly, in accordance with the statute, and the computation of time shall be from the day of initial publication.
- (2) This section is not intended to supersede or affect any statute providing for notice of the fact that an adversary action in court has been commenced.

➔Section 2. KRS 424.220 is amended to read as follows:

- (1) Excepting officers of a city of the first class or a consolidated local government, a county containing such a city or consolidated local government, a public agency of such a city, consolidated local government, or county, or a joint agency of such a city, consolidated local government, and county, or of a school district of such a city, consolidated local government, or county, and excepting officers of a city of the second class or an urban-county government, every public officer of any school district, city, consolidated local government, county, or subdivision, or district less than a county, whose duty it is to collect, receive, have the custody, control, or disbursement of public funds, and every officer of any board or commission of a city, consolidated local government, county, or district whose duty it is to collect, receive, have the custody, control, or disbursement of funds collected from the public in the form of rates, charges, or assessments for services or benefits, shall at the expiration of each fiscal year prepare an itemized, sworn statement of the funds collected, received, held, or disbursed by him during the fiscal year just closed, unless he has complied with KRS 424.230. Pursuant to subsections (2) and (3) of KRS 91A.040, each city of the sixth class shall prepare an itemized, sworn statement of the funds collected, received, held, or disbursed by the city which complies with the provisions of this section.
- (2) The statement shall show:
 - (a) The total amount of funds collected and received during the fiscal year from each individual source; and

- (b) The total amount of funds disbursed during the fiscal year to each individual payee. The list shall include only aggregate amounts to vendors exceeding one thousand dollars (\$1,000).
- (3) Only the totals of amounts paid to each individual as salary or commission and public utility bills shall be shown. The amount of salaries paid to all nonelected county employees shall be shown as lump-sum expenditures by category, including but not limited to road department, jails, solid waste, public safety, and administrative personnel.
- (4) The amount of salaries paid to all teachers shall be shown as a lump-sum instructional expenditure for the school district and not by amount paid to individual teachers. The amount of salaries paid to all other employees of the board shall be shown as lump-sum expenditures by category, including but not limited to administrative, maintenance, transportation, and food service. The local board of education and the fiscal court shall have accessible a factual list of individual salaries for public scrutiny and the local board and the fiscal court shall furnish by mail a factual list of individual salaries of its employees to a newspaper qualified under KRS 424.120 to publish advertisements for the district, which newspaper may then publish as a news item the individual salaries of school or county employees.
- (5) The officer shall procure and include in or attach to the financial statement, as a part thereof, a certificate from the cashier or other proper officer of the banks in which the funds are or have been deposited during the past year, showing the balance, if any, of funds to the credit of the officer making the statement.
- (6) (a) The officer shall, except in a city publishing its audit in accordance with KRS 91A.040(6), within sixty (60) days after the close of the fiscal year cause the financial statement to be published in full in a newspaper qualified under KRS 424.120 to publish advertisements for the city, county, or district, as the case may be. Promptly after the publication is made, the officer shall file a written or printed copy of the advertisement with proof of publication, in the office of the county clerk of the county and with the Auditor of Public Accounts.
- (b) *The appropriate officer of a sixth class city that has not conducted an annual audit under the provisions of KRS 91A.040(2) or (3) may publish a legal display advertisement meeting the requirements of paragraph (b) of subsection (7) of this section which shall satisfy the publication requirements set out in paragraph (a) of this subsection.*
- (7) In lieu of the publication requirements of subsection (6) of this section, the appropriate officer of a city, including the appropriate officer of any municipally owned electric, gas, or water system, shall elect to satisfy the requirements of subsection (6) of this section by:
 - (a) Publishing an audit report in accordance with KRS 91A.040(6); and
 - (b) Publishing a legal display advertisement of not less than six (6) column inches in a newspaper qualified under KRS 424.120 that the statement required by subsection (1) of this section has been prepared and that copies have been provided to each local newspaper of general circulation, each news service, and each local radio and television station which has on file with the city a written request to be provided a statement. The advertisement shall be published within ninety (90) days after the close of the fiscal year.
- (8) The appropriate officer of a county shall satisfy the requirements of subsection (6) of this section by publishing the county's audit, prepared in accordance with KRS 43.070 or 64.810, in the same manner that city audits are published in accordance with KRS 91A.040(6).

➔Section 3. KRS 67A.070 is amended to read as follows:

- (1) Urban-county governments may enact and enforce within their territorial limits such tax, licensing, police, sanitary and other ordinances not in conflict with the Constitution and general statutes of this state now or hereafter enacted, as they shall deem requisite for the health, education, safety, welfare and convenience of the inhabitants of the county and for the effective administration of the urban-county government.
- (2) Urban-county government ordinances shall be deemed to conflict with general statutes of this state only:
 - (a) When the ordinance authorizes that which is expressly prohibited by a general statute; or
 - (b) When there is a comprehensive scheme of legislation on the same subject embodied in a general statute.
- (3) No ordinance or resolution shall be considered by the urban-county government legislative body until it has been read at two (2) separate meetings; provided, however, that the requirement for a second reading may be suspended by a two-thirds (2/3) vote of the membership of the legislative body. Requirements for reading

ordinances or resolutions may be satisfied by public reading of the title and of a certified synopsis of the contents prepared by an attorney licensed to practice law in the Commonwealth of Kentucky.

- (4) All ordinances and resolutions shall be effective upon passage, unless timely vetoed by the chief executive officer of the urban-county government pursuant to the provisions of the comprehensive plan of the urban-county government. ***All ordinances of the urban-county government***~~[Any ordinance or resolution imposing fines, forfeitures, imprisonment, taxes or fees, other than a bond ordinance or resolution,]~~ shall be published in full ***or by publication of the title and a certified synopsis prepared by an attorney licensed to practice law in the Commonwealth of Kentucky. A certified synopsis shall include a brief narrative setting out the main points of the ordinance in a way reasonably calculated to inform the public in a clear and understandable manner of the meaning of the ordinance and shall contain the full text of any section that imposes taxes or fees. The publication shall occur*** in the daily newspaper which has the largest bona fide circulation in the county and is published in the publication area.~~[The publication requirements for all other ordinances or resolutions, including bond ordinances or resolutions, shall be satisfied by publication in full or by publication of the title and of a certified synopsis of the contents prepared by an attorney licensed to practice law in the Commonwealth of Kentucky.]~~
- (5) The provisions of any local, statewide or nationally recognized standard code and codifications of entire bodies of local legislation may be adopted by ordinance which identifies the subject matter by title, source and date and incorporates the adopted provisions by reference without setting them out in full, provided a copy accompanies the adopting ordinance and is made a part of the permanent records of the urban-county government.

Signed by Governor March 16, 2011.

CHAPTER 47

(HB 164)

AN ACT relating to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 23 of this Act shall be known and may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 23 of this Act:

- (1) ***"Adult" means an individual who has attained eighteen (18) years of age;***
- (2) ***"Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under this chapter;***
- (3) ***"Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under this chapter;***
- (4) ***"Guardianship order" means an order appointing a guardian;***
- (5) ***"Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued;***
- (6) ***"Incapacitated person" means an adult for whom a guardian has been appointed;***
- (7) ***"Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding;***
- (8) ***"Person," except in the term "incapacitated person" or "protected 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;***

- (9) *"Protected person" means an adult for whom a protective order has been issued;*
- (10) *"Protective order" means an order appointing a conservator or other order related to management of an adult's property;*
- (11) *"Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued;*
- (12) *"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;*
- (13) *"Respondent" means an adult for whom a protective order or the appointment of a guardian is sought; and*
- (14) *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

A court of this state may treat a foreign country as if it were a state for the purpose of applying Sections 1 to 23 of this Act, but not including Section 18, 19, or 20 of this Act.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

- (1) *A court of this state may communicate with a court in another state concerning a proceeding arising under Sections 1 to 23 of this Act. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.*
- (2) *Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

- (1) *In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:*
 - (a) *Hold an evidentiary hearing;*
 - (b) *Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;*
 - (c) *Order that an evaluation or assessment be made of the respondent;*
 - (d) *Order any appropriate investigation of a person involved in a proceeding;*
 - (e) *Forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (a) of this subsection or any other proceeding, any evidence otherwise produced under paragraph (b) of this subsection, and any evaluation or assessment prepared in compliance with an order under paragraph (c) or (d) of this subsection;*
 - (f) *Issue any order necessary to ensure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; and*
 - (g) *Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. sec. 160.103, as amended.*
- (2) *If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

- (1) *In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.*

- (2) *In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.*
- (3) *Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing shall not be excluded from evidence on an objection based on the best evidence rule.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in Sections 7 to 15 of this Act:*

- (a) *"Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf;*
- (b) *"Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months ending within the six (6) months prior to the filing of the petition; and*
- (c) *"Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.*

- (2) *In determining under Section 9 of this Act and subsection (5) of Section 16 of this Act whether a respondent has a significant connection with a particular state, the court shall consider:*

- (a) *The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;*
- (b) *The length of time the respondent at any time was physically present in the state and the duration of any absence;*
- (c) *The location of the respondent's property; and*
- (d) *The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

Sections 7 to 15 of this Act provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

- (1) *This state is the respondent's home state;*
- (2) *On the date the petition is filed, this state is a significant-connection state and:*
 - (a) *The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or*
 - (b) *The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:*
 1. *A petition for an appointment or order is not filed in the respondent's home state;*
 2. *An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and*
 3. *The court in this state concludes that it is an appropriate forum under the factors set forth in Section 12 of this Act;*

- (3) *This state does not have jurisdiction under either subsection (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or*
- (4) *The requirements for special jurisdiction under Section 10 of this Act are met.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

- (1) *A court of this state lacking jurisdiction under Section 9 of this Act has special jurisdiction to do any of the following:*
 - (a) *Appoint a guardian in an emergency for a term not exceeding ninety (90) days for a respondent who is physically present in this state;*
 - (b) *Issue a protective order with respect to real or tangible personal property located in this state; and*
 - (c) *Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to Section 16 of this Act.*
- (2) *If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

Except as otherwise provided in Section 10 of this Act, a court that has appointed a guardian or issued a protective order consistent with Sections 1 to 23 of this Act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

- (1) *A court of this state having jurisdiction under Section 9 of this Act to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.*
- (2) *If a court of this state declines to exercise its jurisdiction under subsection (1) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.*
- (3) *In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:*
 - (a) *Any expressed preference of the respondent;*
 - (b) *Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;*
 - (c) *The length of time the respondent was physically present in or was a legal resident of this or another state;*
 - (d) *The distance of the respondent from the court in each state;*
 - (e) *The financial circumstances of the respondent's estate;*
 - (f) *The nature and location of the evidence;*
 - (g) *The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;*
 - (h) *The familiarity of the court of each state with the facts and issues in the proceeding; and*
 - (i) *If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

- (1) *If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:*

- (a) *Decline to exercise jurisdiction;*
- (b) *Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or*
- (c) *Continue to exercise jurisdiction after considering:*
 - 1. *The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;*
 - 2. *Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection (3) of Section 12 of this Act; and*
 - 3. *Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 9 of this Act.*
- (2) *If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court shall not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than Sections 1 to 23 of this Act.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, then in addition to complying with the notice requirements of this state, notice of the petition shall be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice shall be given in the same manner as notice is required to be given in this state.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under subsection (1)(a) or (b) of Section 10 of this Act, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

- (1) *If the court in this state has jurisdiction under Section 9 of this Act, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 9 of this Act before the appointment or issuance of the order; and*
- (2) *If the court in this state does not have jurisdiction under Section 9 of this Act, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

- (1) *A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.*
- (2) *Notice of a petition under subsection (1) of this section shall be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.*
- (3) *On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.*
- (4) *The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:*

- (a) *The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;*
 - (b) *An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and*
 - (c) *Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.*
- (5) *The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:*
- (a) *The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in subsection (2) of Section 7 of this Act;*
 - (b) *An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and*
 - (c) *Adequate arrangements will be made for management of the protected person's property.*
- (6) *The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:*
- (a) *A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 17 of this Act; and*
 - (b) *The documents required to terminate a guardianship or conservatorship in this state.*

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

- (1) *To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 16 of this Act, the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.*
- (2) *Notice of a petition under subsection (1) of this section shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice shall be given in the same manner as notice is required to be given in this state.*
- (3) *On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.*
- (4) *The court shall issue an order provisionally granting a petition filed under subsection (1) of this section unless:*
 - (a) *An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or*
 - (b) *The guardian or conservator is ineligible for appointment in this state.*
- (5) *The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 16 of this Act transferring the proceeding to this state.*
- (6) *Not later than ninety (90) days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.*
- (7) *In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.*
- (8) *The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or*

conservator in this state under this chapter if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment, except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.*
- (2) *A court of this state may grant any relief available under Sections 1 to 23 of this Act and other law of this state to enforce a registered order.*

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

In applying and construing the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Sections 1 to 23 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 22. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 23 of this Act modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., but do not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. sec. 7003(b).

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

- (1) *Sections 1 to 23 of this Act apply to guardianship and protective proceedings begun on or after the effective date of this Act.*
- (2) *Sections 1 to 23 of this Act, except for Sections 7 to 15 of this Act, apply to proceedings begun before the effective date of this Act, regardless of whether a guardianship or protective order has been issued.*

➔Section 24. KRS 387.520 is amended to read as follows:

- (1) The District Courts shall have exclusive jurisdiction over all proceedings involving a determination of partial disability or disability, the modification of orders, the appointment and removal of guardians and conservators, and the management and settlement of their accounts.
- (2) If the respondent or ward is a resident of this state, the venue for all proceedings under KRS 387.500 to 387.770 shall be:
 - (a) In the county where the respondent or ward resides;
 - (b) In the county of domicile of the respondent or ward; or
 - (c) In the county where the parent of the respondent or ward is domiciled if the respondent or ward is a minor. Nothing in this section shall preclude transfer of venue for good cause shown.
- (3) If no local conservator has been appointed and no petition in a disability proceeding is pending in this state, a domiciliary foreign conservator may file with a court in this state in a county in which property belonging to the disabled person is located, authenticated copies of his *or her* appointment and of any official bond he *or she* has given. Thereafter, he *or she* may exercise as to assets in this state all powers of a local conservator

and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

- (4) *This section shall be subordinate to Sections 1 to 23 of this Act to the extent that those sections govern jurisdiction between Kentucky and other states.*

Signed by Governor March 16, 2011.

CHAPTER 48

(HB 167)

AN ACT relating to the Surplus Lines Insurance Multi-State Compliance Compact.

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

➔SECTION 1. A NEW SECTION OF KRS 304.010 TO 304.210 IS CREATED TO READ AS FOLLOWS:

The Surplus Lines Insurance Multi-State Compliance Compact is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

PREAMBLE

WHEREAS, with regard to Non-Admitted Insurance policies with risk exposures located in multiple states, the 111th United States Congress, has stipulated in Title V, Subtitle B the Non-Admitted and Reinsurance Reform Act of 2010, of the Dodd-Frank Wall Street Reform and Consumer Protection Act, hereafter, the NRRA, that:

(A) The placement of Non-Admitted Insurance shall be subject to the statutory and regulatory requirements solely of the insured's Home State, and

(B) Any law, regulation, provision, or action of any State that applies or purports to apply to Non-Admitted Insurance sold to, solicited by, or negotiated with an insured whose Home State is another State shall be preempted with respect to such application; except that any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a Non-Admitted Insurer shall not be preempted.

WHEREAS, in compliance with NRRA, no State other than the Home State of an insured may require any Premium Tax payment for Non-Admitted Insurance; and no State other than an insured's Home State may require a Surplus Lines Broker to be licensed in order to sell, solicit, or negotiate Non-Admitted Insurance with respect to such insured;

WHEREAS, the NRRA intends that the States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's Home State; and that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for Non-Admitted Insurance;

WHEREAS, after the expiration of the two-year period beginning on the date of the enactment of the NRRA, a State may not collect any fees relating to licensing of an individual or entity as a Surplus Lines Licensee in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of Surplus Lines Licensees and the renewal of such licenses;

WHEREAS, a need exists for a system of regulation that will provide for Surplus Lines Insurance to be placed with reputable and financially sound Non-Admitted Insurers, and that will permit orderly access to Surplus Lines Insurance in this state and encourage insurers to make new and innovative types of insurance available to consumers in this state;

WHEREAS, protecting the revenue of this state and other Compacting States may be accomplished by facilitating the payment and collection of Premium Tax on Non-Admitted Insurance and providing for allocation of Premium Tax for Non-Admitted Insurance of Multi-State Risks among the States in accordance with Uniform Allocation Formulas;

WHEREAS, the efficiency of the surplus lines market may be improved by eliminating duplicative and inconsistent tax and regulatory requirements among the States, and by promoting and protecting the interests of Surplus Lines Licensees who assist such insureds and Non-Admitted Insurers, thereby ensuring the continued availability of Non-Admitted Insurance to consumers;

WHEREAS, regulatory compliance with respect to Non-Admitted Insurance placements may be streamlined by providing for exclusive single-state regulatory compliance for Non-Admitted Insurance of Multi-State Risks, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including but not limited to insureds, regulators, Surplus Lines Licensees, other insurance producers, and Surplus Lines Insurers;

WHEREAS, coordination of regulatory resources and expertise between State insurance departments and other State agencies, as well as State surplus lines stamping offices, with respect to Non-Admitted Insurance will be improved;

NOW, THEREFORE, in consideration of the foregoing, the State of Kentucky and the various other States do hereby solemnly covenant and agree, each with the other as follows:

ARTICLE I

Purpose

The purposes of this Compact are:

- 1. To implement the express provisions of the NRRRA.*
- 2. To protect the Premium Tax revenues of the Compacting States through facilitating the payment and collection of Premium Tax on Non-Admitted Insurance; and to protect the interests of the Compacting States by supporting the continued availability of such insurance to consumers; and to provide for allocation of Premium Tax for Non-Admitted Insurance of Multi-State Risks among the States in accordance with uniform Allocation Formulas to be developed, adopted, and implemented by the Commission.*
- 3. To streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the States; and promote and protect the interest of Surplus Lines Licensees who assist such insureds and Surplus Lines Insurers, thereby ensuring the continued availability of Surplus Lines Insurance to consumers.*
- 4. To streamline regulatory compliance with respect to Non-Admitted Insurance placements by providing for exclusive single-state regulatory compliance for Non-Admitted Insurance of Multi-State Risks, in accordance with Rules to be adopted by the Commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including but not limited to insureds, regulators, Surplus Lines Licensees, other insurance producers, and Surplus Lines Insurers.*
- 5. To establish a Clearinghouse for receipt and dissemination of Premium Tax and Clearinghouse Transaction Data related to Non-Admitted Insurance of Multi-State Risks, in accordance with Rules to be adopted by the Commission.*
- 6. To improve coordination of regulatory resources and expertise between State insurance departments and other State agencies, as well as State surplus lines stamping offices, with respect to Non-Admitted Insurance.*
- 7. To adopt uniform Rules to provide for Premium Tax payment, reporting, allocation, data collection and dissemination for Non-Admitted Insurance of Multi-State Risks and Single-State Risks, in accordance with Rules to be adopted by the Commission, thereby promoting the overall efficiency of the Non-Admitted Insurance market.*
- 8. To adopt uniform mandatory Rules with respect to regulatory compliance requirements for:*
 - (i) foreign Insurer Eligibility Requirements;*
 - (ii) surplus lines Policyholder Notices;*
- 9. To establish the Surplus Lines Insurance Multi-State Compliance Compact Commission.*
- 10. To coordinate reporting of Clearinghouse Transaction Data on Non-Admitted Insurance of Multi-State Risks among Compacting States and Contracting States.*

11. *To perform these and such other related functions as may be consistent with the purposes of the Surplus Lines Insurance Multi-State Compliance Compact.*

ARTICLE II

Definitions

For purposes of this Compact the following definitions shall apply:

1. *"Admitted Insurer" means an insurer that is licensed, or authorized, to transact the business of insurance under the law of the Home State; for purposes of this Compact "Admitted Insurer" shall not include a domestic surplus lines insurer as may be defined by applicable State law.*
2. *"Affiliate" means with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.*
3. *"Allocation Formula" means the uniform methods promulgated by the Commission by which insured risk exposures will be apportioned to each State for the purpose of calculating Premium Taxes due.*
4. *"Bylaws" means those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct.*
5. *"Clearinghouse" means the Commission's operations involving the acceptance, processing, and dissemination, among the Compacting States, Contracting States, Surplus Lines Licensees, insureds and other persons, of Premium Tax and Clearinghouse Transaction Data for Non-Admitted Insurance of Multi-State Risks, in accordance with this Compact and Rules to be adopted by the Commission.*
6. *"Clearinghouse Transaction Data" means the information regarding Non-Admitted Insurance of Multi-State Risks required to be reported, accepted, collected, processed, and disseminated by Surplus Lines Licensees for Surplus Lines Insurance and insureds for Independently Procured Insurance under this Compact and Rules to be adopted by the Commission. Clearinghouse Transaction Data includes information related to Single-State Risks if a state elects to have the Clearinghouse collect taxes on Single-State Risks for such state.*
7. *"Compacting State" means any State which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.*
8. *"Commission" means the "Surplus Lines Insurance Multi-State Compliance Compact Commission" established by this Compact.*
9. *"Commissioner" means the chief insurance regulatory official of a State including, but not limited to commissioner, superintendent, director or administrator or their designees.*
10. *"Contracting State" means any State which has not enacted this Compact legislation but has entered into a written contract with the Commission to utilize the services of and fully participate in the Clearinghouse.*
11. *"Control" An entity has "control" over another entity if:*
 - (A) *the entity directly or indirectly or acting through 1 or more other persons own, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or*
 - (B) *the entity controls in any manner the election of a majority of the directors or trustees of the other entity.*
12. *"Home State"*
 - (A) *IN GENERAL. Except as provided in subparagraph (B), the term "Home State" means, with respect to an insured:*
 - (i) *the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or*
 - (ii) *if 100 percent of the insured risk is located out of the State referred to in subparagraph (A)(i), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.*
 - (B) *AFFILIATED GROUPS. If more than one insured from an affiliated group are named insureds on a single Non-Admitted Insurance contract, the term "Home State" means the Home State, as*

determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

13. *"Independently Procured Insurance" means insurance procured by an insured directly from a Surplus Lines Insurer or other Non-Admitted Insurer as permitted by the laws of the Home State.*
14. *"Insurer Eligibility Requirements" means the criteria, forms and procedures established to qualify as a Surplus Lines Insurer under the law of the Home State provided that such criteria, forms and procedures are consistent with the express provisions of the NRRA on and after July 21, 2011.*
15. *"Member" means the person or persons chosen by a Compacting State as its representative or representatives to the Commission provided that each Compacting State shall be limited to one vote.*
16. *"Multi-State Risk" means a risk with insured exposures in more than one State.*
17. *"Non-Compacting State" means any State which has not adopted this Compact.*
18. *"Non-Admitted Insurance" means Surplus Lines Insurance and Independently Procured Insurance.*
19. *"Non-Admitted Insurer" means an insurer that is not authorized or admitted to transact the business of insurance under the law of the Home State.*
20. *"NRRA" means the Non-Admitted and Reinsurance Reform Act which is Title V, Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act.*
21. *"Policyholder Notice" means the disclosure notice or stamp that is required to be furnished to the applicant or policyholder in connection with a Surplus Lines Insurance placement.*
22. *"Premium Tax" means with respect to Non-Admitted Insurance, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.*
23. *"Principal Place of Business" means with respect to determining the Home State of the insured, the state where the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities of the insured.*
24. *"Purchasing Group" means any group formed pursuant to the Liability Risk Retention Act which has as one of its purposes the purchase of liability insurance on a group basis, purchases such insurance only for its group members and only to cover their similar or related liability exposure and is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations and is domiciled in any State.*
25. *"Rule" means a statement of general or particular applicability and future effect promulgated by the Commission designed to implement, interpret, or prescribe law or policy or describing the organization, procedure or practice requirements of the Commission which shall have the force and effect of law in the Compacting States.*
26. *"Single-State Risk" means a risk with insured exposures in only one State.*
27. *"State" means any state, district or territory of the United States of America.*
28. *"State Transaction Documentation" means the information required under the laws of the Home State to be filed by Surplus Lines Licensees in order to report Surplus Lines Insurance and verify compliance with surplus lines laws, and by insureds in order to report Independently Procured Insurance.*
29. *"Surplus Lines Insurance" means insurance procured by a Surplus Lines Licensee from a Surplus Lines Insurer or other Non-Admitted Insurer as permitted under the law of the Home State; for purposes of this Compact "Surplus Lines Insurance" shall also mean excess lines insurance as may be defined by applicable State law.*
30. *"Surplus Lines Insurer" means a Non-Admitted Insurer eligible under the law of the Home State to accept business from a Surplus Lines Licensee; for purposes of this Compact "Surplus Lines Insurer" shall also mean an insurer which is permitted to write Surplus Lines Insurance under the laws of the state where such insurer is domiciled.*

31. *"Surplus Lines Licensee" means an individual, firm or corporation licensed under the law of the Home State to place Surplus Lines Insurance.*

ARTICLE III

Establishment of the Commission and Venue

1. *The Compacting States hereby create and establish a joint public agency known as the "Surplus Lines Insurance Multi-State Compliance Compact Commission."*
2. *Pursuant to Article IV, the Commission will have the power to adopt mandatory Rules which establish exclusive Home State authority regarding Non-Admitted Insurance of Multi State Risks, Allocation Formulas, Clearinghouse Transaction Data, a Clearinghouse for receipt and distribution of allocated Premium Tax and Clearinghouse Transaction Data, and uniform rulemaking procedures and Rules for the purpose of financing, administering, operating and enforcing compliance with the provisions of this Compact, its Bylaws and Rules.*
3. *Pursuant to Article IV, the Commission will have the power to adopt mandatory Rules establishing foreign Insurer Eligibility Requirements and a concise and objective Policyholder Notice regarding the nature of a surplus lines placement.*
4. *The Commission is a body corporate and politic, and an instrumentality of the Compacting States.*
5. *The Commission is solely responsible for its liabilities except as otherwise specifically provided in this Compact.*
6. *Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.*

ARTICLE IV

Authority to Establish Mandatory Rules

The Commission shall adopt mandatory Rules which establish:

1. *Allocation Formulas for each type of Non-Admitted Insurance coverage, which Allocation Formulas must be used by each Compacting State and Contracting State in acquiring Premium Tax and Clearinghouse Transaction Data from Surplus Lines Licensees and insureds for reporting to the Clearinghouse created by the Compact Commission. Such Allocation Formulas will be established with input from Surplus lines Licensees and be based upon readily available data with simplicity and uniformity for the Surplus Line Licensee as a material consideration.*
2. *Uniform Clearinghouse Transaction Data reporting requirements for all information reported to the Clearinghouse.*
3. *Methods by which Compacting States and Contracting States require Surplus Lines Licensees and insureds to pay Premium Tax and to report Clearinghouse Transaction Data to the Clearinghouse, including but not limited to processing Clearinghouse Transaction Data through State stamping and service offices, State insurance departments, or other State designated agencies or entities.*
4. *That Non-Admitted Insurance of Multi-State Risks shall be subject to all of the regulatory compliance requirements of the Home State exclusively. Home State regulatory compliance requirements applicable to Surplus Lines Insurance shall include but not be limited to, (i) person(s) required to be licensed to sell, solicit, or negotiate Surplus Lines Insurance; (ii) Insurer Eligibility Requirements or other approved Non-Admitted Insurer requirements; (iii) Diligent Search; (iv) State Transaction Documentation and Clearinghouse Transaction Data regarding the payment of Premium Tax as set forth in this Compact and Rules to be adopted by the Commission. Home State regulatory compliance requirements applicable to Independently Procured Insurance placements shall include but not be limited to providing State Transaction Documentation and Clearinghouse Transaction Data regarding the payment of Premium Tax as set forth in this Compact and Rules to be adopted by the Commission.*
5. *That each Compacting State and Contracting State may charge its own rate of taxation on the premium allocated to such State based on the applicable Allocation Formula provided that the state establishes one single rate of taxation applicable to all Non-Admitted Insurance transactions and no other tax, fee assessment or other charge by any governmental or quasi governmental agency be permitted.*

Notwithstanding the foregoing, stamping office fees may be charged as a separate, additional cost unless such fees are incorporated into a state's single rate of taxation.

6. *That any change in the rate of taxation by any Compacting State or Contracting State be restricted to changes made prospectively on not less than 90 days advance notice to the Compact Commission.*
7. *That each Compacting State and Contracting State shall require Premium Tax payments either annually, semi-annually, or quarterly utilizing one or more of the following dates only: March 1, June 1, September 1, and December 1.*
8. *That each Compacting State and Contracting State prohibit any other State agency or political subdivision from requiring Surplus Lines Licensees to provide Clearinghouse Transaction Data and State Transaction Documentation other than to the insurance department or tax officials of the Home State or one single designated agent thereof.*
9. *The obligation of the Home State by itself, through a designated agent, surplus lines stamping or service office, to collect Clearinghouse Transaction Data from Surplus Line Licensees and from insureds for Independently Procured Insurance, where applicable, for reporting to the Clearinghouse.*
10. *A method for the Clearinghouse to periodically report to Compacting States, Contracting States, Surplus Lines Licensees and insureds who independently procure insurance, all Premium Taxes owed to each of the Compacting States and Contracting States, the dates upon which payment of such Premium Taxes are due and a method to pay them through the Clearinghouse.*
11. *That each Surplus Line Licensee is required to be licensed only in the Home State of each insured for whom Surplus Lines Insurance has been procured.*
12. *That a policy considered to be Surplus Lines Insurance in the insured's Home State shall be considered Surplus Lines Insurance in all Compacting States and Contracting States, and taxed as a Surplus Lines transaction in all states to which a portion of the risk is allocated. Each Compacting State and Contracting State shall require each Surplus Lines Licensee to pay to every other Compacting State and Contracting State Premium Taxes on each Multi-State Risk through the Clearinghouse at such tax rate charged on surplus lines transactions in such other Compacting States and Contracting States on the portion of the risk in each such Compacting State and Contracting State as determined by the applicable uniform Allocation Formula adopted by the Commission. A policy considered to be Independently Procured Insurance in the insured's Home State shall be considered Independently Procured Insurance in all Compacting States and Contracting States. Each Compacting State and Contracting State shall require the insured to pay every other Compacting State and Contracting State the Independently Procured Insurance Premium Tax on each Multi-State Risk through the Clearinghouse pursuant to the uniform Allocation Formula adopted by the Commission.*
13. *Uniform foreign Insurer Eligibility Requirements as authorized by the NRRA.*
14. *A uniform Policyholder Notice.*
15. *Uniform treatment of Purchasing Group Surplus Lines Insurance placements.*

ARTICLE V

Powers of the Commission

The Commission shall have the following powers:

1. *To promulgate Rules and operating procedures, pursuant to Article VIII of this Compact, which shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in this Compact;*
2. *To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State insurance department to sue or be sued under applicable law shall not be affected;*
3. *To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, provided however, the Commission is not empowered to demand or subpoena records or data from Non-Admitted Insurers;*
4. *To establish and maintain offices including the creation of a Clearinghouse for the receipt of Premium Tax and Clearinghouse Transaction Data regarding Non-Admitted Insurance of Multi-State Risks, Single-State*

Risks for states which elect to require Surplus Lines Licensees to pay Premium Tax on Single State Risks through the Clearinghouse and tax reporting forms;

5. *To purchase and maintain insurance and bonds;*
6. *To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compacting State or stamping office, pursuant to an open, transparent, objective competitive process and procedure adopted by the Commission;*
7. *To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications, pursuant to an open, transparent, objective competitive process and procedure adopted by the Commission; and to establish the Commission's personnel policies and programs relating to conflicts of interest, rates of compensation and qualifications of personnel, and other related personnel matters;*
8. *To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;*
9. *To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;*
10. *To sell convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property real, personal or mixed;*
11. *To provide for tax audit Rules and procedures for the Compacting States with respect to the allocation of Premium Taxes including:*
 - a. *Minimum audit standards, including sampling methods,*
 - b. *Review of internal controls,*
 - c. *Cooperation and sharing of audit responsibilities between Compacting States,*
 - d. *Handling of refunds or credits due to overpayments or improper allocation of Premium Taxes,*
 - e. *Taxpayer records to be reviewed including a minimum retention period,*
 - f. *Authority of Compacting States to review, challenge, or re-audit taxpayer records.*
12. *To enforce compliance by Compacting States and Contracting States with Rules, and Bylaws pursuant to the authority set forth in Article XIV;*
13. *To provide for dispute resolution among Compacting States and Contracting States;*
14. *To advise Compacting States and Contracting States on tax-related issues relating to insurers, insureds, Surplus Lines Licensees, agents or brokers domiciled or doing business in Non-Compacting States, consistent with the purposes of this Compact;*
15. *To make available advice and training to those personnel in State stamping offices, State insurance departments or other State departments for record keeping, tax compliance, and tax allocations; and to be a resource for State insurance departments and other State departments;*
16. *To establish a budget and make expenditures;*
17. *To borrow money;*
18. *To appoint and oversee committees, including advisory committees comprised of Members, State insurance regulators, State legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in this Compact and the Bylaws;*
19. *To establish an Executive Committee of not less than seven (7) nor more than fifteen (15) representatives, which shall include officers elected by the Commission and such other representatives as provided for herein and determined by the Bylaws. Representatives of the Executive Committee shall serve a one year term. Representatives of the Executive Committee shall be entitled to one vote each. The Executive Committee shall have the power to act on behalf of the Commission, with the exception of rulemaking, during periods when the Commission is not in session. The Executive Committee shall oversee the day to*

day activities of the administration of the Compact, including the activities of the Operations Committee created under this Article and compliance and enforcement of the provisions of the Compact, its Bylaws, and Rules, and such other duties as provided herein and as deemed necessary.

20. *To establish an Operations Committee of not less than seven (7) and not more than fifteen (15) representatives to provide analysis, advice, determinations and recommendations regarding technology, software, and systems integration to be acquired by the Commission and to provide analysis, advice, determinations and recommendations regarding the establishment of mandatory Rules to be adopted by the Commission.*
21. *To enter into contracts with Contracting States so that Contracting States can utilize the services of and fully participate in the Clearinghouse subject to the terms and conditions set forth in such contracts;*
22. *To adopt and use a corporate seal; and*
23. *To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the State regulation of the business of insurance.*

ARTICLE VI

Organization of the Commission

1. Membership, Voting and Bylaws

- a. *Each Compacting State shall have and be limited to one Member. Each State shall determine the qualifications and the method by which it selects a Member and set forth the selection process in the enabling provision of the legislation which enacts this Compact. In the absence of such a provision the Member shall be appointed by the governor of such Compacting State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compacting State wherein the vacancy exists.*
- b. *Each Member shall be entitled to one (1) vote and shall otherwise have an opportunity to participate in the governance of the Commission in accordance with the Bylaws.*
- c. *The Commission shall, by a majority vote of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact including, but not limited to:*
 - i. *Establishing the fiscal year of the Commission;*
 - ii. *Providing reasonable procedures for holding meetings of the Commission, the Executive Committee, and the Operations Committee;*
 - iii. *Providing reasonable standards and procedures: (i) for the establishment and meetings of committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;*
 - iv. *Providing reasonable procedures for calling and conducting meetings of the Commission that consist of a majority of Commission Members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' and Surplus Lines Licensees' proprietary information, including trade secrets. The Commission may meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part. As soon as practicable, the Commission must make public: (i) a copy of the vote to close the meeting revealing the vote of each Member with no proxy votes allowed, and (ii) votes taken during such meeting;*
 - v. *Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;*
 - vi. *Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;*

- vii. *Promulgating a code of ethics to address permissible and prohibited activities of Commission Members and employees;*
- viii. *Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations;*
- d. *The Commission shall publish its Bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compacting States.*

2. *Executive Committee, Personnel and Chairperson*

- a. *An Executive Committee of the Commission ("Executive Committee") shall be established. All actions, of the Executive Committee, including compliance and enforcement are subject to the review and ratification of the Commission as provided in the Bylaws.*

The Executive Committee shall have no more than fifteen (15) representatives, or one for each State if there are less than fifteen (15) Compacting States, who shall serve for a term and be established in accordance with the Bylaws.

- b. *The Executive Committee shall have such authority and duties as may be set forth in the Bylaws, including but not limited to:*
 - i. *Managing the affairs of the Commission in a manner consistent with the Bylaws and purposes of the Commission;*
 - ii. *Establishing and overseeing an organizational structure within, and appropriate procedures for the Commission to provide for the creation of Rules and operating procedures.*
 - iii. *Overseeing the offices of the Commission; and*
 - iv. *Planning, implementing, and coordinating communications and activities with other State, federal and local government organizations in order to advance the goals of the Commission.*
- c. *The Commission shall annually elect officers from the Executive Committee, with each having such authority and duties, as may be specified in the Bylaws.*
- d. *The Executive Committee may, subject to the approval of the Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Commission may deem appropriate. The executive director shall serve as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other persons as may be authorized by the Commission.*

3. *Operations Committee*

- a. *An Operations Committee shall be established. All actions of the Operations Committee are subject to the review and oversight of the Commission and the Executive Committee and must be approved by the Commission. The Executive Committee will accept the determinations and recommendations of the Operations Committee unless good cause is shown why such determinations and recommendations should not be approved. Any disputes as to whether good cause exists to reject any determination or recommendation of the Operations Committee shall be resolved by the majority vote of the Commission.*

The Operations Committee shall have no more than fifteen (15) representatives or one for each State if there are less than fifteen (15) Compacting States, who shall serve for a term and shall be established as set forth in the Bylaws.

The Operations Committee shall have responsibility for:

- i. *Evaluating technology requirements for the Clearinghouse, assessing existing systems used by state regulatory agencies and state stamping offices to maximize the efficiency and successful integration of the Clearinghouse technology systems with state and state stamping office technology platforms and to minimize costs to the states, state stamping offices and the Clearinghouse.*
- ii. *Making recommendations to the Executive Committee based on its analysis and determination of the Clearinghouse technology requirements and compatibility with existing state and state stamping office systems,*

- iii. *Evaluating the most suitable proposals for adoption as mandatory Rules, assessing such proposals for ease of integration by states, and likelihood of successful implementation and to report to the Executive Committee its determinations and recommendations.*
 - iv. *Such other duties and responsibilities as are delegated to it by the Bylaws, the Executive Committee or the Commission.*
 - b. *All representatives of the Operations Committee shall be individuals who have extensive experience and/or employment in the Surplus Lines Insurance business including but not limited to executives and attorneys employed by Surplus Line Insurers, Surplus Line Licensees, Law Firms, State Insurance Departments and/or State stamping offices. Operations Committee representatives from Compacting States which utilize the services of a state stamping office must appoint the Chief Operating Officer or a senior manager of the state stamping office to the Operations Committee.*
- 4. *Legislative and Advisory Committees*
 - a. *A legislative committee comprised of State legislators or their designees shall be established to monitor the operations of and make recommendations to, the Commission, including the Executive Committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the Bylaws. Prior to the adoption by the Commission of any Uniform Standard, revision to the Bylaws, annual budget or other significant matter as may be provided in the Bylaws, the Executive Committee shall consult with and report to the legislative committee.*
 - b. *The Commission may establish additional advisory committees as its Bylaws may provide for the carrying out of its functions.*
- 5. *Corporate Records of the Commission*
The Commission shall maintain its corporate books and records in accordance with the Bylaws.
- 6. *Qualified Immunity, Defense and Indemnification*
 - a. *The Members, officers, executive director, employees and representatives of the Commission, the Executive Committee and any other Committee of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful or wanton misconduct of that person.*
 - b. *The Commission shall defend any Member, officer, executive director, employee or representative of the Commission, the Executive Committee or any other Committee of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act error or omission did not result from that person's intentional or willful or wanton misconduct.*
 - c. *The Commission shall indemnify and hold harmless any Member, officer, executive director, employee or representative of the Commission, Executive Committee or any other Committee of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional or willful or wanton misconduct of that person.*

ARTICLE VII

Meetings and Acts of the Commission

1. *The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.*
2. *Each Member of the Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Commission. A Member shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Members' participation in meetings by telephone or other means of communication.*
3. *The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.*
4. *Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or otherwise provided in the Compact.*
5. *The Commission shall promulgate Rules concerning its meetings consistent with the principles contained in the "Government in the Sunshine Act," 5 U.S.C., Section 552(b), as may be amended.*
6. *The Commission and its committees may close a meeting, or portion thereof, where it determines by majority vote that an open meeting would be likely to:*
 - a. *Relate solely to the Commission's internal personnel practices and procedures;*
 - b. *Disclose matters specifically exempted from disclosure by federal and State statute;*
 - c. *Disclose trade secrets or commercial or financial information which is privileged or confidential;*
 - d. *Involve accusing a person of a crime, or formally censuring a person;*
 - e. *Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;*
 - f. *Disclose investigative records compiled for law enforcement purposes;*
 - g. *Specifically relate to the Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.*
7. *For a meeting, or portion of a meeting, closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission.*

ARTICLE VIII

Rules and Operating Procedures:

Rulemaking Functions of the Commission

Rulemaking functions of the Commission:

1. *Rulemaking Authority.—The Commission shall promulgate reasonable Rules in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force or effect.*
2. *Rulemaking Procedure.—Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Commission.*
3. *Effective Date - All Rules and amendments, thereto, shall become effective as of the date specified in each Rule, operating procedure or amendment.*
4. *Not later than thirty (30) days after a Rule is promulgated, any person may file a petition for judicial review of the Rule; provided that the filing of such a petition shall not stay or otherwise prevent the Rule from becoming effective unless the court finds that the Petitioner has a substantial likelihood of success. The*

court shall give deference to the actions of the Commission consistent with applicable law and shall not find the Rule to be unlawful if the Rule represents a reasonable exercise of the Commission's authority.

ARTICLE IX

Commission Records and Enforcement

1. *The Commission shall promulgate Rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals, insurers, insureds or Surplus Lines Licensee trade secrets. State Transaction Documentation and Clearinghouse Transaction Data collected by the Clearinghouse shall be used for only those purposes expressed in or reasonably implied under the provisions of this Compact and the Commission shall afford this data the broadest protections as permitted by any applicable law for proprietary information, trade secrets or personal data. The Commission may promulgate additional Rules under which it may make available to federal and State agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.*
2. *Except as to privileged records, data and information, the laws of any Compacting State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State Member of the duty to disclose any relevant records, data or information to the Commission; provided that disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this Act, the Commission shall not be subject to the Compacting State's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the Commission shall remain confidential after such information is provided to any Member, and the Commission shall maintain the confidentiality of any information provided by a member that is confidential under that Member's State Law.*
3. *The Commission shall monitor Compacting States for compliance with duly adopted Bylaws and Rules. The Commission shall notify any non-complying Compacting State in writing of its noncompliance with Commission Bylaws or Rules. If a non-complying Compacting State fails to remedy its noncompliance within the time specified in the notice of noncompliance, the Compacting State shall be deemed to be in default as set forth in Article XIV.*

ARTICLE X

Dispute Resolution

1. *Before a Member may bring an action in a court of competent jurisdiction for violation of any provision, standard or requirement of the Compact, the Commission shall attempt, upon the request of a Member, to resolve any disputes or other issues that are subject to this Compact and which may arise between two or more Compacting States, Contracting States or Non-Compacting States, and the Commission shall promulgate a Rule providing alternative dispute resolution procedures for such disputes.*
2. *The Commission shall also provide alternative dispute resolution procedures to resolve any disputes between insureds or Surplus Lines Licensees concerning a tax calculation or allocation or related issues which are the subject of this Compact.*
3. *Any alternative dispute resolution procedures shall be utilized in circumstances where a dispute arises as to which State constitutes the Home State.*

ARTICLE XI

Review of Commission Decisions

Regarding Commission decisions:

1. *Except as necessary for promulgating Rules to fulfill the purposes of this Compact, the Commission shall not have authority to otherwise regulate insurance in the Compacting States.*
2. *Not later than thirty (30) days after the Commission has given notice of any Rule or Allocation Formula, any third party filer or Compacting State may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate Rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the Commission, in making compliance or tax*

determinations acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 6.

3. *The Commission shall have authority to monitor, review and reconsider Commission decisions upon a finding that the determinations or allocations do not meet the relevant Rule. Where appropriate, the Commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in Section 2 above.*

ARTICLE XII

Finance

1. *The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations the Commission may accept contributions, grants, and other forms of funding from the State stamping offices, Compacting States and other sources.*
2. *The Commission shall collect a fee payable by the insured directly or through a Surplus Lines Licensee on each transaction processed through the Compact Clearinghouse, to cover the cost of the operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.*
3. *The Commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VIII of this Compact.*
4. *The Commission shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this Compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by any State or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange.*
5. *The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements for all funds under its control. The internal financial accounts of the Commission shall be subject to the accounting procedures established under its Bylaws. The financial accounts and reports including the system of internal controls and procedures of the Commission shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but not less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an annual report to the Governor and legislature of the Compacting States, which shall include a report of the independent audit. The Commission's internal accounts shall not be confidential and such materials may be shared with the Commissioner, the controller, or the stamping office of any Compacting State upon request provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals, and licensees' and insurers' proprietary information, including trade secrets, shall remain confidential.*
6. *No Compacting State shall have any claim to or ownership of any property held by or vested in the Commission or to any Commission funds held pursuant to the provisions of this Compact.*
7. *The Commission shall not make any political contributions to candidates for elected office, elected officials, political parties nor political action committees. The Commission shall not engage in lobbying except with respect to changes to this Compact.*

ARTICLE XIII

Compacting States, Effective Date and Amendment

1. *Any State is eligible to become a Compacting State.*
2. *The Compact shall become effective and binding upon legislative enactment of the Compact into law by two (2) Compacting States, provided the Commission shall become effective for purposes of adopting Rules, and creating the Clearinghouse when there are a total of ten (10) Compacting States and Contracting States or, alternatively, when there are Compacting States and Contracting States representing greater than forty percent (40%) of the Surplus Lines Insurance premium volume based on records of the percentage of Surplus Lines Insurance premium set forth in Appendix A hereto. Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State. Notwithstanding the foregoing, the Clearinghouse operations and the duty to report Clearinghouse Transaction Data shall begin on the first January 1st or July 1st following the first anniversary of the*

Commission effective date. For States which join the Compact subsequent to the effective date, a start date for reporting Clearinghouse Transaction Data shall be set by the Commission provided Surplus Lines Licensees and all other interested parties receive not less than 90 days advance notice.

3. *Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until all Compacting States enact the amendment into law.*

ARTICLE XIV

Withdrawal, Default and Termination

1. *Withdrawal*

- a. *Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State, provided that a Compacting State may withdraw from the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which enacted the Compact into law.*
- b. *The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any tax or compliance determinations approved on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Commission.*
- c. *The Member of the Withdrawing State shall immediately notify the Executive Committee of the Commission in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.*
- d. *The Commission shall notify the other Compacting States of the introduction of such legislation within ten (10) days after its receipt of notice thereof.*
- e. *The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. To the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State, the Commission's determinations prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the Withdrawing State, unless formally rescinded by the Commission.*
- f. *Reinstatement following withdrawal of any Compacting State shall occur upon the effective date of the Withdrawing State reenacting the Compact.*

2. *Default*

- a. *If the Commission determines that any Compacting State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Compact, the Bylaws or duly promulgated Rules then after notice and hearing as set forth in the Bylaws, all rights, privileges and benefits conferred by this Compact on the Defaulting State shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include, but are not limited to, failure of a Compacting State to perform its obligations or responsibilities, and any other grounds designated in Commission Rules. The Commission shall immediately notify the Defaulting State in writing of the Defaulting State's suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Commission, the Defaulting State shall be terminated from the Compact and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.*
- b. *Decisions of the Commission that are issued on the effective date of termination shall remain in force in the Defaulting State in the same manner as if the Defaulting State had withdrawn voluntarily pursuant to Section 1 of this Article.*
- c. *Reinstatement following termination of any Compacting State requires a reenactment of the Compact.*

3. *Dissolution of Compact*

- a. *The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.*
- b. *Upon the dissolution of this Compact, the Compact becomes null and void and shall have no further force or effect, and the business and affairs of the Commission shall be wound up and any surplus funds shall be distributed in accordance with the Rules and Bylaws.*

ARTICLE XV

Severability and Construction

1. *The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.*
2. *The provisions of this Compact shall be liberally construed to effectuate its purposes.*
3. *Throughout this Compact the use of the singular shall include the plural and vice-versa.*
4. *The headings and captions of articles, sections and sub-sections used in this Compact are for convenience only and shall be ignored in construing the substantive provisions of this Compact.*

ARTICLE XVI

Binding Effect of Compact and Other Laws

1. Other Laws

- a. *Nothing herein prevents the enforcement of any other law of a Compacting State except as provided in Paragraph b. of this section.*
 - b. *Decisions of the Commission, and any Rules, and any other requirements of the Commission shall constitute the exclusive Rule, or determination applicable to the Compacting States. Any law or regulation regarding Non-Admitted Insurance of Multi-State Risks that is contrary to Rules of the Commission is preempted with respect to the following:*
 - (i) *Clearinghouse Transaction Data reporting requirements;*
 - (ii) *Allocation Formula;*
 - (iii) *Clearinghouse Transaction Data collection requirements;*
 - (iv) *Premium Tax payment time frames and Rules concerning dissemination of data among the Compacting States for Non-Admitted Insurance of Multi-State Risks and Single-State Risks;*
 - (v) *exclusive compliance with surplus lines law of the Home State of the insured;*
 - (vi) *Rules for reporting to a Clearinghouse for receipt and distribution of Clearinghouse Transaction Data related to Non-Admitted Insurance of Multi-State Risks;*
 - (vii) *Uniform foreign Insurers Eligibility Requirements;*
 - (viii) *Uniform Policyholder Notice; and*
 - (ix) *Uniform treatment of Purchasing Groups procuring Non-Admitted Insurance.*
 - c. *Except as stated in paragraph b, any Rule, Uniform Standard or other requirement of the Commission shall constitute the exclusive provision that a Commissioner may apply to compliance or tax determinations. Notwithstanding the foregoing, no action taken by the Commission shall abrogate or restrict: (i) the access of any person to State courts; (ii) the availability of alternative dispute resolution under Article X of this Compact (iii) remedies available under State law related to breach of contract, tort, or other laws not specifically directed to compliance or tax determinations; (iv) State law relating to the construction of insurance contracts; or (v) the authority of the attorney general of the State, including but not limited to maintaining any actions or proceedings, as authorized by law.*
- ##### *2. Binding Effect of this Compact*
- a. *All lawful actions of the Commission, including all Rules promulgated by the Commission, are binding upon the Compacting States, except as provided herein.*

- b. All agreements between the Commission and the Compacting States are binding in accordance with their terms.*
- c. Upon the request of a party to a conflict over the meaning or interpretation of Commission actions, and upon a majority vote of the Compacting States, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute. This provision may be implemented by Rule at the discretion of the Commission.*
- d. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Commission shall be ineffective as to that State and those obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.*

Surplus Line Insurance Premiums by State

Appendix A

| <i>State</i> | <i>Premiums based on taxes paid</i> | <i>Share of Total Premiums</i> |
|----------------------|-------------------------------------|--------------------------------|
| <i>Alabama</i> | <i>445,746,000</i> | <i>1.47%</i> |
| <i>Alaska</i> | <i>89,453,519</i> | <i>0.29%</i> |
| <i>Arizona</i> | <i>663,703,267</i> | <i>2.18%</i> |
| <i>Arkansas</i> | <i>201,859,750</i> | <i>0.66%</i> |
| <i>California</i> | <i>5,622,450,467</i> | <i>18.49%</i> |
| <i>Colorado</i> | <i>543,781,333</i> | <i>1.79%</i> |
| <i>Connecticut</i> | <i>329,358,800</i> | <i>1.08%</i> |
| <i>Delaware</i> | <i>92,835,950</i> | <i>0.31%</i> |
| <i>Florida</i> | <i>2,660,908,760</i> | <i>8.75%</i> |
| <i>Georgia</i> | <i>895,643,150</i> | <i>2.95%</i> |
| <i>Hawaii</i> | <i>232,951,489</i> | <i>0.77%</i> |
| <i>Idaho</i> | <i>74,202,255</i> | <i>0.24%</i> |
| <i>Illinois</i> | <i>1,016,504,629</i> | <i>3.34%</i> |
| <i>Indiana</i> | <i>412,265,320</i> | <i>1.36%</i> |
| <i>Iowa</i> | <i>135,130,933</i> | <i>0.44%</i> |
| <i>Kansas</i> | <i>160,279,300</i> | <i>0.53%</i> |
| <i>Kentucky</i> | <i>167,996,133</i> | <i>0.55%</i> |
| <i>Louisiana</i> | <i>853,173,280</i> | <i>2.81%</i> |
| <i>Maine</i> | <i>60,111,200</i> | <i>0.20%</i> |
| <i>Maryland</i> | <i>434,887,600</i> | <i>1.43%</i> |
| <i>Massachusetts</i> | <i>708,640,225</i> | <i>2.33%</i> |
| <i>Michigan</i> | <i>703,357,040</i> | <i>2.31%</i> |
| <i>Minnesota</i> | <i>393,128,400</i> | <i>1.29%</i> |
| <i>Mississippi</i> | <i>263,313,175</i> | <i>0.87%</i> |
| <i>Missouri</i> | <i>404,489,860</i> | <i>1.33%</i> |
| <i>Montana</i> | <i>64,692,873</i> | <i>0.21%</i> |
| <i>Nebraska</i> | <i>92,141,167</i> | <i>0.30%</i> |

| | | |
|-----------------------|-----------------------|----------------|
| <i>Nevada</i> | <i>354,271,514</i> | <i>1.17%</i> |
| <i>New Hampshire</i> | <i>102,946,250</i> | <i>0.34%</i> |
| <i>New Jersey</i> | <i>1,087,994,033</i> | <i>3.58%</i> |
| <i>New Mexico</i> | <i>67,608,458</i> | <i>0.22%</i> |
| <i>New York</i> | <i>2,768,618,083</i> | <i>9.11%</i> |
| <i>North Carolina</i> | <i>514,965,060</i> | <i>1.69%</i> |
| <i>North Dakota</i> | <i>36,223,943</i> | <i>0.12%</i> |
| <i>Ohio</i> | <i>342,000,000</i> | <i>1.12%</i> |
| <i>Oklahoma</i> | <i>319,526,400</i> | <i>1.05%</i> |
| <i>Oregon</i> | <i>312,702,150</i> | <i>1.03%</i> |
| <i>Pennsylvania</i> | <i>780,666,667</i> | <i>2.57%</i> |
| <i>Rhode Island</i> | <i>71,794,067</i> | <i>0.24%</i> |
| <i>South Carolina</i> | <i>412,489,825</i> | <i>1.36%</i> |
| <i>South Dakota</i> | <i>38,702,120</i> | <i>0.13%</i> |
| <i>Tennessee</i> | <i>451,775,24</i> | <i>1.49%</i> |
| <i>Texas</i> | <i>3,059,170,454</i> | <i>10.06%</i> |
| <i>Utah</i> | <i>142,593,412</i> | <i>0.47%</i> |
| <i>Vermont</i> | <i>41,919,433</i> | <i>0.14%</i> |
| <i>Virginia</i> | <i>611,530,667</i> | <i>2.01%</i> |
| <i>Washington</i> | <i>739,932,050</i> | <i>2.43%</i> |
| <i>West Virginia</i> | <i>130,476,250</i> | <i>0.43%</i> |
| <i>Wisconsin</i> | <i>248,758,333</i> | <i>0.82%</i> |
| <i>Wyoming</i> | <i>40,526,967</i> | <i>0.13%</i> |
| <i>Total</i> | <i>30,400,197,251</i> | <i>100.00%</i> |

This Data is 2005 Calendar Year Data excerpted from a study dated February 27, 2007 by Mackin & Company.

➔ Section 2. KRS 91A.080 is amended to read as follows:

- (1) The legislative body of each local government which elects to impose and collect license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance may, ***except as provided in subsection (10) of this section***, enact or change its license fee or rate of tax to be effective July 1 of each year on a prospective basis only and shall file with the commissioner of insurance at least one hundred (100) days prior to the effective date, a copy of all ordinances and amendments which impose a license fee or tax. No less than eighty-five (85) days prior to the effective date, the commissioner of insurance shall promptly notify each insurance company engaged in the business of insurance in the Commonwealth of those local governments which have elected to impose the license fees or taxes and the current amount of the license fee or rate of tax.
- (2) Any license fee or tax imposed by a local government upon an insurance company with respect to life insurance policies may be based upon the first year's premiums, and, if so based, shall be applied to the amount of the premiums actually collected within each calendar quarter upon the lives of persons residing within the corporate limits of the local government.
- (3) Any license fee or tax imposed by a local government upon any insurance company with respect to any policy which is not a life insurance policy shall be based upon the premiums actually collected by the insurance company within each calendar quarter on risks located within the corporate limits of the local government on those classes of business which the insurance company is authorized to transact, less all premiums returned to policyholders. In determining the amount of license fee or tax to be collected and to be paid to the local government, the insurance company shall use the tax rate effective on the first day of the policy term. When an insurance company collects a premium as a result of a change in the policy during the policy term, the tax rate

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

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

- (10) No license fee or tax imposed under this section shall apply to premiums received on:
- (a) Policies of group health insurance provided for state employees under KRS 18A.225;
 - (b) Policies insuring employers against liability for personal injuries to their employees or the death of their employees caused thereby, under the provisions of KRS Chapter 342;
 - (c) Health insurance policies issued to individuals;
 - (d) Policies issued through Kentucky Access created in Subtitle 17B of KRS Chapter 304; ~~for~~
 - (e) Policies for high deductible health plans as defined in 26 U.S.C. sec. 223(c)(2); *or*
 - (f) ***Multi-state surplus lines, defined as non-admitted insurance as provided in Title V, Subtitle B, the Non-Admitted and Reinsurance Reform Act of 2010, of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203.***
- (11) No county may impose the tax authorized by this section upon the premiums received on policies issued to public service companies which pay ad valorem taxes.
- (12) Insurance companies which pay license fees or taxes pursuant to this section shall credit city license fees or taxes against the same license fees or taxes levied by the county, when the license fees or taxes are levied by the county on or after July 13, 1990. For purposes of this subsection, a consolidated local government, urban-county government, charter county government, or unified local government shall be considered a county.
- (13) No license fee or tax imposed under this section shall apply to premiums paid to insurers of municipal bonds, leases, or other debt instruments issued by or on behalf of a city, county, charter county government, urban-county government, consolidated local government, special district, nonprofit corporation, or other political subdivision of the Commonwealth. However, this exemption shall not apply if the bonds, leases, or other debt instruments are issued for profit or on behalf of for-profit or private organizations.
- (14) A county may impose a license fee or tax covering the entire county or may limit the application of the fee or tax to the unincorporated portions of the county.

➔Section 3. KRS 136.392 is amended to read as follows:

- (1) (a) Every domestic, foreign, or alien insurer, other than life and health insurers, which is either subject to or exempted from Kentucky premium taxes as levied pursuant to the provisions of either KRS 136.340, 136.350, 136.370, or 136.390, shall charge and collect a surcharge of one dollar and fifty cents (\$1.50) upon each one hundred dollars (\$100) of premium, assessments, or other charges, except for those municipal premium taxes, made by it for insurance coverage provided to its policyholders, on risk located in this state, whether the charges are designated as premiums, assessments, or otherwise. The premium surcharge shall be collected by the insurer from its policyholders at the same time and in the same manner that its premium or other charge for the insurance coverage is collected. The premium surcharge shall be disclosed to policyholders pursuant to administrative regulations promulgated by the commissioner of insurance. However, no insurer or its agent shall be entitled to any portion of any premium surcharge as a fee or commission for its collection. On or before the twentieth day of each month, each insurer shall report and remit to the Department of Revenue, on forms as it may require, all premium surcharge moneys collected by it during its preceding monthly accounting period less any moneys returned to policyholders as applicable to the unearned portion of the premium on policies terminated by either the insured or the insurer. Insurers with an annual liability of less than one thousand dollars (\$1,000) for each of the previous two (2) calendar years may report and remit to the Department of Revenue all premium surcharge moneys collected on a calendar year basis on or before the twentieth day of January of the following calendar year. The funds derived from the premium surcharge shall be deposited in the State Treasury, and shall constitute a fund allocated for the uses and purposes of the Firefighters Foundation Program fund, KRS 95A.220 and 95A.262, and the Law Enforcement Foundation Program fund, KRS 15.430.
- (b) Effective July 1, 1992, the surcharge rate in paragraph (a) of this subsection shall be adjusted by the commissioner of revenue to a rate calculated to provide sufficient funds for the uses and purposes of the Firefighters Foundation Program fund as prescribed by KRS 95A.220 and 95A.262 and the Law Enforcement Foundation Program fund as prescribed by KRS 15.430 for each fiscal year. The rate shall be calculated using as its base the number of local government units eligible for participation in the funds under applicable statutes as of January 1, 1994. To allow the commissioner of revenue to calculate an appropriate rate, the secretary of the Public Protection Cabinet and the secretary for the

Justice and Public Safety Cabinet shall certify to the commissioner of revenue, no later than January 1 of each year, the estimated budgets for the respective funds specified above, including any surplus moneys in the funds, which shall be incorporated into the consideration of the adjusted rate for the next biennium. As soon as practical, the commissioner of revenue shall advise the commissioner of insurance of the new rate and the commissioner shall inform the affected insurers. The rate adjustment process shall continue on a biennial basis.

- (2) Within five (5) days after the end of each month, all insurance premium surcharge proceeds deposited in the State Treasury as set forth in this section shall be paid by the State Treasurer into the Firefighters Foundation Program fund trust and agency account and the Law Enforcement Foundation Program fund trust and agency account. The amount paid into each account shall be proportionate to each fund's respective share of the total deposits, pursuant to KRS 42.190. Moneys deposited to the Law Enforcement Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 15.410 to 15.500, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse. On and after July 1, 1999, moneys in this account shall not lapse. Money deposited to the Firefighters Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 95A.200 to 95A.300, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. On and after July 1, 1999, moneys in this account shall not lapse.
- (3) Insurance premium surcharge funds collected from the policyholders of any domestic mutual company, cooperative, or assessment fire insurance company shall be deposited in the State Treasury, and shall be paid monthly by the State Treasurer into the Firefighters Foundation Program fund trust and agency account as provided in KRS 95A.220 to 95A.262. However, insurance premium surcharge funds collected from policyholders of any mutual company, cooperative, or assessment fire insurance company which transfers its corporate domicile to this state from another state after July 15, 1994, shall continue to be paid into the Firefighters Foundation Program fund and the Law Enforcement Foundation Program fund as prescribed.
- (4) No later than July 1 of each year, the Department of Insurance shall provide the Department of Revenue with a list of all Kentucky-licensed property and casualty insurers and the amount of premium volume collected by the insurer for the preceding calendar year as set forth on the annual statement of the insurer. No later than September 1 of each year, the Department of Revenue shall calculate an estimate of the premium surcharge due from each insurer subject to the insurance premium surcharge imposed pursuant to this section, based upon the surcharge rate imposed pursuant to this section and the amount of the premium volume for each insurer as reported by the Department of Insurance. The Department of Revenue shall compare the results of this estimate with the premium surcharge paid by each insurer during the preceding year and shall provide the Legislative Research Commission, the Commission on Fire Protection Personnel Standards and Education, the Kentucky Law Enforcement Council, and the Department of Insurance with a report detailing its findings on a cumulative basis. In accordance with KRS 131.190, the Department of Revenue shall not identify or divulge the confidential tax information of any individual insurer in this report.
- (5) The insurance premiums surcharge provided in this section shall not apply to premiums collected from the following:
 - (a) The federal government;
 - (b) Resident educational and charitable institutions qualifying under Section 501(c)(3) of the Internal Revenue Code;
 - (c) Resident nonprofit religious institutions for real, tangible, and intangible property coverage only;
 - (d) State government for coverage of real property; or
 - (e) Local governments for coverage of real property.
- (6) ***Pursuant to the Non-Admitted and Reinsurance Reform Act of 2010, Title V, Subtitle B, of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-517, the insurance premium surcharge on non-admitted insurance for multistate risks shall be exempt from the provisions of this section but shall be subject to the provisions of Section 4 of this Act.***

➔Section 4. KRS 304.10-180 is amended to read as follows:

- (1) ***For single state risks located solely within this state***, each broker shall pay the following taxes:
- (a) A tax at the rate of three percent (3%) on the premiums, assessments, fees, charges, or other consideration deemed part of the premium as defined in KRS 304.14-030, on surplus lines insurance subject to tax transacted by him or her with unauthorized insurers during the preceding calendar quarter as shown by his or her quarterly statement filed with the commissioner in accordance with KRS 304.10-170. The tax shall not be assessed on the premium surcharge tax, the local government premium tax, or any other state or federal tax. The tax shall be remitted to the commissioner within thirty (30) days of the end of each calendar quarter. When collected the tax shall be credited to the insurance regulatory trust fund, as established by KRS 304.2-400;
 - (b) The premium surcharge tax, to be remitted to the Kentucky Department of Revenue, in accordance with KRS 136.392; and
 - (c) The local government premium tax, to be remitted to the appropriate city, county, or urban-county government taxing authority, in accordance with KRS 91A.080. Each broker shall be subject to the provisions of this section and KRS 91A.080 and 91A.0802 to 91A.0810 as an insurance company.
- (2) ***For multistate risks, each broker shall pay a tax at the rate of eleven and eight-tenths percent (11.8%) on premiums in accordance with the uniform Allocation Formula and other rules adopted by the Surplus Lines Insurance Multi-State Compliance Compact Commission established in Section 1 of this Act. The tax collected on multistate risks shall be remitted to the Department of Insurance, which shall no less than semiannually divide and distribute the revenues as follows:***
- (a) ***Twenty-five percent (25%) of the tax collected shall be retained by the Department of Insurance and treated as if collected pursuant to subsection (1)(a) of this section;***
 - (b) ***Fifteen percent (15%) of the tax collected shall be distributed to the Department of Revenue and treated as if it was collected pursuant to Section 3 of this Act and shall be used for the purposes of funding:***
 - 1. ***The Firefighters Foundation Program fund, as provided by KRS 95A.220 and 95A.262; and***
 - 2. ***The Law Enforcement Foundation Program Fund as provided by KRS 15.430; and***
 - (c) ***Sixty percent (60%) of the tax collected shall be distributed to the Department for Local Government. The Department for Local Government:***
 - 1. ***Shall determine the share of the tax for each city and county government on a pro rata basis pursuant to a distribution formula that is based upon the percentage of each city's and county's historical local premium tax collections from surplus lines insurance in calendar years 2007, 2008, and 2009, as compared to the total of all local insurance premium taxes on surplus lines insurance collected in calendar years 2007, 2008, and 2009;***
 - 2. ***Shall exclude any city or county from the distribution that collected a total of less than five hundred dollars (\$500) in insurance premium taxes from surplus lines insurance for calendar years 2007, 2008, and 2009 and the total amount of these city or county collections of less than five hundred dollars (\$500) shall be excluded from the determination of the total local insurance premium tax collections required by this subsection;***
 - 3. ***Shall not less than semiannually distribute the proceeds to city and county governments for the purposes of funding public safety, including but not limited to:***
 - a. ***Police;***
 - b. ***Fire;***
 - c. ***Emergency 911 services; and***
 - d. ***Ambulance services; and***
 - 4. ***May charge a yearly administrative fee equal to one percent (1%) of the total local government portion provided under this subsection, not to exceed ten thousand dollars (\$10,000) per year statewide.***

~~[If a surplus lines policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.]~~

➔Section 5. Sections 2, 3, and 4 of this Act shall take effect as provided in Article XIII of Section 1 of this Act, upon legislative enactment of the compact into law by two compacting states, provided the commission shall become effective for purposes of adopting rules, and creating the clearinghouse when there are a total of ten compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than 40 percent of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance.

Signed by Governor March 16, 2011.

Legislative Research Commission Note. As enacted, Section 1 of this Act directed that a new section of KRS 304.010 to 304.210 be created. Subtitle 10 of KRS Chapter 304 contains statutes relating to surplus lines insurance, and they are numbered as KRS 304.10-010 to 304.10-210. Therefore, under the authority of KRS 7.136, the Reviser of Statutes will create a new section of KRS 304.10-010 to 304.10-210 to correct a manifest clerical or typographical error.

CHAPTER 49

(HB 183)

AN ACT relating to city classification.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of Wurtland, in Greenup County, is such as to justify its being classified as a city of the fifth class; and

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Sadieville, in Scott County is such to justify its being classified as a city of the fifth class; and

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Midway, in Woodford County is such to justify its being classified as a city of the fourth class;

NOW, THEREFORE,

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

➔Section 1. The City of Wurtland, in Greenup County, is transferred from the sixth class to the fifth class of cities.

➔Section 2. The City of Sadieville, in Scott County, is transferred from the sixth to the fifth class of cities.

➔Section 3. The City of Midway, in Woodford County, is transferred from the fifth to the fourth class of cities.

Signed by Governor March 16, 2011.

CHAPTER 50

(HB 192)

AN ACT relating to instruction in voting.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly hereby finds that knowledge of procedures for voter registration and participation in elections is essential for all Kentucky students to acquire the capacities established in KRS 158.645(2) and (4). Instruction in election procedures is consistent with the goals of responsible citizenship established in KRS 158.6451.*
- (2) *Every secondary school shall provide students in the twelfth grade information on:*
 - (a) *How to register to vote;*

- (b) *How to vote in an election using a ballot; and*
 - (c) *How to vote using an absentee ballot.*
- (3) *A school may provide this information through classroom activities, written materials, electronic communication, Internet resources, participation in mock elections, and other methods identified by the principal after consulting with teachers.*

Signed by Governor March 16, 2011.

CHAPTER 51

(HB 228)

AN ACT relating to campaign finance.

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

➔Section 1. KRS 121.150 is amended to read as follows:

- (1) No contribution shall be made or received, directly or indirectly, other than an independent expenditure, to support inauguration activities or to support or defeat a candidate, slate of candidates, constitutional amendment, or public question which will appear on the ballot in an election, except through the duly appointed campaign manager, or campaign treasurer of the candidate, slate of candidates, or registered committee. Any person making an independent expenditure, shall report these expenditures when the expenditures by that person exceed five hundred dollars (\$500) in the aggregate in any one (1) election, on a form provided or using a format approved by the registry and shall sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the campaign on whose behalf it was made.
- (2) Except as provided in KRS 121.180(10), the solicitation from and contributions by campaign committees, caucus campaign committees, political issues committees, permanent committees, and party executive committees to any religious, charitable, civic, eleemosynary, or other causes or organizations established primarily for the public good is expressly prohibited; except that it shall not be construed as a violation of this section for a candidate or a slate of candidates to contribute to religious, civic, or charitable groups.
- (3) No candidate, slate of candidates, committee, or contributing organization, nor anyone acting on their behalf, shall accept any anonymous contribution in excess of fifty dollars (\$50), and all anonymous contributions in excess of fifty dollars (\$50) shall be returned to the donor, if the donor can be determined. If no donor is found, the contribution shall escheat to the state. No candidate, slate of candidates, committee, or contributing organization, nor anyone acting on their behalf shall accept anonymous contributions in excess of one thousand dollars (\$1,000) in the aggregate in any one (1) election. Anonymous contributions in excess of one thousand dollars (\$1,000) in the aggregate which are received in any one (1) election shall escheat to the state.
- (4) No candidate, slate of candidates, committee, or contributing organization, nor anyone on their behalf, shall accept a cash contribution in excess of fifty dollars (\$50) in the aggregate from each contributor in any one (1) election. No candidate, slate of candidates, committee, or contributing organization, nor anyone on their behalf, shall accept a cashier's check or money order in excess of the maximum cash contribution limit unless the instrument clearly identifies both the payor and the payee. A contribution made by cashier's check or money order which identifies both the payor and payee shall be treated as a contribution made by check for purposes of the contribution limits contained in this section. No person shall make a cash contribution in excess of fifty dollars (\$50) in the aggregate in any one (1) election to a candidate, slate of candidates, committee, or contributing organization, nor anyone on their behalf.
- (5) No candidate, slate of candidates, committee, contributing organization, nor anyone on their behalf, shall accept any contribution in excess of one hundred dollars (\$100) from any person who shall not become eighteen (18) years of age on or before the day of the next general election.
- (6) No candidate, slate of candidates, campaign committee, political issues committee, nor anyone acting on their behalf, shall accept a contribution of more than one thousand dollars (\$1,000) from any person, permanent committee, or contributing organization in any one (1) election; ~~except that no candidate for school board, his~~

~~campaign committee, nor anyone acting on their behalf shall accept a contribution of more than one hundred dollars (\$100) from any person or more than two hundred dollars (\$200) from any permanent committee or contributing organization in any one (1) election]. No person, permanent committee, or contributing organization shall contribute more than one thousand dollars (\$1,000) to any one (1) candidate, campaign committee, political issues committee, nor anyone acting on their behalf, in any one (1) election]; except that no person shall contribute more than one hundred dollars (\$100) and no permanent committee or contributing organization shall contribute more than two hundred dollars (\$200) to any one (1) school board candidate, his campaign committee, nor anyone acting on their behalf, in any one (1) election].~~

- (7) Permanent committees or contributing organizations affiliated by bylaw structure or by registration, as determined by the Registry of Election Finance, shall be considered as one (1) committee for purposes of applying the contribution limits of subsection (6) of this section.
- (8) No permanent committee shall contribute funds to another permanent committee for the purpose of circumventing contribution limits of subsection (6) of this section.
- (9) No person shall contribute funds to a permanent committee, political issues committee, or contributing organization for the purpose of circumventing the contribution limits of subsection (6) of this section.
- (10) No person shall contribute more than one thousand five hundred dollars (\$1,500) to all permanent committees and contributing organizations in any one (1) year.
- (11) No person shall contribute more than two thousand five hundred dollars (\$2,500) to the state executive committee of a political party and its subdivisions and affiliates in any one (1) year. No person shall contribute more than two thousand five hundred dollars (\$2,500) to a caucus campaign committee in any one (1) year. Contributions a person makes to any executive committee other than the state executive committee in excess of one thousand dollars (\$1,000) in any one (1) year shall be deposited in a separate account which the state executive committee maintains for the exclusive purpose of paying administrative costs incurred by the political party.
- (12) No person shall make a payment, distribution, loan, advance, deposit, or gift of money to another person to contribute to a candidate, a slate of candidates, committee, contributing organization, or anyone on their behalf. No candidate, slate of candidates, committee, contributing organization, nor anyone on their behalf shall accept a contribution made by one (1) person who has received a payment, distribution, loan, advance, deposit, or gift of money from another person to contribute to a candidate, a slate of candidates, committee, contributing organization, or anyone on their behalf.
- (13) No candidates running as a slate for the offices of Governor and Lieutenant Governor shall make combined total personal loans to their committee in excess of fifty thousand dollars (\$50,000) in any one (1) election. No candidate for any other statewide elected state office shall lend to his committee any amount in excess of twenty-five thousand dollars (\$25,000) in any one (1) election. In campaigning for all other offices, no candidate shall lend to his committee more than ten thousand dollars (\$10,000) in any one (1) election.
- (14) Subject to the provisions of subsection (18) of this section, no candidate or slate of candidates for nomination to any state, county, city, or district office, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for primary election expenses after the date of the primary. No person other than the candidate or slate of candidates shall contribute for primary election expenses after the date of the primary.
- (15) Subject to the provisions of subsection (18) of this section, no candidate or slate of candidates for any state, county, city, or district office at a regular election, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for regular election expenses after the date of the regular election. No person other than the candidate or slate of candidates shall contribute for regular election expenses after the date of the regular election.
- (16) Subject to the provisions of subsection (18) of this section, no candidate or slate of candidates for nomination or election to any state, county, city, or district office, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for special election expenses after the date of the special election. No person other than the candidate or slate of candidates shall contribute for special election expenses after the date of the special election.
- (17) The provisions of subsections (14) and (15) of this section shall apply only to those candidates in a primary or regular election which shall be conducted subsequent to January 1, 1989. The provisions of subsection (16) of this section shall apply only to those candidates or slates of candidates in a special election which shall be conducted subsequent to January 1, 1993.

- (18) A candidate, slate of candidates, or a campaign committee may solicit and accept contributions after the date of a primary election, regular election, or special election to defray necessary expenses that arise after the date of the election associated with election contests, recounts, and recanvasses of a specific election, complaints regarding alleged campaign finance violations that are filed with the registry pertaining to a specific election, or other legal actions pertaining to a specific election to which a candidate, slate of candidates, or campaign committee is a party. Reports of contributions received and expenditures made after the date of the specific election shall be made in accordance with KRS 121.180.
- (19) No slate of candidates for Governor and Lieutenant Governor or their immediate families shall loan any money, service, or other thing of value to their campaign, and all moneys, services, or other things of value which are loaned shall be deemed a contribution, which may not be recovered by the slate of candidates, except to the extent of a combined total of fifty thousand dollars (\$50,000).
- (20) No candidate, slate of candidates, committee, except a political issues committee, or contributing organization, nor anyone on their behalf, shall knowingly accept a contribution from a corporation, directly or indirectly.
- (21) Nothing in this section shall be construed to restrict the ability of a corporation to administer its permanent committee insofar as its actions can be deemed not to influence an election as prohibited by KRS 121.025.
- (22) No candidate, slate of candidates, or committee, nor anyone on their behalf, shall solicit a contribution of money or services from a state employee, whether or not the employee is covered by the classified service provisions of KRS Chapter 18A. However, it shall not be a violation of this subsection for a state employee to receive a solicitation directed to him as a registered voter in an identified precinct as part of an overall plan to contact voters not identified as state employees.
- (23)
 - (a) A candidate or a slate of candidates for elective public office shall not accept contributions from permanent committees which, in the aggregate, exceed fifty percent (50%) of the total contributions accepted by the candidate or a slate of candidates in any one (1) election or ten thousand dollars (\$10,000) in any one (1) election, whichever is the greater amount. The percentage of the total contributions or dollar amounts of contributions accepted by a candidate or a slate of candidates in an election that is accepted from permanent committees shall be calculated as of the day of each election. Funds in a candidate's or a slate of candidates' campaign account which are carried forward from one (1) election to another shall not be considered in calculating the acceptable percentage or dollar amount of contributions which may be accepted from permanent committees for the election for which the funds are carried forward. A candidate or a slate of candidates may, without penalty, contribute funds to his campaign account not later than sixty (60) days following the election so as not to exceed the permitted percentage or dollar amount of contributions which may be accepted from permanent committees or the candidate or a slate of candidates may, not later than sixty (60) days after the end of the election, refund any excess permanent committee contributions on a pro rata basis to the permanent committees whose contributions are accepted after the aggregate limit has been reached.
 - (b) The provisions of paragraph (a) of this subsection regarding the receipt of aggregate contributions from permanent committees in any one (1) election shall also apply separately to the receipt of aggregate contributions from executive committees of any county, district, state, or federal political party in any one (1) election.
 - (c) The provisions of paragraph (a) of this subsection regarding the receipt of aggregate contributions from permanent committees in any one (1) election shall also apply separately to the receipt of aggregate contributions from caucus campaign committees.
- (24) No candidate or slate of candidates for any office in this state shall accept a contribution, including an in-kind contribution, which is made from funds in a federal campaign account. No person shall make a contribution, including an in-kind contribution, from funds in a federal campaign account to any candidate or slate of candidates for any office in this state.

➔Section 2. KRS 121.170 is amended to read as follows:

- (1) Any committee, except a federally-registered out-of-state permanent committee, organized under any provisions of this chapter shall register with the registry, by filing official notice of intention at the time of organization, giving names, addresses, and positions of the officers of the organization, ***identifying an official contact person of the committee***, and designating the candidate or candidates, slate of candidates, or question it is organized to support or oppose on forms prescribed by the registry; except that no campaign committee for a slate of candidates for Governor and Lieutenant Governor shall be registered prior to the filing of a joint notification and declaration by the slate of candidates pursuant to KRS 118.125 and 118.127. No entity which

is excluded from the definition of "campaign committee" established in KRS 121.015(3)(a) shall be required to register as a committee with the registry. The name of the committee shall reasonably identify to the public the sponsorship and purpose of the committee. The forms filed with the registry shall require the registrant to clearly identify the specific purpose, sponsorship, and source from which the committee originates; and the registry shall refuse to allow filing by any committee until this requirement has been satisfied.

- (2) Any person who acts as a fundraiser by directly soliciting contributions for an election campaign of a candidate or slate of candidates for statewide-elected state office or an office in a jurisdiction containing in excess of two hundred thousand (200,000) residents shall register with the registry when he *or she* raises in excess of three thousand dollars (\$3,000) in any one (1) election for the campaign committee by filing official notice giving his *or her* name, address, occupation, employer or, if he *or she* is self-employed, the name under which he *or she* is doing business, and all candidates or slates of candidates for whom he *or she* is soliciting on forms prescribed by the registry. A registered fundraiser shall comply with the campaign finance reporting requirements of KRS 121.180(3), (4), and (5).
- (3) All provisions of KRS 121.160 governing the duties and responsibilities of a candidate, slate of candidates, or campaign treasurer shall apply to a registered committee, except a federally-registered out-of-state permanent committee, and a person acting as a campaign fundraiser. In case of the death, resignation, or removal of a campaign treasurer for a permanent committee or executive committee, the ***chairperson***~~chairman~~ of the permanent committee or executive committee shall, within three (3) days after receiving notice of the vacancy by certified mail, appoint a successor as treasurer for the committee and file the name and address of the successor with the registry. The ***chairperson***~~chairman~~ of the permanent committee or executive committee shall be accountable as the treasurer for the committee if the ***chairperson***~~chairman~~ fails to meet this filing requirement.
- (4) The ***chairperson***~~chairman~~ of a committee and the campaign treasurer shall be separate persons.
- (5) Any federally-registered out-of-state permanent committee that contributes to a Kentucky candidate or a slate of candidates shall:
 - (a) File with the registry a copy of its federal registration (Federal Election Commission Form 1 - Committee Registration Form);
 - (b) File with the registry a copy of the Federal Election Commission finance report when a contribution is made to a Kentucky candidate or a slate of candidates; and
 - (c) Contribute not more than the maximum amount permitted for a permanent committee to make under Kentucky law to any candidate or to any slate of candidates for any office in this Commonwealth.
- (6) Notwithstanding any provision of law to the contrary, a contribution made by a federally-registered permanent committee to any candidate or to any slate of candidates for any office in this Commonwealth that complies with the provisions of 2 U.S.C. sec. 441b, 11 C.F.R. sec. 104.10, 11 C.F.R. sec. 106.6, and 11 C.F.R. sec. 114.1-114.12 regarding limitations on contributions by corporations shall be deemed to comply with the campaign finance laws of this Commonwealth prohibiting corporate contributions to candidates or slates of candidates.
- (7) The organization, formation, or registration of a permanent committee by any member of the General Assembly shall be prohibited.
- (8) ***The official contact person of a permanent committee shall not be a legislative agent as defined in KRS 6.611 or an executive agency lobbyist as defined in KRS 11A.201.***

Signed by Governor March 16, 2011.

CHAPTER 52

(HB 229)

AN ACT relating to public employees.

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

➔Section 1. KRS 18A.205 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary, may procure from one (1) or more life insurance companies, authorized to do business in this state, a policy or policies of group life insurance insuring the lives of all or any class or classes of state employees. The policy or policies shall be approved by the commissioner of insurance and may contain such provisions as the commissioner of insurance approves whether or not otherwise permitted by the insurance laws. It is intended that life insurance may be made available for state employees, except that the procuring is permissive.
- (2) The term "state employee," for purposes of KRS 18A.205 to 18A.215, shall mean a person who is regularly employed by any department, board, agency, or branch of state government, and who is also:
 - (a) A contributing member of any one (1) of the *state-administered* retirement systems ~~administered by the state~~; *or*
 - (b) *A retiree of a state-administered retirement system who is employed in a regular full-time position for purposes of retirement coverage, but who is not eligible to contribute to one (1) of the systems administered by Kentucky Retirement Systems pursuant to subsection (17) of Section 3 of this Act.*

Notwithstanding the definition of "state employee" in this subsection, ~~provided, however, that~~ any federally funded time-limited employee may receive insurance coverage.

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

➔Section 2. KRS 61.510 is amended to read as follows:

As used in KRS 61.510 to 61.705, unless the context otherwise requires:

- (1) "System" means the Kentucky Employees Retirement System created by KRS 61.510 to 61.705;
- (2) "Board" means the board of trustees of the system as provided in KRS 61.645;
- (3) "Department" means any state department or board or agency participating in the system in accordance with appropriate executive order, as provided in KRS 61.520. For purposes of KRS 61.510 to 61.705, the members, officers, and employees of the General Assembly and any other body, entity, or instrumentality designated by executive order by the Governor, shall be deemed to be a department, notwithstanding whether said body, entity, or instrumentality is an integral part of state government;
- (4) "Examiner" means the medical examiners as provided in KRS 61.665;
- (5) "Employee" means the members, officers, and employees of the General Assembly and every regular full-time, appointed or elective officer or employee of a participating department, including the Department of Military Affairs. The term does not include persons engaged as independent contractors, seasonal, emergency, temporary, interim, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 61.510 to 61.705;
- (6) "Employer" means a department or any authority of a department having the power to appoint or select an employee in the department, including the Senate and the House of Representatives, or any other entity, the employees of which are eligible for membership in the system pursuant to KRS 61.525;
- (7) "State" means the Commonwealth of Kentucky;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1956, except that for members, officers, and employees of the General Assembly this date shall be January 1, 1960, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided, and each member, officer, and employee of the General Assembly shall be credited with a month of current service for each month he serves in the position;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1956, for which creditable compensation was paid; except that for members, officers, and employees of the General Assembly, this date shall be January 1, 1960. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at

least one hundred (100) hours of work; provided, however, that each member, officer, and employee of the General Assembly shall be credited with a month of prior service for each month he served in the position prior to January 1, 1960. Twelve (12) months of current service in the system are required to validate prior service;

- (12) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), together with interest credited on such amounts and any other amounts the member shall have contributed thereto, including interest credited thereon. For members who begin participating on or after September 1, 2008, "accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by KRS 61.702(2)(b);
- (13) "Creditable compensation" means all salary, wages, tips to the extent the tips are reported for income tax purposes, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). For members of the General Assembly, it shall mean all amounts which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 6.505(4) or 61.560(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's total service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). In cases where compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time;
- (14) "Final compensation" of a member means:
 - (a) For a member who begins participating before September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
 - (b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) years period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance;
 - (c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;

- (d) For a member who begins participating on or after September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit. ***If the member does not have five (5) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years shall be used;*** or
 - (e) For a member who begins participating on or after September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) complete fiscal years he was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, nineteen hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
 - (16) "Retirement allowance" means the retirement payments to which a member is entitled;
 - (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables that are adopted by the board. In cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member, unless the member has chosen the Social Security adjustment option as provided for in KRS 61.635(8), in which case the member's actual age shall be used. No disability retirement option shall be less than the same option computed under early retirement;
 - (18) "Normal retirement date" means the sixty-fifth birthday of a member, unless otherwise provided in KRS 61.510 to 61.705;
 - (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year. The "fiscal year" shall be the limitation year used to determine contribution and benefit limits as established by 26 U.S.C. sec. 415;
 - (20) "Officers and employees of the General Assembly" means the occupants of those positions enumerated in KRS 6.150. The term shall also apply to assistants who were employed by the General Assembly for at least one (1) regular legislative session prior to July 13, 2004, who elect to participate in the retirement system, and who serve for at least six (6) regular legislative sessions. Assistants hired after July 13, 2004, shall be designated as interim employees;
 - (21) "Regular full-time positions," as used in subsection (5) of this section, shall mean all positions that average one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, including all positions except:
 - (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;
 - (b) Emergency positions which are positions which do not exceed thirty (30) working days and are nonrenewable;
 - (c) Temporary positions which are positions of employment with a participating department for a period of time not to exceed nine (9) months;
 - (d) Part-time positions which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty; and
 - (e) Interim positions which are positions established for a one-time or recurring need not to exceed nine (9) months;
 - (22) "Delayed contribution payment" means an amount paid by an employee for purchase of current service. The amount shall be determined using the same formula in KRS 61.5525, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and

considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;

- (23) "Parted employer" means a department, portion of a department, board, or agency, such as Outwood Hospital and School, which previously participated in the system, but due to lease or other contractual arrangement is now operated by a publicly held corporation or other similar organization, and therefore is no longer participating in the system;
- (24) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (25) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (26) "Beneficiary" means the person or persons or estate or trust or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;
- (27) "Recipient" means the retired member or the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall not be considered a recipient, except for purposes of KRS 61.623;
- (28) "Level-percentage-of-payroll amortization method" means a method of determining the annual amortization payment on the unfunded actuarial accrued liability as expressed as a percentage of payroll over a set period of years. Under this method, the percentage of payroll shall be projected to remain constant for all years remaining in the set period and the unfunded actuarially accrued liability shall be projected to be fully amortized at the conclusion of the set period;
- (29) "Increment" means twelve (12) months of service credit which are purchased. The twelve (12) months need not be consecutive. The final increment may be less than twelve (12) months;
- (30) "Person" means a natural person;
- (31) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (32) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month. Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions;
- (33) "Objective medical evidence" means reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;
- (34) "Participating" means an employee is currently earning service credit in the system as provided in KRS 61.543;
- (35) "Month" means a calendar month;
- (36) "Membership date" means:
 - (a) The date upon which the member began participating in the system as provided in KRS 61.543; or
 - (b) For a member electing to participate in the system pursuant to KRS 196.167(4) who has not previously participated in the system or the Kentucky Teachers' Retirement System, the date the member began participating in a defined contribution plan that meets the requirements of 26 U.S.C. sec. 403(b);
- (37) "Participant" means a member, as defined by subsection (8) of this section, or a retired member, as defined by subsection (24) of this section;
- (38) "Qualified domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, that:

- (a) Is issued by a court or administrative agency; and
 - (b) Relates to the provision of child support, alimony payments, or marital property rights to an alternate payee; and
- (39) "Alternate payee" means a spouse, former spouse, child, or other dependent of a participant, who is designated to be paid retirement benefits in a qualified domestic relations order.

➔Section 3. KRS 61.637 is amended to read as follows:

- (1) A retired member who is receiving monthly retirement payments under any of the provisions of KRS 61.510 to 61.705 and 78.510 to 78.852 and who is reemployed as an employee by a participating agency prior to August 1, 1998, shall have his retirement payments suspended for the duration of reemployment. Monthly payments shall not be suspended for a retired member who is reemployed if he anticipates that he will receive less than the maximum permissible earnings as provided by the Federal Social Security Act in compensation as a result of reemployment during the calendar year. The payments shall be suspended at the beginning of the month in which the reemployment occurs.
- (2) Employer and employee contributions shall be made as provided in KRS 61.510 to 61.705 and 78.510 to 78.852 on the compensation paid during reemployment, except where monthly payments were not suspended as provided in subsection (1) of this section or would not increase the retired member's last monthly retirement allowance by at least one dollar (\$1), and the member shall be credited with additional service credit.
- (3) In the month following the termination of reemployment, retirement allowance payments shall be reinstated under the plan under which the member was receiving payments prior to reemployment.
- (4)
 - (a) Notwithstanding the provisions of this section, the payments suspended in accordance with subsection (1) of this section shall be paid retroactively to the retired member, or his estate, if he does not receive more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment.
 - (b) If the retired member is paid suspended payments retroactively in accordance with this section, employee contributions deducted during his period of reemployment, if any, shall be refunded to the retired employee, and no service credit shall be earned for the period of reemployment.
 - (c) If the retired member is not eligible to be paid suspended payments for his period of reemployment as an employee, his retirement allowance shall be recomputed under the plan under which the member was receiving payments prior to reemployment as follows:
 - 1. The retired member's final compensation shall be recomputed using creditable compensation for his period of reemployment; however, the final compensation resulting from the recalculation shall not be less than that of the member when his retirement allowance was last determined;
 - 2. If the retired member initially retired on or subsequent to his normal retirement date, his retirement allowance shall be recomputed by using the formula in KRS 61.595(1);
 - 3. If the retired member initially retired prior to his normal retirement date, his retirement allowance shall be recomputed using the formula in KRS 61.595(2), except that the member's age used in computing benefits shall be his age at the time of his initial retirement increased by the number of months of service credit earned for service performed during reemployment;
 - 4. The retirement allowance payments resulting from the recomputation under this subsection shall be payable in the month following the termination of reemployment in lieu of payments under subparagraph 3. The member shall not receive less in benefits as a result of the recomputation than he was receiving prior to reemployment or would receive as determined under KRS 61.691; and
 - 5. Any retired member who was reemployed prior to March 26, 1974, shall begin making contributions to the system in accordance with the provisions of this section on the first day of the month following March 26, 1974.
- (5) A retired member, or his estate, shall pay to the retirement fund the total amount of payments which are not suspended in accordance with subsection (1) of this section if the member received more than the maximum permissible earnings as provided by the Federal Social Security Act in compensation from participating agencies during any calendar year of reemployment, except the retired member or his estate may repay the lesser of the total amount of payments which were not suspended or fifty cents (\$0.50) of each dollar earned

over the maximum permissible earnings during reemployment if under age sixty-five (65), or one dollar (\$1) for every three dollars (\$3) earned if over age sixty-five (65).

- (6) (a) "Reemployment" or "reinstatement" as used in this section shall not include a retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095.
 - (b) A retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095 or by court order or by order of the Human Rights Commission and accepts employment by an agency participating in the Kentucky Employees Retirement System or County Employees Retirement System shall void his retirement by reimbursing the system in the full amount of his retirement allowance payments received.
- (7) (a) Effective August 1, 1998, the provisions of subsections (1) to (4) of this section shall no longer apply to a retired member who is reemployed in a position covered by the same retirement system from which the member retired. Reemployed retired members shall be treated as new members upon reemployment. Any retired member whose reemployment date preceded August 1, 1998, who does not elect, within sixty (60) days of notification by the retirement systems, to remain under the provisions of subsections (1) to (4) of this section shall be deemed to have elected to participate under this subsection.
- (b) A retired member whose disability retirement was discontinued pursuant to KRS 61.615 and who is reemployed in one (1) of the systems administered by the Kentucky Retirement Systems prior to his or her normal retirement date shall have his or her accounts combined upon termination for determining eligibility for benefits. If the member is eligible for retirement, the member's service and creditable compensation earned as a result of his or her reemployment shall be used in the calculation of benefits, except that the member's final compensation shall not be less than the final compensation last used in determining his or her retirement allowance. The member shall not change beneficiary or payment option designations. This provision shall apply to members reemployed on or after August 1, 1998.
- (8) A retired member or his employer shall notify the retirement system if he has accepted employment with an agency that participates in the retirement system from which the member retired.
- (9) If the retired member is under a contract, the member shall submit a copy of that contract to the retirement system, and the retirement system shall determine if the member is an independent contractor for purposes of retirement benefits.
- (10) If a member is receiving a retirement allowance, or has filed the forms required for a retirement allowance, and is employed within one (1) month of the member's initial retirement date in a position that is required to participate in the same retirement system from which the member retired, the member's retirement shall be voided and the member shall repay to the retirement system all benefits received. The member shall contribute to the member account established for him prior to his voided retirement. The retirement allowance for which the member shall be eligible upon retirement shall be determined by total service and creditable compensation.
- (11) (a) If a member of the Kentucky Employees Retirement System retires from a department which participates in more than one (1) retirement system and is reemployed within one (1) month of his initial retirement date by the same department in a position participating in another retirement system, the retired member's retirement allowance shall be suspended for the first month of his retirement and the member shall repay to the retirement system all benefits received for the month.
- (b) A retired member of the County Employees Retirement System who after initial retirement is hired by the county from which the member retired shall be considered to have been hired by the same employer.
- (12) (a) If a hazardous member who retired prior to age fifty-five (55), or a nonhazardous member who retired prior to age sixty-five (65), is reemployed within six (6) months of the member's termination by the same employer, the member shall obtain from his previous and current employers a copy of the job description established by the employers for the position and a statement of the duties performed by the member for the position from which he retired and for the position in which he has been reemployed.
- (b) The job descriptions and statements of duties shall be filed with the retirement office.
- (13) If the retirement system determines that the retired member has been employed in a position with the same principal duties as the position from which the member retired:
 - (a) The member's retirement allowance shall be suspended during the period that begins on the month in which the member is reemployed and ends six (6) months after the member's termination;

- (b) The retired member shall repay to the retirement system all benefits paid from systems administered by Kentucky Retirement Systems under reciprocity, including medical insurance benefits, that the member received after reemployment began;
 - (c) Upon termination, or subsequent to expiration of the six (6) month period from the date of termination, the retired member's retirement allowance based on his initial retirement account shall no longer be suspended and the member shall receive the amount to which he is entitled, including an increase as provided by KRS 61.691;
 - (d) Except as provided in subsection (7) of this section, if the position in which a retired member is employed after initial retirement is a regular full-time position, the retired member shall contribute to a second member account established for him in the retirement system. Service credit gained after the member's date of reemployment shall be credited to the second member account; and
 - (e) Upon termination, the retired member shall be entitled to benefits payable from his second retirement account.
- (14) (a) If the retirement system determines that the retired member has not been reemployed in a position with the same principal duties as the position from which he retired, the retired member shall continue to receive his retirement allowance.
- (b) If the position is a regular full-time position, the member shall contribute to a second member account in the retirement system.
- (15) (a) If a retired member is reemployed at least one (1) month after initial retirement in a different position, or at least six (6) months after initial retirement in the same position, and prior to normal retirement age, the retired member shall contribute to a second member account in the retirement system and continue to receive a retirement allowance from the first member account.
- (b) Service credit gained after reemployment shall be credited to the second member account. Upon termination, the retired member shall be entitled to benefits payable from the second member account.
- (16) A retired member who is reemployed and contributing to a second member account shall not be eligible to purchase service credit under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 which he was eligible to purchase prior to his initial retirement.
- (17) Notwithstanding any provision of subsections (1) to (7)(a) and (10) to (15) of this section, the following shall apply to retired members who are reemployed by an agency participating in one (1) of the systems administered by Kentucky Retirement Systems on or after September 1, 2008:
- (a) Except as provided by paragraphs (c) and (d) of this subsection, if a member is receiving a retirement allowance from one (1) of the systems administered by Kentucky Retirement Systems, or has filed the forms required to receive a retirement allowance from one (1) of the systems administered by Kentucky Retirement Systems, and is employed in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems or is employed in a position that is not considered regular full-time with an agency participating in one (1) of the systems administered by Kentucky Retirement Systems within three (3) months following the member's initial retirement date, the member's retirement shall be voided, and the member shall repay to the retirement system all benefits received, including any health insurance benefits. If the member is returning to work in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems:
 - 1. The member shall contribute to a member account established for him or her in one (1) of the systems administered by Kentucky Retirement Systems, and employer contributions shall be paid on behalf of the member by the participating employer; and
 - 2. Upon subsequent retirement, the member shall be eligible for a retirement allowance based upon total service and creditable compensation, including any additional service or creditable compensation earned after his or her initial retirement was voided;
 - (b) Except as provided by paragraphs (c) and (d) of this subsection, if a member is receiving a retirement allowance from one (1) of the systems administered by Kentucky Retirement Systems and is employed in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems after a three (3) month period following the member's initial retirement

date, the member may continue to receive his or her retirement allowance during the period of reemployment subject to the following provisions:

1. Both the employee and participating agency shall certify in writing on a form prescribed by the board that no prearranged agreement existed between the employee and agency prior to the employee's retirement for the employee to return to work with the participating agency. If the participating agency or employer fail to complete the certification, the member's retirement shall be voided and the provisions of paragraph (a) of this subsection shall apply to the member and the employer;
 2. Notwithstanding any other provision of KRS Chapter 16, 61, or 78 to the contrary, the member shall not contribute to the systems and shall not earn any additional benefits for any work performed during the period of reemployment;
 3. The employer shall pay employer contributions as specified by KRS 61.565 and 61.702 on all creditable compensation earned by the employee during the period of reemployment. The additional contributions paid shall be used to reduce the unfunded actuarial liability of the systems; and
 4. The employer shall be required to reimburse the systems for the cost of the health insurance premium paid by the systems to provide coverage for the retiree, not to exceed the cost of the single premium;
- (c) If a member is receiving a retirement allowance from the State Police Retirement System or from hazardous duty retirement coverage with the Kentucky Employees Retirement System or the County Employees Retirement System, or has filed the forms required to receive a retirement allowance from the State Police Retirement System or from hazardous duty retirement coverage with the Kentucky Employees Retirement System or the County Employees Retirement System, and is employed in a regular full-time position required to participate in the State Police Retirement System or in a hazardous duty position with the Kentucky Employees Retirement System or the County Employees Retirement System within one (1) month following the member's initial retirement date, the member's retirement shall be voided, and the member shall repay to the retirement system all benefits received, including any health insurance benefits. If the member is returning to work in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems:
1. The member shall contribute to a member account established for him or her in one (1) of the systems administered by Kentucky Retirement Systems, and employer contributions shall be paid on behalf of the member by the participating employer; and
 2. Upon subsequent retirement, the member shall be eligible for a retirement allowance based upon total service and creditable compensation, including any additional service or creditable compensation earned after his or her initial retirement was voided; and
- (d) If a member is receiving a retirement allowance from the State Police Retirement System or from hazardous duty retirement coverage with the Kentucky Employees Retirement System or the County Employees Retirement System and is employed in a regular full-time position required to participate in the State Police Retirement System or in a hazardous duty position with the Kentucky Employees Retirement System or the County Employees Retirement System after a one (1) month period following the member's initial retirement date, the member may continue to receive his or her retirement allowance during the period of reemployment subject to the following provisions:
1. Both the employee and participating agency shall certify in writing on a form prescribed by the board that no prearranged agreement existed between the employee and agency prior to the employee's retirement for the employee to return to work with the participating agency. If the participating agency or employer fail to complete the certification, the member's retirement shall be voided and the provisions of paragraph (c) of this subsection shall apply to the member and the employer;
 2. Notwithstanding any other provision of KRS Chapter 16, 61, or 78 to the contrary, the member shall not contribute to the systems and shall not earn any additional benefits for any work performed during the period of reemployment;
 3. The employer shall pay employer contributions as specified by KRS 61.565 and 61.702 on all creditable compensation earned by the employee during the period of reemployment. The

additional contributions paid shall be used to reduce the unfunded actuarial liability of the systems; and

4. The employer shall be required to reimburse the systems for the cost of the health insurance premium paid by the systems to provide coverage for the retiree, not to exceed the cost of the single premium.

➔Section 4. KRS 78.510 is amended to read as follows:

As used in KRS 78.510 to 78.852, unless the context otherwise requires:

- (1) "System" means the County Employees Retirement System;
- (2) "Board" means the board of trustees of the system as provided in KRS 78.780;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (5) "Examiner" means the medical examiners as provided in KRS 61.665;
- (6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.510 to 78.852;
- (7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;
- (12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon. For members who begin participating on or after September 1, 2008, "accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by KRS 61.702(2)(b);
- (13) "Creditable compensation" means all salary, wages, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation", including employee contributions picked up after August 1, 1982, pursuant

to KRS 78.610(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, sick leave except as provided in KRS 78.616(5), and other items determined by the board shall be excluded. Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time;

(14) "Final compensation" means:

- (a) For a member who begins participating before September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
- (b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance;
- (c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;
- (d) For a member who begins participating on or after September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit. ***If the member does not have five (5) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years shall be used;*** or
- (e) For a member who begins participating on or after September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) complete fiscal years he was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit;

(15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7.5) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;

(16) "Retirement allowance" means the retirement payments to which a member is entitled;

- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables adopted by the board. In cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member, unless the member has chosen the Social Security adjustment option as provided for in KRS 61.635(8), in which case the member's actual age shall be used. No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth birthday of a member unless otherwise provided in KRS 78.510 to 78.852;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year. The "fiscal year" shall be the limitation year used to determine contribution and benefits limits as set out in 26 U.S.C. sec. 415;
- (20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.510 to 78.852;
- (21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:
 - (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed nine (9) months, except for employees of school boards, in which case the period of time shall not exceed six (6) months;
 - (b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;
 - (c) Temporary, also referred to as probationary, positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or
 - (d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;
- (22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);
- (23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall not be considered a recipient, except for purposes of KRS 61.623;
- (27) "Person" means a natural person;
- (28) "School term or year" means the twelve (12) months from July 1 through the following June 30;
- (29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;

- (30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula in KRS 61.5525, except the determination of the actuarial cost for classified employees of a school board shall be based on their final compensation, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;
- (31) "Participating" means an employee is currently earning service credit in the system as provided in KRS 78.615;
- (32) "Month" means a calendar month;
- (33) "Membership date" means the date upon which the member began participating in the system as provided in KRS 78.615;
- (34) "Participant" means a member, as defined by subsection (8) of this section, or a retired member, as defined by subsection (23) of this section;
- (35) "Qualified domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, that:
 - (a) Is issued by a court or administrative agency; and
 - (b) Relates to the provision of child support, alimony payments, or marital property rights to an alternate payee; and
- (36) "Alternate payee" means a spouse, former spouse, child, or other dependent of a participant, who is designated to be paid retirement benefits in a qualified domestic relations order.

➔Section 5. KRS 78.530 is amended to read as follows:

- (1)
 - (a) Each county and school board, as defined in KRS 78.510, will participate in the system by appropriate order authorizing such participation which has been entered and duly recorded in the records of the governing body of the county or school board. In cases where general purpose county government does not participate, but the sheriff and his employees or the county clerk and his employees do, the sheriff or the clerk shall retain the order in his office. The authority to issue and properly record such order of participation being hereby granted, permits such county to participate in the system. The effective date of such participation shall be fixed in the order.
 - (b) Notwithstanding any statute to the contrary, after April 9, 2002, the systems shall deny the request for participation of any agency which does not have an irrevocable contract with the state Personnel Cabinet for health insurance coverage under KRS 18A.225 *to 18A.229* for its active employees, except that:
 - 1. County governments entering the system between April 9, 2002, and July 1, 2003, under this section shall be excluded from this requirement; *and*
 - 2. *Agencies entering the system on or after April 9, 2002, which were established by a merger or an interlocal agreement to provide public services shall be excluded from this requirement if all agencies entering into the merger or interlocal agreement had an initial participation date with the system prior to April 9, 2002.*
- (2) Once a county or school board participates, it shall thereafter continue to participate, except as provided in KRS 78.535.
- (3)
 - (a) Concurrent with the adoption of the appropriate resolution to participate in the system, a county may elect the alternate participation plan which will require the county to purchase on behalf of each employee electing coverage, at the time the county elected to participate in the system as provided under KRS 78.540(2), current service credit for employment in regular full-time positions between July 1, 1958, and the participation date of the county. Cities which participate in the system pursuant to subsection (7) of this section, KRS 79.080, 90.400, 90.410, 95.520, 95.621, 95.761, 95.768, 95.852, or 96.180 shall be required to purchase on behalf of each employee electing coverage only as much service credit as the employee has accumulated in the city-administered plan, up to the participation date of the city. Accumulated service shall include service for which an employee received a refund pursuant to KRS 95.620 or 95.866, if such refund has been repaid. If the employee has not yet repaid the refund, he

may make payment to the system by any method acceptable to the system, and the requirement of five (5) years of continuous reemployment prior to repayment of refunds shall not apply. Upon the employee's repayment, the city shall purchase the associated service credit for the employee. Cost of such service credit over and above that which would be funded within the existing employer contribution rate shall be determined by the board's consulting actuary. The expense of such actuarial service shall be paid by the county;

- (b) The county shall establish a payment schedule subject to approval by the board for payment of the cost of such service over and above that which would be funded within the existing employer contribution rate. The maximum period allowed in a payment schedule shall be thirty (30) years, with interest at the rate actuarially assumed by the board. A shorter period is desirable and the board may approve any payment schedule provided it is not longer than a thirty (30) year period, except that cities which participate in the system pursuant to subsection (7) of this section, KRS 79.080, 90.400, 90.410, 95.520, 95.621, 95.761, 95.768, 95.852, or 96.180 may, at their option, extend the payment schedule to a maximum of thirty (30) years, may choose to make level payments at the interest rate actuarially assumed by the board over the life of the payment schedule chosen, and may retain employer contributions and the earnings thereon attributable to employees electing coverage;
- (c) A city entering the system under the alternate participation plan, may, by ordinance, levy a special property tax to pay for current service credit purchased for the period between July 1, 1958, and the participation date of the city. The special tax shall be to pay, within a period of no more than fifteen (15) years, for the cost of such service credit over that which would be funded within the existing employer contribution rate, as determined by the board's consulting actuary. The reason for levying the special tax and the disposition of the proceeds shall be part of the ordinance levying the tax. The special tax shall be rescinded when the unfunded prior service liability has been amortized, and shall not be subject to the provisions of KRS 132.017 or 132.027. In addition, the city may maintain any tax, the proceeds of which had been devoted to funding pension obligations under the locally administered plan prior to participation in the system, for the purpose of funding current service costs incurred after the date of participation. The city may increase the tax to pay current service costs which exceed the local pension system costs to which the tax had been devoted, but the city shall not collect from the tax more revenues than are necessary to pay current service costs incurred after the date of participation. The city may continue the tax so long as it participates in the system, and the tax shall not be subject to the provisions of KRS 132.017 or 132.027. The city shall not collect either tax authorized by this paragraph if its participation has been terminated pursuant to KRS 78.535;
- (d) The county may at a later date purchase current service credit from July 1, 1958, to the participation date of the county by alternate participation plan for those employees who rejected membership in the system at the time the county first participated. In addition, the employer shall pay the employer contributions on the creditable compensation of the employees who later elect membership from the participation date of the county to the date the member elects participation. The employee shall pay the employee contributions on his creditable compensation from the participation date of the county to the date he elects membership plus interest at the current actuarial rate compounded annually on the employee and employer contributions. Cost of the service credit over and above that which would be funded within the existing employer contribution rate shall be determined by the board's consulting actuary. The expense of the actuarial service shall be paid by the county. The county shall pay the cost of the service by lump sum or by adding it to the existing payment schedule established under paragraph (b) of this subsection;
- (e) A county which did not participate by alternate participation may, until July 1, 1991, purchase current service credit for those employees who rejected membership in the system at the time the county first participated. The employer shall pay the employer contributions on the creditable compensation of the employees who later elect membership from the participation date of the county to the date the member elects participation. The employee shall pay the employee contributions on his creditable compensation from the participation date of the county to the date he elects membership plus interest at the current actuarial rate compounded annually on the employee and employer contributions. The county shall pay the cost of the service credit by lump sum or by establishing a payment schedule under paragraph (b) of this subsection; and
- (f) A county which participated in the system but did not elect the alternate participation plan may at a later date elect the alternate participation plan. In this case, the county shall purchase on behalf of each employee participating in the system current service credit for employment in regular full-time positions between July 1, 1958, or a later date selected by the county government, and the participation

date of the county. The county shall also purchase, for employees who decide to participate when the county elects the alternate participation plan, current service credit for employment in regular full-time positions between July 1, 1958, or the later date selected by the county government, and the participation date of the county. In addition, the county shall pay the employer contributions on the creditable compensation of the employees who later elect membership from the participation date of the county to the date the member elects participation. The employee shall pay the employee contributions on his creditable compensation from the participation date of the county to the date he elects membership plus interest at the current actuarial rate compounded annually on the employee and employer contributions. Cost of the service credit over that which would be funded within the existing employer contribution rate shall be determined by the board's consulting actuary. The expense of the actuarial service shall be paid by the county. The county shall pay the cost of the service by lump sum or by a payment schedule established under paragraph (b) of this subsection.

- (4) Every school board not participating on June 21, 1974, shall enact a resolution of participation no later than July 1, 1976.
- (5) The order of the governing body of a county, as provided for in subsection (1) of this section, may exclude from participation in the system hospitals and any other semi-independent agency. Each such excluded agency shall be identified in the order authorizing participation and such excluded agency may participate in the system as a separate agency.
- (6) An agency whose participation in the County Employees Retirement System has been terminated by the board of trustees in accordance with KRS 78.535 may at a later date request participation in the retirement system by the adoption of an appropriate order as authorized by subsection (1) of this section. The board may accept the participation of such agency provided it is determined that such participation is in the best interest of the agency, the employees thereof and the County Employees Retirement System.
- (7)
 - (a) After August 1, 1988, except as permitted by KRS 65.156, no local government retirement system shall be created pursuant to KRS 70.580 to 70.598 and any local government retirement systems created pursuant to KRS 79.080, 90.400, 90.410, 95.768, and KRS Chapter 96 shall be closed to new members. New employees who would have been granted membership in such retirement systems shall instead be granted membership in the County Employees Retirement System. Employees who would have been granted membership in retirement systems created pursuant to KRS 95.768, or any other policemen or firefighters who would have been granted membership in retirement systems created pursuant to KRS 79.080, 90.400, or 90.410, or any such policemen or firefighter members employed on or prior to August 1, 1988, who transfer to the County Employees Retirement System, shall be certified by their employers as working in hazardous positions. Each city participating in the County Employees Retirement System pursuant to this subsection shall execute the appropriate order authorizing such participation, shall select the alternate participation plan as described in subsection (3) of this section, and shall pay for the actuarial services necessary to determine the additional costs of alternate participation. Cities which closed their local pension systems to new members and participated in the system prior to July 15, 1988, whose employees at the time of transition were given the option to join the system shall not be required to offer said employees a second option to join the system.
 - (b) Notwithstanding any statute to the contrary, after April 9, 2002, the systems shall deny the request for participation of any agency which does not have an irrevocable contract with the state Personnel Cabinet for health insurance coverage under KRS 18A.225 *to 18A.229* for its active employees, ***except that agencies entering the system on or after April 9, 2002, which were established by a merger or an interlocal agreement to provide public services shall be excluded from this requirement if all agencies entering into the merger or interlocal agreement had an initial participation date with the system prior to April 9, 2002.***
- (8) Any city which closed a police and firefighter pension plan to new members between January 1, 1988, and July 15, 1988, and participated in the system under the alternate participation plan shall, if its police and firefighters were not covered by Social Security, or any city which operates a pension under KRS 90.400 or 90.410, shall be required to certify that its police and firefighters are working in hazardous positions, and shall offer its police and firefighters in service at the time of entry a second option to participate under hazardous duty coverage if they were not offered hazardous duty coverage at the time of their first option. The provisions of subsection (3)(b) of this section notwithstanding, a city affected by this subsection may, at its option, extend its payment schedule to the County Employees Retirement System for alternate participation to thirty (30) years at the rate actuarially assumed by the board.

➔Section 6. If an agency meets the requirements of the exception provided in subsection (1)(b)2. of Section 5 of this Act, but was required under KRS 78.530 prior to the effective date of this Act to sign a contract with the Personnel Cabinet to provide its employees with health insurance coverage through the Public Employees Health Insurance Plan as a condition of its participation in the County Employees Retirement System, then the agency shall be eligible to opt out of the health insurance contract by notifying the secretary of the Personnel Cabinet.

Signed by Governor March 16, 2011.

CHAPTER 53

(HB 245)

AN ACT relating to motor vehicle usage tax.

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

➔Section 1. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

- (1) Motor vehicles titled or registered to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions;
- (2) Motor vehicles titled or registered to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;
- (3) Motor vehicles which have been previously titled in Kentucky on or after July 1, 2005, or previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. The motor vehicles shall not be leased, rented, or loaned to any person and shall be held for resale only;
- (4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to nonresident members of the Armed Forces on duty in this Commonwealth under orders from the United States government;
- (5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;
- (6) Motor vehicles titled in Kentucky on or after July 1, 2005, or previously registered in Kentucky, transferred between husband and wife, parent and child, stepparent and stepchild, or grandparent and grandchild;
- (7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;
- (8) Motor vehicles transferred to a corporation from a proprietorship or limited liability company, to a limited liability company from a corporation or proprietorship, or from a corporation or limited liability company to a proprietorship, within six (6) months from the time that the business is incorporated, organized, or dissolved, ***if the transferor and the transferee are the same business entity except for a change in legal form;***
- (9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, if the vehicles were titled in Kentucky on or after July 1, 2005, or previously registered in Kentucky;
- (10) Motor vehicles transferred between a subsidiary corporation and its parent corporation if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;
- (11) Motor vehicles transferred between a limited liability company and any of its members, if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;
- (12) The interest of a partner in a motor vehicle when other interests are transferred to him;

- (13) Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(6). The reposessor shall hold the vehicle for resale only and not for personal use, unless he has previously paid the motor vehicle usage tax on the vehicle;
- (14) Motor vehicles transferred to an insurance company to settle a claim. These vehicles shall be junked or held for resale only;
- (15) Motor carriers operating under a charter bus certificate issued by the Transportation Cabinet under KRS Chapter 281;
- (16) (a) 1. Motor vehicles registered under KRS 186.050 that have a declared gross vehicle weight with any towed unit of forty-four thousand and one (44,001) pounds or greater; **and**
 2. ~~[(17)]~~ Farm trucks registered under KRS 186.050(4) that have a declared gross vehicle weight with any towed unit of forty-four thousand and one (44,001) pounds or greater; ~~and~~
 (b) ~~[(18)]~~ ~~In order~~ To be eligible for the exemption established in *paragraph (a) of this subsection* ~~subsections (16) and (17) of this section~~, motor vehicles shall be ~~required to be~~ registered at the appropriate range for the declared gross weight of the vehicle established in KRS 186.050(3)(b) and shall be prohibited from registering at a higher weight range. If a motor vehicle is initially registered in one (1) declared gross weight range and subsequently is registered at a declared gross weight range lower than forty-four thousand and one (44,001) pounds, the person registering the vehicle shall be required to pay the county clerk the usage tax due on the vehicle unless the person can provide written proof to the clerk that the tax has been previously paid;
- (17) *Motor vehicles transferred to a trustee to be held in trust, or from a trustee to a beneficiary of the trust, if a direct transfer from the grantor of the trust to all individual beneficiaries of the trust would have qualified for an exemption from the tax pursuant to subsection (6) or (9) of this section;*
- (18) *Motor vehicles transferred to a trustee to be held in trust, if the grantor of the trust is a natural person and is treated as the owner of any portion of the trust for federal income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679; and*
- (19) *Motor vehicles transferred from a trustee of a trust to another person if:*
 - (a) *The grantor of the trust is a natural person and is treated as the owner of any portion of the trust for federal income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679; and*
 - (b) *A direct transfer from the grantor of the trust to the person would have qualified for an exemption from the tax pursuant to subsection (6) or (9) of this section.*

➔Section 2. This Act takes effect August 1, 2011.

Signed by Governor March 16, 2011.

CHAPTER 54

(HB 255)

AN ACT relating to a health insurance tax exclusion, and declaring an emergency.

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

➔Section 1. KRS 141.010 is amended to read as follows:

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

- (1) "Commissioner" means the commissioner of the Department of Revenue;
- (2) "Department" means the Department of Revenue;
- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2006, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006, that would otherwise terminate, and as modified by KRS 141.0101, except that for property placed in service after September 10, 2001, only the depreciation and expense deductions allowed

under Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed, and including the provisions of the Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, effective on the dates specified in that Act;

- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) "Modified gross income" means the greater of:
 - (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code of 1986, including any subsequent amendments in effect on December 31 of the taxable year, and adjusted as follows:
 - 1. Include interest income derived from obligations of sister states and political subdivisions thereof; and
 - 2. Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
 - (b) Adjusted gross income as defined in subsection (10) of this section and adjusted to include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);
- (9) "Gross income," in the case of taxpayers other than corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income," in the case of taxpayers other than corporations, means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;
 - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
 - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
 - (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
 - (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
 - (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;
 - (i) 1. For taxable years ending prior to December 31, 2005, exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
 The "applicable amount" shall be:
 - a. Twenty-five percent (25%), but not more than six thousand two hundred fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;

- b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
 - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
 - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
- 2. For taxable years beginning after December 31, 2005, exclude up to forty-one thousand one hundred ten dollars (\$41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
- 3. As used in this paragraph:
 - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
 - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
 - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;
- (j)
 - 1.
 - a. Exclude the portion of the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and
 - b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.
 - 2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;
- (k) ~~Exclude for taxable years beginning after December 31, 1998,~~ to the extent not already excluded from gross income, any amounts paid for health insurance, or the value of any voucher or similar instrument used to provide health insurance, which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents, ***or for any person authorized to be provided excludable coverage by the taxpayer pursuant to the federal Patient Protection and Affordable Care Act of 2010, Pub. L. 111-148, or the Health Care and Education Reconciliation Act of 2010 Pub. L. 111-152,*** during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;
- (l) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections;
- (m) Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600;
- (n) Exclude any capital gains income attributable to property taken by eminent domain;
- (o) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;

- (p) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;
 - (q) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;
 - (r) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;
 - (s) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;
 - (t) Exclude all income from all sources for active duty and reserve members and officers of the Armed Forces of the United States or National Guard who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries; and
 - (u) For taxable years beginning on or after January 1, 2010, exclude all military pay received by active duty members of the Armed Forces of the United States, members of reserve components of the Armed Forces of the United States, and members of the National Guard, including compensation for state active duty as described in KRS 38.205;
- (11) "Net income," in the case of taxpayers other than corporations, means adjusted gross income as defined in subsection (10) of this section, minus:
- (a) The standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, the deduction allowed by KRS 141.0202;
 - (b) Any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families;
 - (c) For taxable years beginning on or after January 1, 2010, the amount of domestic production activities deduction calculated at six percent (6%) as allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years beginning before 2010; and
 - (d) 1. All the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except:
 - a. Any deduction allowed by the Internal Revenue Code for state or foreign taxes measured by gross or net income, including state and local general sales taxes allowed in lieu of state and local income taxes under the provisions of Section 164(b)(5) of the Internal Revenue Code;
 - b. Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
 - c. The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof;
 - d. For taxable years beginning on or after January 1, 2010, the domestic production activities deduction allowed under Section 199 of the Internal Revenue Code;
 - e. Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained; and

- f. Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under this chapter; and
 - 2. Nothing in this chapter shall be construed to permit the same item to be deducted more than once;
- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude all dividend income received after December 31, 1969;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
 - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
 - (f) Include the amount calculated under KRS 141.205;
 - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;
 - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
 - (i) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;
 - (j) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;
 - (k) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;
 - (l) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;
 - (m) For taxable years beginning after December 31, 2004, and before January 1, 2007, exclude the distributive share income or loss received from a corporation defined in subsection (24)(b) of this section whose income has been subject to the tax imposed by KRS 141.040. The exclusion provided in this paragraph shall also apply to a taxable year that begins prior to January 1, 2005, if the tax imposed by KRS 141.040 is paid on the distributive share income by a corporation defined in subparagraphs 2. to 8. of subsection (24)(b) of this section with a return filed for a period of less than twelve (12) months that begins on or after January 1, 2005, and ends on or before December 31, 2005. This paragraph shall not be used to delay payment of the tax imposed by KRS 141.040; and
 - (n) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus:
 - (a) The deduction allowed by KRS 141.0202;
 - (b) Any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families;
 - (c) For taxable years beginning on or after January 1, 2010, the amount of domestic production activities deduction calculated at six percent (6%) as allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years beginning before 2010; and

- (d) All the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except:
1. Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
 2. The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
 3. The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
 4. Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
 5. Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
 6. Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
 7. Any deduction prohibited by KRS 141.205;
 8. Any dividends-paid deduction of any captive real estate investment trust; and
 9. For taxable years beginning on or after January 1, 2010, the domestic production activities deduction allowed under Section 199 of the Internal Revenue Code;
- (14) (a) "Taxable net income," in the case of corporations that are taxable in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120. A corporation is taxable in another state if, in any state other than Kentucky, the corporation is required to file a return for or pay a net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or corporate stock tax;
- (c) "Taxable net income," in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and
- (d) "Taxable net income," in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code, except that a captive real estate investment trust shall not be allowed any deduction for dividends paid;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;
- (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the commissioner, "taxable year" means the period for which the return is made;

- (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
 - (18) "Nonresident" means any individual not a resident of this state;
 - (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
 - (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;
 - (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
 - (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
 - (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
 - (24)
 - (a) For taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and
 - (b) For taxable years beginning after December 31, 2004, and before January 1, 2007, "corporations" means:
 - 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
 - 2. S corporations as defined in Section 1361(a) of the Internal Revenue Code;
 - 3. A foreign limited liability company as defined in KRS 275.015;
 - 4. A limited liability company as defined in KRS 275.015;
 - 5. A professional limited liability company as defined in KRS 275.015;
 - 6. A foreign limited partnership as defined in KRS 362.2-102(9);
 - 7. A limited partnership as defined in KRS 362.2-102(14);
 - 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-101(7) or (8);
 - 9. A real estate investment trust as defined in Section 856 of the Internal Revenue Code;
 - 10. A regulated investment company as defined in Section 851 of the Internal Revenue Code;
 - 11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;
 - 12. A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and
 - 13. Other similar entities created with limited liability for their partners, members, or shareholders.
- For purposes of this paragraph, "corporation" shall not include any publicly traded partnership as defined by Section 7704(b) of the Internal Revenue Code that is treated as a partnership for federal tax purposes under Section 7704(c) of the Internal Revenue Code or its publicly traded partnership affiliates. As used in this paragraph, "publicly traded partnership affiliates" shall include any limited liability company or limited partnership for which at least eighty percent (80%) of the limited liability company member interests or limited partner interests are owned directly or indirectly by the publicly traded partnership;
- (25) "Doing business in this state" includes but is not limited to:
 - (a) Being organized under the laws of this state;
 - (b) Having a commercial domicile in this state;
 - (c) Owning or leasing property in this state;
 - (d) Having one (1) or more individuals performing services in this state;
 - (e) Maintaining an interest in a pass-through entity doing business in this state;

- (f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or
- (g) Directing activities at Kentucky customers for the purpose of selling them goods or services.

Nothing in this subsection shall be interpreted in a manner that goes beyond the limitations imposed and protections provided by the United States Constitution or Pub. L. No. 86-272;

- (26) "Pass-through entity" means any partnership, S corporation, limited liability company, limited liability partnership, limited partnership, or similar entity recognized by the laws of this state that is not taxed for federal purposes at the entity level, but instead passes to each partner, member, shareholder, or owner their proportionate share of income, deductions, gains, losses, credits, and any other similar attributes;
- (27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal Revenue Code;
- (28) "Limited liability pass-through entity" means any pass-through entity that affords any of its partners, members, shareholders, or owners, through function of the laws of this state or laws recognized by this state, protection from general liability for actions of the entity; and
- (29) "Captive real estate investment trust" means a real estate investment trust as defined in Section 856 of the Internal Revenue Code that meets the following requirements:
 - (a)
 - 1. The shares or other ownership interests of the real estate investment trust are not regularly traded on an established securities market; or
 - 2. The real estate investment trust does not have enough shareholders or owners to be required to register with the Securities and Exchange Commission; and
 - (b)
 - 1. The maximum amount of stock or other ownership interest that is owned or constructively owned by a corporation equals or exceeds:
 - a. Twenty-five percent (25%), if the corporation does not occupy property owned, constructively owned, or controlled by the real estate investment trust; or
 - b. Ten percent (10%), if the corporation occupies property owned, constructively owned, or controlled by the real estate investment trust.

The total ownership interest of a corporation shall be determined by aggregating all interests owned or constructively owned by a corporation;
 - 2. For the purposes of this paragraph:
 - a. "Corporation" means a corporation taxable under KRS 141.040, and includes an affiliated group as defined in KRS 141.200, that is required to file a consolidated return pursuant to the provisions of KRS 141.200; and
 - b. "Owned or constructively owned" means owning shares or having an ownership interest in the real estate investment trust, or owning an interest in an entity that owns shares or has an ownership interest in the real estate investment trust. Constructive ownership shall be determined by looking across multiple layers of a multilayer pass-through structure; and
 - (c) The real estate investment trust is not owned by another real estate investment trust.

➔Section 2. The provisions of this Act apply for taxable years beginning on or after January 1, 2011.

➔Section 3. Whereas a significant difference exists between the methods for determining taxable employee wages for Kentucky purposes and for federal purposes, resulting in significant hardship for Kentucky employers in determining how to account for employee wages, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 16, 2011.

CHAPTER 55

(HB 264)

AN ACT relating to Medicaid.

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

➔Section 1. KRS 205.590 is amended to read as follows:

- (1) The following technical advisory committees shall be established for the purpose of acting in an advisory capacity to the council with respect to the administration of the medical assistance program and in performing the function of peer review:
 - (a) A Technical Advisory Committee on Physician Services consisting of five (5) physicians appointed by the council of the Kentucky State Medical Association;
 - (b) A Technical Advisory Committee on Hospital Care consisting of five (5) hospital administrators appointed by the board of trustees of the Kentucky Hospital Association;
 - (c) A Technical Advisory Committee on Dental Care consisting of five (5) dentists appointed by the Kentucky Dental Association;
 - (d) A Technical Advisory Committee on Nursing Service consisting of five (5) nurses appointed by the board of directors of the Kentucky State Association of Registered Nurses;
 - (e) A Technical Advisory Committee on Drugs consisting of five (5) pharmacists appointed by the Kentucky Pharmacists Association;
 - (f) A Technical Advisory Committee on Nursing Home Care consisting of six (6) members of which five (5) members shall be appointed by the Kentucky Association of Health Care Facilities, and one (1) member shall be appointed by the Kentucky Association of Nonprofit Homes and Services for the Aging, Inc.;
 - (g) A Technical Advisory Committee on Optometric Care consisting of five (5) members appointed by the Kentucky Optometric Association;
 - (h) A Technical Advisory Committee on Podiatric Care consisting of five (5) podiatrists appointed by the Kentucky Podiatry Association;
 - (i) A Technical Advisory Committee on Primary Care consisting of five (5) primary care providers, two (2) of whom shall represent licensed health maintenance organizations, appointed by the Governor, until such time as an association of primary care providers is established, whereafter the association shall appoint the members;
 - (j) A Technical Advisory Committee on Home Health Care consisting of five (5) members appointed by the board of directors of the Kentucky Home Health Association;
 - (k) A Technical Advisory Committee on Consumer Rights and Client Needs consisting of five (5) members, with one (1) member to be appointed by each of the following organizations: the Kentucky Combined Committee on Aging, the Kentucky Legal Services Corporation, the Kentucky Association for Retarded Citizens, the Department of Public Advocacy, and the National Association of Social Workers-Kentucky Chapter;
 - (l) *A Technical Advisory Committee on Behavioral Health consisting of six (6) members, with one (1) member to be appointed by each of the following organizations: the Kentucky Mental Health Coalition, the Kentucky Association of Regional Mental Health and Mental Retardation Programs, the National Alliance on Mental Illness (NAMI) Kentucky, a statewide mental health consumer organization, the People Advocating Recovery (PAR), and the Kentucky Brain Injury Alliance;*
 - (m) *A Technical Advisory Committee on Children's Health consisting of ten (10) members, with one (1) member to be appointed by each of the following organizations: the Kentucky Chapter of the American Academy of Pediatrics, the Kentucky PTA, the Kentucky Psychological Association, the Kentucky School Nurses Association, the Kentucky Association for Early Childhood Education, the Family Resource and Youth Services Coalition of Kentucky, the Kentucky Youth Advocates, the Kentucky Association of Hospice and Palliative Care, a parent of a child enrolled in Medicaid or the Kentucky Children's Health Insurance Program appointed by the Kentucky Head Start Association, and a pediatric dentist appointed by the Kentucky Dental Association; and*

- (n) *A Technical Advisory Committee on Intellectual and Developmental Disabilities consisting of nine (9) members, one (1) of whom shall be a consumer who participates in a nonresidential community Medicaid waiver program; one (1) of whom shall be a consumer who participates in a residential community Medicaid waiver program; one (1) of whom shall be a consumer representative of a family member who participates in a community Medicaid waiver program; one (1) of whom shall be a consumer representative of a family member who resides in an ICF/MR facility that accepts Medicaid payments, all of whom shall be appointed by the Governor. One (1) member shall be appointed by the Arc of Kentucky, one (1) member shall be appointed by the Kentucky Council on Developmental Disabilities, one (1) member shall be appointed by the Kentucky Association of Homes and Services for the Aging and two (2) members shall be appointed by the Kentucky Association of Private Providers, one (1) of whom shall be a nonprofit provider and one (1) of whom shall be a for-profit provider; and*
- (o) *A Technical Advisory Committee on Therapy Services consisting of six (6) members, two (2) of whom shall be occupational therapists and shall be appointed by the Kentucky Occupational Therapists Association; two (2) of whom shall be physical therapists and shall be appointed by the Kentucky Physical Therapy Association; and two (2) of whom shall be speech therapists and shall be appointed by the Kentucky Speech-Language-Hearing Association.*
- (2) The members of the technical advisory committees shall serve until their successors are appointed and qualified.
- (3) Each appointive member of a committee shall serve without compensation but shall be entitled to reimbursement for actual and necessary expenses in carrying out his duties with reimbursement for expenses being made in accordance with state regulations relating to travel reimbursement.

Signed by Governor March 16, 2011.

CHAPTER 56

(HB 269)

AN ACT relating to coal miners.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

The third week of August of each year shall be designated as Coal Miners Appreciation Week. The Governor may annually issue a proclamation designating the third week of August as Coal Miners Appreciation Week and calling upon coal mining businesses and all citizens of the Commonwealth to observe the occasion and honor the coal miners of the Commonwealth.

Signed by Governor March 16, 2011.

CHAPTER 57

(HB 278)

AN ACT relating to nurse education.

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

➔Section 1. KRS 164.298 is amended to read as follows:

- (1) The governing board *as defined in KRS 164.001* of each eligible postsecondary education institution *and college as defined in KRS 164.945* shall collaborate with the Kentucky Board of Nursing to ensure that each university offering an advanced practice doctoral degree in nursing complies with the accreditation standards

of the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education and with minimal education and licensure standards for admission to and graduation from an advanced practice doctoral program in nursing.

- (2) Each university offering an advanced nursing practice doctoral program shall refer to the degree as the "doctor of nursing practice," with the degree being abbreviated as "DNP." Any advertisement about the advanced nursing practice doctoral program shall not refer to graduates using the term "doctor." Graduates of the program shall accurately portray their academic credentials as well as their registered nurse and advanced practice registered nurse credentials, if applicable, subject to sanction under KRS 311.375(4).

Signed by Governor March 16, 2011.

CHAPTER 58

(HB 288)

AN ACT relating to real estate appraisal management companies.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act, unless the context otherwise requires:

- (1) *"Appraisal management company" means a person who performs the actions necessary to administer a network of state-licensed appraisers to fulfill requests for appraisal management services on behalf of a client, including but not limited to the following actions:*
 - (a) *Recruiting appraisers;*
 - (b) *Contracting with appraisers to perform appraisal services;*
 - (c) *Collecting fees from clients;*
 - (d) *Negotiating fees with appraisers or reimbursing appraisers for appraisal services;*
 - (e) *Receiving appraisal orders and appraisal reports;*
 - (f) *Submitting appraisal reports received from appraisers to the company's clients;*
 - (g) *Reviewing or verifying appraisal reports; or*
 - (h) *Managing the process of having an appraisal performed, including providing related administrative and clerical duties;*
- (2) *"Appraisal management services" means conducting business by telephone, by electronic means, by mail, or in person, directly or indirectly for compensation or other pecuniary gain or in the expectation of compensation or other pecuniary gain to:*
 - (a) *Solicit, accept, or offer to accept a request for appraisal services; or*
 - (b) *Employ or contract with a licensed or certified appraiser to perform appraisal services;*
- (3) *"Appraisal services" means the practice of developing an opinion of the value of real estate in conformity with the minimum USPAP standards;*
- (4) *"Appraiser" means an individual licensed by the board who, for a fee or other consideration, develops and communicates a real estate appraisal or otherwise gives an opinion of the value of real estate or any interest in real estate in conformity with the minimum USPAP standards;*
- (5) *"Appraiser panel" means a group of independent appraisers who have been selected by an appraisal management company to perform appraisal services for the appraisal management company;*
- (6) *"Board" means the Kentucky Real Estate Appraisers Board established by KRS 324A.015;*
- (7) *"Client" means a person that contracts with or otherwise enters into an agreement with an appraisal management company for the performance of appraisal services;*

- (8) *"Controlling person" means an individual employed, appointed, or authorized by an appraisal management company to contract with clients or independent appraisers for the performance of appraisal services;*
- (9) *"Managing principal" has the same meaning as "controlling person";*
- (10) *"Registrant" means an appraisal management company or person that is registered or seeking registration under Section 2 of this Act; and*
- (11) *"USPAP" means the Uniform Standards of Professional Appraisal Practice.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

- (1) *A person shall not act or offer to act as an appraisal management company or perform appraisal management services within the Commonwealth unless registered by the board.*
- (2) *To be registered by the board, a person shall make written application to the board, submit to a criminal history check as provided in subsection (3) of this section, pay a fee established by the board, and post a surety bond as provided in Section 3 of this Act. The written application shall include the following information:*
 - (a) *The name, street address, and telephone contact information of the person seeking registration;*
 - (b) *1. If the registrant is a domestic organization, the designation of an agent for service of process; or*
2. If the registrant is a foreign organization, documentation that the foreign organization is authorized to transact business in the Commonwealth and has appointed an agent for service of process by submitting a copy of:
 - a. The registrant's filing with the Secretary of State appointing an agent for service of process; and*
 - b. A certificate of authority issued by the Secretary of State.**A foreign organization's failure to comply with this paragraph may result in rejection of the application;*
 - (c) *The name, residential street address, and contact information of any person who owns ten percent (10%) or more of the appraisal management company for which registration is being requested;*
 - (d) *The name, residential street address, and contact information of a controlling person or managing principal;*
 - (e) *A certification that the registrant:*
 - 1. Has a system and process in place to verify that any person being added to the appraiser panel of the appraisal management company, or who may be used by the appraisal management company to otherwise perform appraisals, holds a license in good standing in this state under this chapter;*
 - 2. Has a system and process in place to review the work of all appraisers that are performing appraisal services for the appraisal management company on a periodic basis to ensure that the appraisal services are being conducted in accordance with the minimum USPAP standards; and*
 - 3. Maintains a detailed record of each request for appraisal services that it receives and the appraiser that performs the appraisal services for the appraisal management company;*
 - (f) *A certification from the registrant and any partner, member, manager, officer, director, managing principal, controlling person, or person occupying a similar status or performing similar functions, or person directly or indirectly controlling the registrant that:*
 - 1. The application for registration when filed or after filing contains no statement that, in light of the circumstances under which it was made, is false or misleading with respect to a material fact;*
 - 2. The person certifying has not violated or failed to comply with Section 3, 4, or 5 of this Act;*
 - 3. The person certifying and each person who owns ten percent (10%) or more of the registrant has not pled guilty or nolo contendere to or been found guilty of:*

- a. *A felony; or*
 - b. *Within the past ten (10) years, a misdemeanor involving mortgage lending or real estate appraising, or an offense involving breach of trust or fraudulent or dishonest dealing;*
- 4. *The person certifying is not permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving appraisal management services or operating an appraisal management company;*
- 5. *The person certifying is not the subject of an order of the board or any other state's appraisal management company regulatory agency denying, suspending, or revoking the person's privilege to operate as an appraisal management company; and*
- 6. *The person certifying has not acted as an appraisal management company while not properly registered by the board; and*
- (g) *Any other information required by the board.*
- (3) *The board shall require a national and state criminal background check on the person certifying under subsection (2)(f) of this section and each person who owns ten percent (10%) or more of the registrant under the following requirements:*
 - (a) *The person certifying and each person who owns ten percent (10%) or more of the registrant shall provide his or her fingerprints to the Department of Kentucky State Police for submission to the Federal Bureau of Investigation after a state criminal background check is conducted;*
 - (b) *The results of the national and state criminal background check shall be sent to the board; and*
 - (c) *Any fee charged by the Department of Kentucky State Police and the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the check.*
- (4) *The board shall issue a certificate of registration to a registrant authorizing the registrant to act or offer to act as an appraisal management company in this state upon:*
 - (a) *Receipt of a properly completed application;*
 - (b) *Payment of the required fee;*
 - (c) *Posting of the required bond; and*
 - (d) *A determination by the board that:*
 - 1. *The registrant has not had a previous registration suspended or revoked; and*
 - 2. *The activities of the applicant shall be directed and conducted by persons who:*
 - a. *Have not had a previous registration suspended or revoked;*
 - b. *Have not pled guilty or nolo contendere to or been found guilty of a felony; or*
 - c. *Within the past ten (10) years have not pled guilty, pled nolo contendere to, or been found guilty of a misdemeanor involving mortgage lending or real estate appraising or an offense involving a breach of trust or fraudulent or dishonest dealing.*
- (5)
 - (a) *If the board finds that there is substantial reason to deny the application for registration, the board shall notify the registrant that the application has been denied and shall afford the registrant an opportunity for a hearing before the board to show cause why the registration should not be denied.*
 - (b) *All proceedings concerning the denial of a certificate of registration shall be conducted in accordance with KRS Chapter 13B.*
 - (c) *The acceptance by the board of an application for registration does not constitute the approval of its contents or waive the authority of the board to take disciplinary action under Section 7 of this Act.*
- (6)
 - (a) *Registrations issued under this section shall be renewed annually.*
 - (b) *Renewal shall occur on October 31 of each year.*

- (c) *If the initial registration occurs less than six (6) months before October 31, the renewal shall not be required until October 31 of the following year, and shall then be renewed on October 31 of each year thereafter.*
- (7) (a) *Failure to renew a registration in a timely manner shall result in a loss of authority to operate.*
- (b) *A request to reinstate a certificate of registration shall be accompanied by payment of a penalty of fifty dollars (\$50) for each month of delinquency, up to six (6) months after expiration.*
- (c) *After six (6) months' delinquency, a new application for registration shall be required.*
- (8) *The board shall promulgate administrative regulations to establish standards for the operation of appraisal management companies and for the implementation and enforcement of Sections 1 to 8 of this Act.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall promulgate administrative regulations establishing a reasonable filing fee to be paid by each appraisal management company seeking registration under Section 2 of this Act. The filing fee shall include the annual fee for inclusion in the national registry maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.*
- (2) *In addition to the filing fee, each applicant for registration shall post and maintain a surety bond with the board. The surety bond shall:*
 - (a) *Be established by the board through administrative regulation but shall not exceed five hundred thousand dollars (\$500,000);*
 - (b) *Be in the form prescribed by the board; and*
 - (c) *Accrue to the state for the benefit of any claimant against the registrant to secure the faithful performance of the registrant's obligations.*

The aggregate liability of the surety bond shall not exceed the principal sum of the surety bond.

- (3) *A party having a claim against the registrant may bring suit directly against the surety bond, or the board may bring suit on behalf of the party having a claim against the registrant.*
- (4) *Consumer claims shall be given priority in recovering from the surety bond.*
- (5) *If a claim reduces the face amount of the bond, the bond amount shall be annually restored upon renewal of the registrant's registration.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

- (1) *A registrant that is an organization shall:*
 - (a) *Maintain a registered agent for service of process; and*
 - (b) *Provide to the board the information required by the Secretary of State concerning the organization's agent for service of process. If changes are made to the information required by the Secretary of State, the changes shall be provided to the board within five (5) business days.*
- (2) *A registrant shall maintain, or cause to be maintained, complete records of requests for appraisal services referred to an appraiser licensed or certified by the board, including without limitation records pertaining to the acceptance of fees from clients and payments to appraisers. The board may inspect records, without prior notice, periodically, or if the board determines that the records are pertinent to an investigation of a complaint against a registrant.*
- (3) *A registrant shall designate a controlling person or managing principal responsible for ensuring compliance with this section.*
- (4) (a) *The registrant shall file a form with the board:*
 - 1. *Documenting the identity of the person designated as the controlling person or managing principal; and*
 - 2. *Certifying the individual's acceptance of the responsibility of a controlling person or managing principal.*
- (b) *The registrant shall submit a new form to the board within five (5) business days after a change in its controlling person or managing principal.*

- (c) *An individual registrant who operates as a sole proprietorship is deemed the managing principal under this section.*
 - (5) *A registrant shall make and keep its accounts, correspondence, memoranda, papers, books, and other records in accordance with administrative regulations promulgated by the board. All records shall be retained for five (5) years unless the board establishes a different, longer retention period for particular types of records.*
 - (6) *The registrant shall disclose, on all invoices, purchase orders, or other documents establishing work to be performed for or compensation due from its clients, itemized actual fees paid to any third party for services performed, including appraisal services, for the client through contract with or arrangement through the registrant. The disclosure shall include:*
 - (a) *The name of the third party performing the service, including a licensed appraiser performing appraisal services;*
 - (b) *The nature of the service and itemized fees paid to the third party for appraisal services or any other services performed; and*
 - (c) *Itemized fees or charges received by the registrant for appraisal management services.*
- If the disclosure made becomes inaccurate because of changes to services requested or performed, a revised or amended disclosure shall be provided by the end of the next business day after the change to services has been performed, and the revised or amended disclosure shall be clearly marked as revised or amended and contain sufficient information for the client to identify the original disclosure referenced.*
- (7) *The provisions of this section do not exempt the registrant from any other reporting requirements contained within any federal or state law.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

- (1) *An employee, director, officer, or agent of an appraisal management company or any other third party acting as a joint venture partner with or as an independent contractor for an appraisal management company shall not improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal, including but not limited to the use of intimidation, coercion, extortion, bribery, blackmail, threat of nonpayment or withholding payment for appraisal services, or threat of exclusion from future appraisal work.*
- (2) *The registrant shall not:*
 - (a) *Request, allow, or require an appraiser to collect any portion of the fee charged by the appraisal management company, including the appraisal fee, from a borrower, homeowner, or other third party;*
 - (b) *Require an appraiser to provide the registrant with the appraiser's digital signature or seal;*
 - (c) *Alter, amend, or change an appraisal report submitted by a licensed or certified appraiser, by the following or any other actions:*
 - 1. *Removing the appraiser's signature;*
 - 2. *Adding or removing information to or from the appraisal report; or*
 - 3. *Altering the final value opinion reported by an appraiser;*
 - (d) *Remove an appraiser from an appraiser panel without prior written notice to the appraiser. An appraiser may only be removed from an appraiser panel with written notice for:*
 - 1. *A violation of the minimum USPAP standards or other applicable statutes or administrative regulations resulting in a suspension or revocation of the appraiser's license in Kentucky; or*
 - 2. *Other substandard or otherwise improper performance as may be determined by administrative regulations promulgated by the board;*
 - (e) *Enter into contracts or agreements with an appraiser for the performance of appraisal services unless the appraiser is licensed or certified in good standing with the board;*

- (f) *Request that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the appraiser completes an appraisal report;*
 - (g) *Provide to an appraiser an anticipated, estimated, encouraged, or desired value for a property or a proposed or target amount to be loaned or borrowed, except that a copy of the sales contract for purchase transactions may be provided;*
 - (h) *Commit an act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality; or*
 - (i) *Have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.*
- (3) *Subsection (1) of this section shall not prohibit an appraisal management company from requesting that an appraiser:*
- (a) *Provide additional information about the basis for a valuation;*
 - (b) *Correct objective factual errors in an appraisal report; or*
 - (c) *Provide further detail, substantiation, or explanation for the appraiser's value conclusion.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

- (1) *The executive director of the board shall keep a register of all applicants for registration which shall include:*
- (a) *The date of the application;*
 - (b) *The applicant's name;*
 - (c) *The applicant's business address; and*
 - (d) *The current status of the registration.*
- (2) *The register shall be prima facie evidence of all matters contained in the register.*
- (3) *The register shall be kept on file in the office of the board and shall be open for public inspection in accordance with KRS 61.870 to 61.884.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

- (1) *The board may deny, suspend, revoke, or refuse to issue or renew the registration of an appraisal management company, or may restrict or limit the activities of an appraisal management company or of a person who owns an interest in or participates in the business of an appraisal management company if the board finds that any of the following circumstances apply to the applicant, a registrant, a person owning ten percent (10%) or more of the applicant or registrant, a partner, member, manager, officer, director, managing principal, controlling person, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant or registrant:*
- (a) *The application for registration contained a statement that in light of the circumstances under which it was made is false or misleading with respect to a material fact;*
 - (b) *The person has violated or failed to comply with Section 2, 3, 4, or 5 of this Act or failed to comply with administrative regulations promulgated by the board for the implementation and enforcement of Sections 1 to 8 of this Act;*
 - (c) *The person has pled guilty or nolo contendere to or has been found guilty of a felony or, within the past ten (10) years, a misdemeanor involving mortgage lending or real estate appraising or an offense involving a breach of trust or fraudulent or dishonest dealing;*
 - (d) *The person is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving appraisal management services or operating an appraisal management company;*
 - (e) *The person is the subject of an order of the board or any other state's appraisal management company regulatory agency denying, suspending, or revoking the person's privilege to operate as an appraisal management company;*

- (f) *The person acted as an appraisal management company while not properly registered by the board; or*
- (g) *The person failed to pay the proper filing or renewal fee as provided under Sections 2 and 3 of this Act.*
- (2) *Upon its own motion or the written complaint of a person reporting a violation of subsection (1) of this section, and after notice and the opportunity for a hearing in accordance with KRS Chapter 13B, the board may:*
 - (a) *Suspend or revoke the registration of a registrant;*
 - (b) *Impose a fine not to exceed five thousand dollars (\$5,000) per violation; or*
 - (c) *Take other appropriate disciplinary actions as established by the board through promulgation of administrative regulations.*
- (3) *The board may appear in its own name in Franklin Circuit Court, or the Circuit Court of the county where the alleged violation occurred, to obtain injunctive relief to prevent a person from violating Section 3, 4, 5, or 7 of this Act. The Circuit Court may grant a temporary or permanent injunction regardless of whether:*
 - (a) *Criminal prosecution has been or may be instituted as a result of the violation; or*
 - (b) *The person is the holder of a registration issued by the board.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 324A IS CREATED TO READ AS FOLLOWS:

Unless otherwise required to be registered as an appraisal management company, by state or federal law Sections 1 to 8 of this Act shall not apply to:

- (1) *The federal government, state government, any county or municipal government, or any agency or instrumentality thereof;*
- (2) *A person authorized to engage in business as, or as a subsidiary of, a bank, credit union, or savings and loan association under the laws of the United States, the Commonwealth of Kentucky, or any other state;*
- (3) *A real estate broker or real estate agent properly licensed or otherwise authorized to do business in the Commonwealth of Kentucky;*
- (4) *An officer or employee of any entity listed in subsection (1), (2), or (3) of this section when acting within the scope of his or her employment;*
- (5) *An entity that is responsible for ensuring that the real estate appraisal activity being performed by an employee is performed in accordance with applicable appraisal standards;*
- (6) *An individual who:*
 - (a) *Is an appraiser; and*
 - (b) *In the normal course of business enters into an agreement, whether written or otherwise, with another appraiser for the performance of a real estate appraisal activity that the individual cannot complete for any reason, including:*
 - 1. *Competency;*
 - 2. *Workload;*
 - 3. *Schedule; or*
 - 4. *Geographic location;*
- (7) *An individual who:*
 - (a) *In the normal course of business enters into an agreement, whether written or otherwise, with an appraiser for the performance of real estate appraisal activity; and*
 - (b) *Under the agreement cosigns the report of the appraiser performing the real estate appraisal upon completion of the real estate appraisal activity; or*
- (8) *An appraisal management company that contracts with one (1) or more appraisers for the performance of fewer than ten (10) appraisals in this state in a calendar year.*

➔Section 9. This Act shall be known as the Kentucky Appraisal Management Company Registration Act.

Signed by Governor March 16, 2011.

CHAPTER 59

(HB 289)

AN ACT relating to the operation of a motor vehicle.

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

➔Section 1. KRS 189.960 is amended to read as follows:

- (1) The operator of a vehicle shall yield the right-of-way to any public safety vehicle, *as defined in KRS 189.910(2)*, or *any* pedestrian actually engaged in work upon a highway or within any highway construction or maintenance area indicated by official traffic control devices.
- (2) The operator of a vehicle shall yield the right-of-way to any public safety vehicle obviously and actually engaged in work upon a highway whenever such vehicle displays flashing lights meeting the requirements of KRS 189.920(4)~~(3)~~.

➔Section 2. KRS 189.394 is amended to read as follows:

- (1) The fines for speeding in violation of KRS 189.390 shall be:

| Mph. | Prima Facie or Maximum Speed | | | | | | | | | | | | |
|-------|------------------------------|----|----|----|----|----|----|----|----|----|----|-----------|------|
| Over | | | | | | | | | | | | | |
| Limit | 15 | 20 | 25 | 30 | 35 | 40 | 45 | 50 | 55 | 60 | 65 | 70 | Fine |
| 1 | 16 | 21 | 26 | 31 | 36 | 41 | 46 | 51 | 56 | 61 | 66 | 71 | \$1 |
| 2 | 17 | 22 | 27 | 32 | 37 | 42 | 47 | 52 | 57 | 62 | 67 | 72 | 2 |
| 3 | 18 | 23 | 28 | 33 | 38 | 43 | 48 | 53 | 58 | 63 | 68 | 73 | 3 |
| 4 | 19 | 24 | 29 | 34 | 39 | 44 | 49 | 54 | 59 | 64 | 69 | 74 | 4 |
| 5 | 20 | 25 | 30 | 35 | 40 | 45 | 50 | 55 | 60 | 65 | 70 | 75 | 5 |
| 6 | 21 | 26 | 31 | 36 | 41 | 46 | 51 | 56 | 61 | 66 | 71 | 76 | 16 |
| 7 | 22 | 27 | 32 | 37 | 42 | 47 | 52 | 57 | 62 | 67 | 72 | 77 | 17 |
| 8 | 23 | 28 | 33 | 38 | 43 | 48 | 53 | 58 | 63 | 68 | 73 | 78 | 18 |
| 9 | 24 | 29 | 34 | 39 | 44 | 49 | 54 | 59 | 64 | 69 | 74 | 79 | 19 |
| 10 | 25 | 30 | 35 | 40 | 45 | 50 | 55 | 60 | 65 | 70 | 75 | 80 | 20 |
| 11 | 26 | 31 | 36 | 41 | 46 | 51 | 56 | 61 | 66 | 71 | 76 | 81 | 22 |
| 12 | 27 | 32 | 37 | 42 | 47 | 52 | 57 | 62 | 67 | 72 | 77 | 82 | 24 |
| 13 | 28 | 33 | 38 | 43 | 48 | 53 | 58 | 63 | 68 | 73 | 78 | 83 | 26 |
| 14 | 29 | 34 | 39 | 44 | 49 | 54 | 59 | 64 | 69 | 74 | 79 | 84 | 28 |
| 15 | 30 | 35 | 40 | 45 | 50 | 55 | 60 | 65 | 70 | 75 | 80 | 85 | 30 |
| 16 | 31 | 36 | 41 | 46 | 51 | 56 | 61 | 66 | 71 | 76 | 81 | | 32 |
| 17 | 32 | 37 | 42 | 47 | 52 | 57 | 62 | 67 | 72 | 77 | 82 | | 34 |
| 18 | 33 | 38 | 43 | 48 | 53 | 58 | 63 | 68 | 73 | 78 | 83 | | 36 |
| 19 | 34 | 39 | 44 | 49 | 54 | 59 | 64 | 69 | 74 | 79 | 84 | | 38 |

| | | | | | | | | | | | | |
|----|----|----|----|----|----|----|----|----|----|----|----|----|
| 20 | 35 | 40 | 45 | 50 | 55 | 60 | 65 | 70 | 75 | 80 | 85 | 40 |
| 21 | 36 | 41 | 46 | 51 | 56 | 61 | 66 | 71 | | | | 43 |
| 22 | 37 | 42 | 47 | 52 | 57 | 62 | 67 | 72 | | | | 46 |
| 23 | 38 | 43 | 48 | 53 | 58 | 63 | 68 | 73 | | | | 49 |
| 24 | 39 | 44 | 49 | 54 | 59 | 64 | 69 | 74 | | | | 52 |
| 25 | 40 | 45 | 50 | 55 | 60 | 65 | 70 | 75 | | | | 55 |

- (2) For speeding in excess of the speeds shown on the specific fine schedule the fine shall be not less than sixty dollars (\$60) nor more than one hundred dollars (\$100).
- (3) For any violation shown on the chart for which a specific fine is prescribed, the defendant may elect to pay the fine and court costs to the circuit clerk before the date of his trial or to be tried in the normal manner. Payment of the fine and court costs to the clerk shall be considered as a plea of guilty for all purposes.
- (4) If the offense charged shows a speed in excess of the speeds shown on the specific fine schedule the defendant shall appear for trial and may not pay the fine to the clerk before the trial date.
- (5) If the offense occurred in a highway work zone, the fine established by subsection (1) or (2) of this section shall be doubled.
- (6) All fines collected for speeding in a highway work zone in violation of KRS 189.390 shall be deposited into a separate trust and agency account within the Transportation Cabinet known as the "Highway Work Zone Safety Fund." The highway work zone safety fund shall be used exclusively by the Transportation Cabinet to hire or pay for enhanced law enforcement of traffic laws within highway work zones.
- (7) If the offense occurred in an area near a school where flasher lights have been installed and are flashing, and a speed limit has been set pursuant to KRS 189.336, the fine established by subsection (1) or (2) of this section shall be doubled.

➔Section 3. KRS 189.292 is amended to read as follows:

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

- (4) ***The secretary of the Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the provisions of this section, including but not limited to updates or advances in the automotive and information technology industries.***

➔Section 4. KRS 189.294 is amended to read as follows:

- (1) As used in this section, "personal communication device" shall have the same meaning as defined in KRS 189.292.
- (2) Any person under the age of eighteen (18) who has been issued an instruction permit, intermediate license, or operator's license shall not operate a motor vehicle, motorcycle, or moped that is in motion on the traveled portion of a roadway while using a personal communication device, except to summon medical help or a law enforcement or public safety agency in an emergency situation.
- (3) Use of a personal communication device does not include a stand-alone global positioning system, ***a global positioning or navigation system that is physically or electronically integrated into the motor vehicle***, or an in-vehicle security, diagnostics, and communications system, but does include manually entering information into the global positioning system feature of a personal communication device.
- (4) This section shall not apply to the use of a citizens band radio or an amateur radio by a motor vehicle operator.
- (5) ***The secretary of the Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the provisions of this section, including but not limited to updates or advances in the automotive and information technology industries.***

➔Section 5. 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. Except as provided in subsection (8)(b) and (c) of this section, 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 Homeland Security, United States Bureau of Citizenship and Immigration Services:
- (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 Homeland Security, United States Bureau of Citizenship and Immigration Services 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 Homeland Security, United States Bureau of Citizenship and Immigration Services, 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 Homeland Security, United States Bureau of Citizenship and Immigration Services, has not been reviewed by the 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 Homeland Security, United States Bureau of Citizenship and Immigration Services 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) 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.
 - (b) Upon receipt of proper documentation provided by the Department of Corrections, the circuit clerk of the county in which a released felony offender resides shall issue to any felony offender, if the felony offender is eligible, released from the Department of Corrections on home incarceration, parole, completed service of sentence, shock probation, or pardon, a personal identification card or, if the felony offender is eligible, an operator's license. Proper documentation under this paragraph shall consist of:
 - 1. The offender's certificate of birth;

2. A copy of the offender's resident record card and parole certificate or notice of discharge;
3. A photograph of the offender, printed on plastic card or paper; and
4. A release letter that shall contain the offender's:
 - a. Full legal name, subject to the information available to the Department of Corrections;
 - b. Discharge/release date;
 - c. Signature;
 - d. Social Security number;
 - e. Date of birth;
 - f. Present Kentucky address where he or she resides; and
 - g. Physical description.

The offender shall present this documentation to the circuit clerk within thirty (30) calendar days from the date of the release letter and shall be responsible for paying the fee for the personal identification card or operator's license pursuant to KRS 186.531. The provisions of this paragraph shall apply only to persons released on or after July 15, 2010.

- (c) Upon receipt of proper documentation provided by the Department of Corrections, the circuit clerk of the county in which a felony offender resides shall issue to any felony offender, if the felony offender is eligible, probated or conditionally discharged by the court and under the supervision of the Division of Probation and Parole, a personal identification card or, if the felony offender is eligible, an operator's license. Proper documentation under this paragraph shall consist of:

1. The offender's certificate of birth;
2. The offender's sentencing order;
3. A photograph of the offender, printed on plastic card or paper; and
4. A notarized release letter, signed by the supervising officer verifying the offender's status on supervision, that shall contain the offender's:
 - a. Full legal name, subject to the information available to the Division of Probation and Parole;
 - b. Signature;
 - c. Social Security number;
 - d. Date of birth;
 - e. Present Kentucky address where he or she resides; and
 - f. Physical description.

The offender shall present this documentation to the circuit clerk within thirty (30) calendar days from the date of the notarized release letter. The offender shall be responsible for paying the fee for the personal identification card or operator's license pursuant to KRS 186.531. The provisions of this paragraph shall apply only to persons released on or after July 15, 2010.

- (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 KRS 311.1917.
- (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 **two dollars (\$2)**~~one dollar (\$1)~~ paid to the circuit clerk, **two (2)**~~one (1)~~ medical insignia ~~decals~~~~decal~~ that may be affixed to the **driver's**~~lower-left~~ side of the front windshield of a motor vehicle **and to the driver's side of the rear window 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.

Signed by Governor March 16, 2011.

CHAPTER 60

(HB 308)

AN ACT relating to background checks.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO READ AS FOLLOWS:

- (1) *A court that orders a commitment or makes a finding or adjudication under which a person becomes subject to the provisions of 18 U.S.C. sec. 922(d)(4) and (g)(4) shall order the circuit clerk to forward the person's name and non-clinical identifying information, including the person's Social Security number and date of birth, along with a copy of the order of commitment to the Department of Kentucky State Police, which in turn shall forward the information to the Federal Bureau of Investigation, its successor agency, or agency designated by the Federal Bureau of Investigation, for inclusion in the National Instant Criminal Background Check System database. The court shall also notify the person of the prohibitions of 18 U.S.C. sec. 922(d)(4) and (g)(4).*
- (2) *A person who is subject to the provisions of 18 U.S.C. sec. 922(d)(4) and (g)(4) because of a commitment, finding, or adjudication that occurred in this state may petition the court in which such commitment, finding, or adjudication occurred to remove, pursuant to Section 105(a) of Pub. L. No. 110-180, the disabilities imposed under 18 U.S.C. sec. 922(d)(4) and (g)(4). A copy of the petition for relief shall also be served on the director of the Division of Behavioral Health and the county attorney of the county in which the original commitment, finding, or adjudication occurred. The director of the Division of Behavioral Health and the county attorney may, as each deems appropriate, appear, support, object to, or present evidence relevant to the relief sought by the petitioner. The court shall receive and consider evidence in a closed proceeding, including evidence offered by the petitioner concerning:*
 - (a) *The circumstances of the original commitment, finding, or adjudication;*
 - (b) *The petitioner's mental health and criminal history records, if any;*
 - (c) *The petitioner's reputation;*
 - (d) *The petitioner's date of birth and Social Security number; and*
 - (e) *Changes in the petitioner's condition or circumstances relevant to the relief sought.*

The court shall grant the petition for relief if it finds by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that granting of the relief would not be contrary to the public interest. A record shall be kept of the proceedings, but it shall remain confidential and be disclosed only to a court in the event of an appeal. The petitioner may appeal a denial of the requested relief, and review on appeal shall be de novo. A person may file a petition for relief under this section no more than once every two (2) years.

- (3) *When the court issues an order granting a petition for relief under subsection (2) of this section, the circuit clerk shall immediately forward a copy of the order to the Department of Kentucky State Police, which in turn shall immediately forward a copy to the Federal Bureau of Investigation, or its successor agency, for updating of the National Instant Criminal Background Check System database and shall remove all*

information in any database over which the department exercises control relating to the person whose relief from disability is granted and shall immediately destroy all paper copies of the order of commitment and other documents relating to the matter.

- (4) *If a petition is granted under this section, the order, finding, or adjudication for which relief is granted shall, pursuant to Section 105(a) of Pub. L. No. 110-180, be deemed not to have occurred for purposes of 18 U.S.C. sec. 922(d)(4) and (g)(4).*
- (5) *The Department of Kentucky State Police shall not use or permit the use of the records or information obtained or retained pursuant to this section for any purpose not specified in this section.*
- (6) *The provisions of this section shall supersede any other statute to the contrary for the purposes set forth in this section but otherwise shall be held and construed as ancillary and supplemental to any other statute.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
 - (a) *"Fingerprint card" means the standard Federal Bureau of Investigation FD-258 fingerprint card;*
 - (b) *"Fingerprint-supported background check" means a statewide search of the centralized criminal history record information system created and maintained by the Commonwealth utilizing the fingerprints of the subject of the background check. This shall not include a national check by the Federal Bureau of Investigation; and*
 - (c) *"Name-based background check" means a statewide search of the centralized criminal history record information system created and maintained by the Commonwealth utilizing the name, date of birth, and Social Security number of the subject of the background check. This shall not include a national check by the Federal Bureau of Investigation.*
- (2) *Any other provision of law to the contrary notwithstanding, a person may request the Department of Kentucky State Police to conduct a name-based or fingerprint-supported background check of himself or herself and release the results to any person designated by the requester.*
- (3) *A person requesting a fingerprint-supported background check on himself or herself shall be fingerprinted by a law enforcement agency or other agency approved by the Department of Kentucky State Police to submit fingerprints. The fingerprinting agency shall forward the fingerprint card to the Department of Kentucky State Police. The fingerprinting agency may charge a fee, not to exceed the actual cost of processing the request.*
- (4) *A request for a name-based or fingerprint-supported background check shall be submitted on forms approved by the Department of Kentucky State Police.*
- (5) *The Department of Kentucky State Police may charge a fee for conducting a background check, not to exceed the actual cost of processing the request, to be paid by the requester.*
- (6) *The Department of Kentucky State Police shall promulgate administrative regulations to implement the provisions of this section.*

Signed by Governor March 16, 2011.

CHAPTER 61

(HB 309)

AN ACT relating to life insurance beneficiaries.

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

➔SECTION 1. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "retained asset account" means any mechanism whereby the settlement of proceeds payable under a life insurance policy, including but not limited to the payment of cash surrender value, is*

accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account where those proceeds are retained by the insurer, pursuant to a supplementary contract not involving annuity benefits.

- (2) (a) *An insurer may not use a retained asset account as the mode of settlement unless the insurer discloses the use of a retained asset account to the beneficiary or the beneficiary's legal representative prior to the transfer of life insurance proceeds to a retained asset account.*
- (b) *A beneficiary shall be informed, prior to the distribution of any life insurance proceeds, of his or her right to receive a lump-sum payment of life insurance proceeds in the form of a bank check or other form of immediate full payment of benefits.*
- (3) (a) *A complete listing and clear explanation of all life insurance proceeds payment options available to the beneficiary shall accompany, in written or electronic format, the use of a retained asset account. The complete listing and clear explanation of life insurance proceeds payment options shall accompany the disclosure required by subsection (2)(b) of this section.*
- (b) *Pursuant to paragraph (a) of this subsection, the use of a retained asset account shall require the following to be included in the complete listing and clear explanation disclosure:*
 1. *The recommendation to consult a tax, investment, or other financial advisor regarding tax liability and investment options;*
 2. *The initial interest rate, the circumstances and time frames under which interest rates may change, and any dividends and other gains that may be paid or distributed to the account holder;*
 3. *The custodian of the funds or assets of the account;*
 4. *The coverage guaranteed by the Federal Deposit Insurance Corporation (FDIC), if any, and the amount of the coverage;*
 5. *The limitations, if any, on the number or amount of withdrawals or transfers of funds from the account, including any minimum or maximum withdrawal amounts for payment of life insurance proceeds;*
 6. *The delays, if any, that the account holder may encounter in completing authorized transactions and the anticipated duration of such delays;*
 7. *The services provided for a fee, including a list of the fees and the method of their calculation;*
 8. *The nature and frequency of statements of account;*
 9. *The payment of some or all of the life insurance proceeds may be by the delivery of checks, drafts, or other instruments to access the available funds;*
 10. *The entire life insurance proceeds are available to the account holder by the use of one (1) check, draft, or other instrument;*
 11. *The insurer or a related party may derive income, in addition to any fees charged on the account, from the total gains received on the investment of the balance of funds in the account;*
 12. *The telephone number, address, and other contact information, including a Web site address, to obtain additional information regarding the account; and*
 13. *The following statement, "FOR FURTHER INFORMATION, PLEASE CONTACT YOUR STATE DEPARTMENT OF INSURANCE."*
- (c) *The writings produced to satisfy the requirements of this subsection shall be written in plain language and printed in bold in no smaller than a twelve (12) point font.*
- (4) (a) *Insurers shall, on at least an annual basis, report the following information to the Department of Insurance:*
 1. *The number and dollar amount of retained asset accounts:*
 - a. *In force at the beginning of the year;*
 - b. *Issued or added during the year;*

- c. *Closed or withdrawn during the year;*
 - d. *In force at the end of the year; and*
 - e. *That are transferred annually pursuant to KRS Chapter 393;*
 - 2. *The dollar amount of investment earnings or interest credited to retained asset accounts during the year;*
 - 3. *The dollar amount of fees and other charges assessed during the year;*
 - 4. *A narrative description of how the retained asset accounts are structured. The description shall include:*
 - a. *All of the interest rates paid to retained asset account holders during the reporting year, as well as the number of times changes were made to interest rates during the reporting year;*
 - b. *A list of all applicable fees charged by the reporting entity directly or indirectly associated with the retained asset accounts; and*
 - c. *Whether the retained asset accounts were the default method for satisfying life insurance claims;*
 - 5. *The number and dollar amount of retained asset accounts in force at the end of the current year as compared to the prior year segregated by the following ages of the outstanding retained asset accounts:*
 - a. *Zero (0) to twelve (12) months;*
 - b. *Thirteen (13) to twenty-four (24) months;*
 - c. *Twenty-five (25) to thirty-six (36) months;*
 - d. *Thirty-seven (37) to forty-eight (48) months;*
 - e. *Forty-nine (49) to sixty (60) months; and*
 - f. *Greater than sixty (60) months;*
 - 6. *The identity of any entity or financial institution that administers retained asset accounts on behalf of the insurer; and*
 - 7. *Any other information relating to retained asset accounts as requested or required by the commissioner of the Department of Insurance.*
- (b) *All marketing materials, disclosure statements, and supplemental contract forms utilized in connection with retained asset accounts shall be filed with the Department of Insurance prior to their use. The commissioner shall disapprove any materials, statements, or forms submitted under this section that are inconsistent with subsection (3) of this section or are otherwise untrue, unfair, deceptive, false, or misleading.*
- (5) *An insurer shall immediately return any remaining balance held in a retained asset account to the beneficiary when the account becomes inactive. A retained asset account shall become inactive for purposes of this subsection if no funds are withdrawn from the account, or if no affirmative directive has been provided to the insurer by the beneficiary, during any continuous three (3) year period.*
 - (6) *The commissioner may promulgate administrative regulations implementing this section.*
 - (7) *This section may be cited as the Beneficiaries Bill of Rights.*

Signed by Governor March 16, 2011.

AN ACT relating to tax increment financing.

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

➔Section 1. KRS 65.7043 is amended to read as follows:

The purposes of KRS 65.7041 to 65.7083 are as follows:

- (1) KRS 65.7047 provides authority for cities and counties to establish local development areas for the development of previously undeveloped land within their jurisdictional boundaries and to devote local resources to support the development of projects in those local development areas. Local development areas established under KRS 65.7047 and projects within local development areas shall not be eligible for participation by the Commonwealth; and
- (2) (a) KRS 65.7049, 65.7051, and 65.7053 provide a framework for cities and counties:
 1. To establish development areas for:
 - a. The redevelopment of previously developed land within their jurisdictional boundaries; and
 - b. The development of previously undeveloped land, if:
 - i. The project proposed for the development area includes an arena as part of the proposed development;
 - ii. *The project is a mixed-use development located in a university research park; or*
 - iii. *The project is a mixed-use development located within three (3) miles of a military base that houses, deploys, or employs any combination of at least twenty-five thousand (25,000) military personnel, their families, military retirees, or civilian employees;* and
 2. To devote local resources to providing redevelopment assistance and supporting projects in those development areas.
- (b) Projects within development areas established pursuant to KRS 65.7049, 65.7051, and 65.7053 shall be eligible for participation by the Commonwealth if such projects meet the requirements for Commonwealth participation established by Subchapter 30 of KRS Chapter 154.

➔Section 2. KRS 65.7045 is amended to read as follows:

As used in KRS 65.7041 to 65.7083:

- (1) "Activation date" means the date established any time within a two (2) year period after the commencement date. The activation date is the date on which the time period for the pledge of incremental revenues shall commence. The governing body may extend the two (2) year period to no more than four (4) years upon written application by the agency requesting the extension. To implement the activation date, the agency that is a party to the local participation agreement or the local development area agreement shall notify the governing body that created the development area or local development area;
- (2) "Agency" means:
 - (a) An urban renewal and community development agency established under KRS Chapter 99;
 - (b) A development authority established under KRS Chapter 99;
 - (c) A nonprofit corporation;
 - (d) A housing authority established under KRS Chapter 80;
 - (e) An air board established under KRS 183.132 to 183.160;
 - (f) A local industrial development authority established under KRS 154.50-301 to 154.50-346;
 - (g) A riverport authority established under KRS 65.510 to 65.650; or
 - (h) A designated department, division, or office of a city or county;
- (3) "Arena" means a facility which serves primarily as a venue for athletic events, live entertainment, and other performances, and which has a permanent seating capacity of at least five thousand (5,000);

- (4) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (5) "Brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant;
- (6) "Capital investment" means:
 - (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of a project;
 - (b) The cost of acquiring land or rights in land within the development area on the footprint of the project, and any cost incident thereto, including recording fees;
 - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of a project which is not paid by the contractor or contractors or otherwise provided;
 - (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of a project;
 - (e) All costs that are required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of a project; and
 - (f) All other costs of a nature comparable to those described in this subsection;
- (7) "City" means any city, consolidated local government, or urban-county government;
- (8) "Commencement date" means:
 - (a) The date on which a local development area agreement is executed; or
 - (b) The date on which a local participation agreement is executed;
- (9) "Commonwealth" means the Commonwealth of Kentucky;
- (10) "County" means any county, consolidated local government, charter county, unified local government, or urban-county government;
- (11) "Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on increment bonds as the payments come due and are payable and any charges related to the payment of the foregoing;
- (12) "Development area" means an area established under KRS 65.7049, 65.7051, and 65.7053;
- (13) "Economic development projects" means projects which are approved for tax credits under Subchapter 20, 22, 23, 24, 25, 26, 27, 28, 34, or 48 of KRS Chapter 154;
- (14) "Establishment date" means the date on which a development area or a local development area is created. If the development area, local development area, development area plan, or local development area plan is modified or amended subsequent to the original establishment date, the modifications or amendments shall not extend the existence of the development area or local development area beyond what would be permitted under KRS 65.7041 to 65.7083 from the original establishment date;
- (15) "Governing body" means the body possessing legislative authority in a city or county;
- (16) "Increment bonds" means bonds and notes issued for the purpose of paying the costs of one (1) or more projects, or grant or loan programs as described in subsection (30)~~(29)~~(c) of this section, in a development area or a local development area;
- (17) "Incremental revenues" means the amount of revenues received by a taxing district, as determined by subtracting old revenues from new revenues in a calendar year with respect to a development area, a project within a development area, or a local development area;
- (18) "Issuer" means a city, county, or agency issuing increment bonds;
- (19) "Local development area" means a development area established under KRS 65.7047;
- (20) "Local development area agreement" means an agreement entered into under KRS 65.7047;

- (21) "Local participation agreement" means the agreement entered into under KRS 65.7063;
- (22) "Local tax revenues" means:
- (a) Revenues derived by a city or county from one (1) or more of the following sources:
 - 1. Real property ad valorem taxes;
 - 2. Occupational license taxes, excluding occupational license taxes that have already been pledged to support an economic development project within the development area; and
 - 3. The occupational license fee permitted by KRS 65.7056; and
 - (b) Revenues derived by any taxing district other than school districts or fire districts from real property ad valorem taxes;
- (23) "Low-income household" means a household in which gross income is no more than two hundred percent (200%) of the poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. sec. 9902(2);
- (24) *"Mixed-use" has the same meaning as in KRS 154.30-060;*
- (25) "New revenues" means the amount of local tax revenues received by a taxing district with respect to a development area or a local development area in any calendar year beginning with the year in which the activation date occurred;
- ~~(26)(25)~~ "Old revenues" means the amount of local tax revenues received by a taxing district with respect to a development area or a local development area during the last calendar year prior to the commencement date. If the governing body determines that the amount of local tax revenues received during the last calendar year prior to the commencement date does not represent a true and accurate depiction of revenues, the governing body may consider revenues for a period of no longer than three (3) calendar years prior to the commencement date, so as to determine a fair representation of local tax revenues;
- ~~(27)(26)~~ "Outstanding" means increment bonds that have been issued, delivered, and paid for by the purchaser, except any of the following:
- (a) Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;
 - (b) Increment bonds in replacement of which or in exchange for which other increment bonds have been issued; or
 - (c) Increment bonds for the payment, redemption, or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;
- ~~(28)(27)~~ "Planning unit" means a planning commission established pursuant to KRS Chapter 100;
- ~~(29)(28)~~ "Project" means any property, asset, or improvement located in a development area or a local development area and certified by the governing body as:
- (a) Being for a public purpose; and
 - (b) Being for the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, including the development, rehabilitation, renovation, installation, improvement, enlargement, or extension of real estate and buildings; and
 - (c) Contributing to economic development or tourism;
- ~~(30)(29)~~ "Redevelopment assistance," as utilized within a development area, includes the following:
- (a) Technical assistance programs to provide information and guidance to existing, new, and potential businesses and residences;
 - (b) Programs to market and promote the development area and attract new businesses and residents;

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

termination date established in the ordinance, the termination date for the local development area shall be extended to the termination date of the local development area agreement;

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

- (36) ***"University research park" means land owned by a public university that has been designated by the public university as being primarily for the development of projects and facilities to support high-tech, pharmaceutical, laboratory, and other research-based businesses, including projects and facilities to support and complement the development of high-tech, pharmaceutical, laboratory, and other research-based businesses.***

➔Section 3. KRS 65.7049 is amended to read as follows:

Any city or county may establish a development area pursuant to ***this section***, ~~KRS 65.7049,~~ 65.7051, and 65.7053 to encourage investment and reinvestment in and development, use, and reuse of areas of the city or county under the following conditions:

- (1) The area shall be contiguous and shall be no more than three (3) square miles;
- (2) The establishment or expansion of the development area shall not cause the assessed value of taxable real property within all development areas and local development areas of the city or county establishing the development area to exceed twenty percent (20%) of the assessed value of all taxable real property within its jurisdiction. For the purpose of determining whether the twenty percent (20%) threshold has been met, the assessed value of taxable real property within all of the development areas and local development areas shall be valued as of the establishment date;
- (3) The governing body of the city or county shall determine that the development area ***either***:
 - (a) Has two (2) or more of the following conditions:
 - 1. ~~1. (a)~~ Substantial loss of residential, commercial, or industrial activity or use;
 - 2. ~~2. (b)~~ Forty percent (40%) or more of the households are low-income households;
 - 3. ~~3. (c)~~ More than fifty percent (50%) of residential, commercial, or industrial structures are deteriorating or deteriorated;
 - 4. ~~4. (d)~~ Substantial abandonment of residential, commercial, or industrial structures;
 - 5. ~~5. (e)~~ Substantial presence of environmentally contaminated land;
 - 6. ~~6. (f)~~ Inadequate public improvements or substantial deterioration in public infrastructure; or
 - 7. ~~7. (g)~~ Any combination of factors that substantially impairs or arrests the growth and economic development of the city or county; impedes the provision of adequate housing; impedes the development of commercial or industrial property; or adversely affects public health, safety, or general welfare due to the development area's present condition and use; ***or***
 - (b) ***The project is a mixed-use development:***
 - 1. ***Located in a university research park; or***
 - 2. ***Located within three (3) miles of a military base that houses, deploys, or employs any combination of at least twenty-five thousand (25,000) military personnel, their families, military retirees, or civilian employees; and***
- (4) The governing body of the city or county shall find that all of the following are true ***for projects meeting the requirements of paragraph (a) of subsection (3) of this section***:

- (a) That the development area is not reasonably expected to be developed without public assistance. This finding shall be supported by specific reasons and supporting facts, including a clear demonstration of the financial need for public assistance; and
- (b) That the public benefits of the development area justify the public costs proposed. This finding shall be supported by specific data and figures demonstrating that the projected benefits outweigh the anticipated costs and shall take into account the positive and negative effects of investment in the development on existing businesses and residents within the community as a whole; and
- (c)
 - 1. That the area immediately surrounding the development area has not been subject to growth and development through investment by private enterprise; or
 - 2. If the area immediately surrounding the development area has been subject to growth and development through investment by private enterprise, the identification of special circumstances within the development area that would prevent its development without public assistance.

➔Section 4. KRS 154.30-060 is amended to read as follows:

- (1) The Commonwealth Participation Program for Mixed-Use Redevelopment in Blighted Urban Areas is hereby established.
- (2) State participation under this program shall be limited to the support of approved public infrastructure costs and costs associated with land preparation, demolition, and clearance determined to be necessary to support private investment or private development projects that benefit the public, where project economics are unable to support or secure necessary financing to undertake the public improvements, land preparation, demolition, and clearance.
- (3) As used in this section:
 - (a) "Mixed-use" means a project that includes at least two (2) qualified uses;
 - (b) "Qualified use" means:
 - 1. Retail;
 - 2. Residential;
 - 3. Office;
 - 4. Restaurant; or
 - 5. Hospitality.

To be a qualified use, the use must comprise at least twenty percent (20%) of the total finished square footage of the proposed project or represent twenty percent (20%) of the total capital investment; and
 - (c) "Retail" means an establishment predominantly engaged in the sale of tangible personal property subject to the tax imposed by KRS Chapter 139, but shall not include restaurants.
- (4) To be considered for state participation under this program, a project shall:
 - (a) Be located in an area that has three (3) or more of the conditions listed in KRS 65.7049(3)(a), **or be a project described in subsection (3)(b) of Section 3 of this Act**;
 - (b) Be a mixed-use project;
 - (c) Represent new economic activity in the Commonwealth;
 - (d) Result in a capital investment between twenty million dollars (\$20,000,000) and two hundred million dollars (\$200,000,000);
 - (e) Not include any retail establishment that exceeds twenty thousand (20,000) square feet of finished square footage;
 - (f) Include pedestrian amenities and public space; and
 - (g) Result in a net positive economic impact to the Commonwealth, taking into consideration any substantial adverse impact on existing Commonwealth businesses. The net positive impact shall be certified to the authority as required by KRS 154.30-030(6)(b).
- (5) The following costs may be recovered pursuant to this section:

- (a) Up to one hundred percent (100%) of approved public infrastructure costs; and
 - (b) Up to one hundred percent (100%) of expenses for land preparation, demolition, and clearance necessary for the development to occur.
- (6) The commission shall review the application, the certification required by KRS 154.30-030, and supporting information as provided in KRS 154.30-030.
- (7) The authority shall specifically identify the state taxes from which incremental revenues will be pledged. The authority may pledge up to eighty percent (80%) of the incremental revenues from the identified state tax revenues from the footprint of the project, provided that the maximum amount of incremental revenues that may be pledged for a project during the term of the tax incentive agreement from all approved state taxes shall not exceed the costs and expenses determined under subsection (5) of this section.
- (8) As part of the approval process, the authority shall determine the following:
- (a) The footprint of the project;
 - (b) That the proposed project meets the requirements established by subsection (4) of this section;
 - (c) The maximum amount of approved public infrastructure costs and expenses for land preparation, demolition, and clearance;
 - (d) That the local revenues pledged to support the public infrastructure of the project and local revenues pledged to support the overall project are of a sufficient amount to warrant participation of the Commonwealth in the project;
 - (e) The termination date of the tax incentive agreement; and
 - (f) Any adjustments to be made to old revenues, in determining incremental revenues during each year of the term of the tax incentive agreement.
- (9) If state income taxes or local occupational licenses taxes are included for a project that includes office space, the authority shall consider the impact of pledging these taxes on the ability to utilize other economic development projects at a later date.
- (10) The pledge of state incremental tax revenues of the Commonwealth by the authority shall be implemented through the execution of a tax incentive agreement between the Commonwealth and the agency, city, or county in accordance with KRS 154.30-070.

➔Section 5. KRS 65.7051 is amended to read as follows:

- (1) Any city or county seeking to establish a development area shall adopt a development plan. The development plan may be developed by a city, a county, or a city and county jointly, or may be proposed by an agency or by a private entity. The plan shall include the following:
- (a) Assurances that the proposed development area meets the requirements of KRS 65.7049(1) and (2), identification of the conditions in the proposed development area that meet the criteria set forth in KRS 65.7049(3), and, *if applicable*, confirmation that the requirements of KRS 65.7049(4) have been met;
 - (b) A detailed description of the existing uses and conditions of real property in the development area;
 - (c) A map showing the boundaries of the proposed development area, a legal description of the development area, and geographic reference points;
 - (d) A map showing proposed improvements and uses therein, including the identification of any proposed projects, along with a narrative description of the proposed improvements, projects, and uses within the development area;
 - (e) A description of the redevelopment assistance proposed to be employed in the development area, including the manner and location of such assistance;
 - (f) A detailed financial plan containing projections of the cost of the proposed redevelopment assistance to be provided, proposed projects to be funded, proposed sources of funding for these costs, projected incremental revenues, and the projected time frame during which financial obligations will be incurred;
 - (g) Proposed changes of any zoning ordinance, comprehensive plan, master plan, map, building code, or ordinance anticipated to be required to implement the development plan; and

- (h) If the city or county is a member of a planning unit, certification of review by the planning commission for compliance with the comprehensive plan of the planning unit pursuant to KRS Chapter 100 after any necessary changes identified in paragraph (g) of this subsection are made.
- (2) Prior to adoption of a development plan, the city or county shall hold a public hearing to solicit input from the public regarding the plan. The city or county shall advertise the hearing by causing to be published, in accordance with KRS 424.130, notice of the time, place, and purpose of the hearing and a general description of the boundaries of the proposed development area. The notice shall include a summary of the redevelopment assistance proposed to be employed, identification of projects proposed for the development area, and a statement that a copy of the development plan is available for inspection at the business office of the city or county.
- (3) Prior to publication of a hearing notice pursuant to subsection (2) of this section, a copy of the development plan shall be filed with the city clerk of each city having jurisdiction within the proposed development area, and with the county fiscal court.
- (4) A city or county having jurisdiction within the proposed development area not initially participating in a proposed development plan shall have the opportunity to determine whether it will participate in the plan. The city or county shall determine and notify the entity proposing the development plan in writing within thirty (30) days after the public hearing whether it will participate in the plan.
- (5) At the end of the time period established in subsection (4) of this section, the city or county may adopt an ordinance establishing a development area in accordance with KRS 65.7053.

➔Section 6. KRS 65.7053 is amended to read as follows:

- (1) An ordinance establishing a development area shall include the following provisions:
 - (a) A legal description of the boundaries of the development area, and geographic reference points;
 - (b) The establishment date;
 - (c) The termination date, including a provision that allows the termination date to be extended as provided in KRS 65.7045(35)~~[(34)]~~;
 - (d) A name for the development area for identification purposes;
 - (e) A finding that the conditions in the development area meet the criteria described in KRS 65.7049;
 - (f) A finding supporting the need to employ redevelopment assistance in the development area;
 - (g) A provision adopting the development plan required by KRS 65.7051(1);
 - (h) Approval of any agreements relating to the development area, including any local participation agreements;
 - (i) A provision establishing a special fund for the development area or any project within the development area;
 - (j) A requirement that any entity other than the governing body that receives financial assistance under the development area ordinance, whether in the form of a grant, loan, or loan guarantee, shall make periodic accounting to the governing body;
 - (k) A provision for periodic analysis and review by the governing body of the development activity in the development area, a review of the progress in meeting the stated goals of the development area, and a requirement that the review and analysis be forwarded to the authority if the development activity includes projects subject to a tax incentive agreement;
 - (l) Designation of the agency or agencies responsible for oversight, administration, and implementation of the development ordinance; and
 - (m) Any other provisions, findings, limitations, rules, or procedures regarding the proposed development area or a project within the development area and its establishment or maintenance deemed necessary by the city or county.
- (2) An ordinance establishing a development area may designate an existing agency to oversee and administer implementation of a development area ordinance or a portion thereof.

- (3) Unless the ordinance establishing a development area requires an earlier date, a development area shall cease to exist on the termination date.

➔Section 7. KRS 154.30-010 is amended to read as follows:

As used in this subchapter:

- (1) "Activation date" means:
- (a) For all projects except those described in paragraph (b) of this subsection, the date established any time within a two (2) year period after the commencement date. The Commonwealth may extend the two (2) year period to no more than four (4) years upon written application by the agency requesting the extension; and
 - (b) For signature projects approved under KRS 154.30-050(2)(a), the date established any time within a *ten* (10)~~five (5)~~ year period after the commencement date.

The activation date is the date on which the time period for the pledge of incremental revenues shall commence. To implement the activation date, the agency that is a party to the tax incentive agreement shall notify the office;

- (2) "Agency" means:
- (a) An urban renewal and community development agency established under KRS Chapter 99;
 - (b) A development authority established under KRS Chapter 99;
 - (c) A nonprofit corporation;
 - (d) A housing authority established under KRS Chapter 80;
 - (e) An air board established under KRS 183.132 to 183.160;
 - (f) A local industrial development authority established under KRS 154.50-301 to 154.50-346;
 - (g) A riverport authority established under KRS 65.510 to 65.650; or
 - (h) A designated department, division, or office of a city or county;
- (3) "Approved public infrastructure costs" means costs associated with the acquisition, installation, construction, or reconstruction of public works, public improvements, and public buildings, including planning and design costs associated with the development of such public amenities. "Approved public infrastructure costs" includes but is not limited to costs incurred for the following:
- (a) Land preparation, including demolition and clearance work;
 - (b) Buildings;
 - (c) Sewers and storm drainage;
 - (d) Curbs, sidewalks, promenades, and pedways;
 - (e) Roads;
 - (f) Street lighting;
 - (g) The provision of utilities;
 - (h) Environmental remediation;
 - (i) Floodwalls and floodgates;
 - (j) Public spaces or parks;
 - (k) Parking;
 - (l) Easements and rights-of-way;
 - (m) Transportation facilities;
 - (n) Public landings;
 - (o) Amenities, such as fountains, benches, and sculptures; and

- (p) Riverbank modifications and improvements;
- (4) "Approved signature project costs" means:
 - (a) The acquisition of land for portions of the project that are for infrastructure; and
 - (b) Costs associated with the acquisition, installation, development, construction, improvement, or reconstruction of infrastructure, including planning and design costs associated with the development of infrastructure, including but not limited to parking structures, including portions of parking structures that serve as platforms to support development above;that have been determined by the commission to represent a unique challenge in the financing of a project such that the project could not be developed without incentives intended by this chapter to foster economic development;
- (5) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (6) "Capital investment" means:
 - (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of a project;
 - (b) The cost of acquiring land or rights in land within the development area on the footprint of the project, and any cost incident thereto, including recording fees;
 - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of a project which is not paid by the contractor or contractors or otherwise provided;
 - (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of a project;
 - (e) All costs that are required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of a project; and
 - (f) All other costs of a nature comparable to those described in this subsection;
- (7) "City" means any city, consolidated local government, or urban-county government;
- (8) "Commencement date" means the date on which a tax incentive agreement is executed;
- (9) "Commonwealth" means the Commonwealth of Kentucky;
- (10) "County" means any county, consolidated local government, charter county, unified local government, or urban-county government;
- (11) "CPI" means the nonseasonally adjusted Consumer Price Index for all urban consumers, all items, base year computed for 1982 to 1984 equals one hundred (100), published by the United States Department of Labor, Bureau of Labor Statistics;
- (12) "Department" means the Department of Revenue;
- (13) "Development area" means an area established under KRS 65.7049, 65.7051, and 65.7053;
- (14) "Economic development projects" means projects which are approved for tax credits under Subchapter 20, 22, 23, 24, 25, 26, 27, 28, 34, or 48 of KRS Chapter 154;
- (15) "Financing costs" means principal, interest, costs of issuance, debt service reserve requirements, underwriting discount, costs of credit enhancement or liquidity instruments, and other costs directly related to the issuance of bonds or debt for approved public infrastructure costs or approved signature project costs for projects approved pursuant to KRS 154.30-050;
- (16) "Footprint" means the actual perimeter of a discrete, identified project within a development area. The footprint shall not include any portion of a development area outside the area for which actual capital investments are made;
- (17) "Governing body" means the body possessing legislative authority in a city or county;

- (18) "Increment bonds" means bonds and notes issued for the purpose of paying the costs of one (1) or more projects;
- (19) "Incremental revenues" means:
- (a) The amount of revenues received by a taxing district, as determined by subtracting old revenues from new revenues in a calendar year with respect to a development area, or a project within a development area; or
 - (b) The amount of revenues received by the Commonwealth as determined by subtracting old revenues from new revenues in a calendar year with respect to the footprint;
- (20) "Local participation agreement" means the agreement entered into under KRS 65.7063;
- (21) "Local tax revenues" has the same meaning as in KRS 65.7045;
- (22) "New revenues" means:
- (a) The amount of local tax revenues received by a taxing district with respect to a development area in any calendar year beginning with the year in which the activation date occurred; or
 - (b) The amount of state tax revenues received by the Commonwealth with respect to the footprint in any calendar year beginning with the year in which the activation date occurred;
- (23) "Old revenues" means:
- (a) The amount of local tax revenues received by a taxing district with respect to a development area during the last calendar year prior to the commencement date; or
 - (b)
 - 1. The amount of state tax revenues received by the Commonwealth within the footprint during the last calendar year prior to the commencement date. If the authority determines that the amount of state tax revenues received during the last calendar year prior to the commencement date does not represent a true and accurate depiction of revenues, the authority may consider revenues for a period of no longer than three (3) calendar years prior to the commencement date, so as to determine a fair representation of state tax revenues. The amount determined by the authority shall be specified in the tax incentive agreement. If state tax revenues were derived from the footprint prior to the commencement date, old revenues shall increase each calendar year by:
 - a. The percentage increase, if any, of the CPI or a comparable index; or
 - b. An alternative percentage increase that is determined to be appropriate by the authority.The method for increasing old revenues shall be set forth in the tax incentive agreement;
 - 2. If state revenues were derived from the footprint prior to the commencement date, the calculation of incremental revenues shall be based on the value of old revenues as increased using the method prescribed in subparagraph 1. of this paragraph to reflect the same calendar year as is used in the determination of new revenues.
- (24) "Outstanding" means increment bonds that have been issued, delivered, and paid for by the purchaser, except any of the following:
- (a) Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;
 - (b) Increment bonds in replacement of which or in exchange for which other increment bonds have been issued; or
 - (c) Increment bonds for the payment, redemption, or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;
- (25) "Project" means any property, asset, or improvement located in a development area and certified by the governing body as:

- (a) Being for a public purpose; and
 - (b) Being for the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, including the development, rehabilitation, renovation, installation, improvement, enlargement, or extension of real estate and buildings; and
 - (c) Contributing to economic development or tourism; and
 - (d) Meeting the additional requirements established by KRS 154.30-040, 154.30-050, or 154.30-060;
- (26) "Signature project" means a project approved under KRS 154.30-050;
- (27) "State real property ad valorem tax" means real property ad valorem taxes levied under KRS 132.020(1)(a);
- (28) "State tax revenues" means revenues received by the Commonwealth from one (1) or more of the following sources:
- (a) State real property ad valorem taxes;
 - (b) Individual income taxes levied under KRS 141.020, other than individual income taxes that have already been pledged to support an economic development project within the development area;
 - (c) Corporation income taxes levied under KRS 141.040, other than corporation income taxes that have already been pledged to support an economic development project within the development area;
 - (d) Limited liability entity taxes levied under KRS 141.0401, other than limited liability entity taxes that have already been pledged to support an economic development project within the development area; and
 - (e) Sales taxes levied under KRS 139.200, excluding sales taxes already pledged for:
 - 1. Approved tourism attraction projects, as defined in KRS 148.851, within the development area; and
 - 2. Projects which are approved for sales tax refunds under Subchapter 20 of KRS Chapter 154 within the development area;
- (29) "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.30-070; and
- (30) "Termination date" means:
- (a) For a tax incentive agreement satisfying the requirements of KRS 154.30-040 or 154.30-060, a date established by the tax incentive agreement that is no more than twenty (20) years from the activation date. However, the termination date for a tax incentive agreement shall in no event be more than forty (40) years from the establishment date of the development area to which the tax incentive agreement relates; and
 - (b) For a project grant agreement satisfying the requirements of KRS 154.30-050, a date established by the tax incentive agreement that is no more than thirty (30) years from the activation date. However, the termination date for a tax incentive agreement shall in no event be more than forty (40) years from the establishment date of the development area to which the tax incentive agreement relates.

➔Section 8. Notwithstanding KRS 65.7044(6), the provisions of Section 7 of this Act shall apply retroactively and any agreements entered into prior to the effective date of this Act, for projects approved under KRS 154.30-050(2)(a) that have not been activated as of the effective date of this Act, shall be amended to reflect the revised activation date provided for in Section 7 of this Act.

Signed by Governor March 16, 2011.

CHAPTER 63

(HB 311)

AN ACT relating to prescription drugs.

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

➔Section 1. KRS 218A.180 is amended to read as follows:

- (1) Except when dispensed directly by a practitioner to an ultimate user, no methamphetamine or controlled substance in Schedule II may be dispensed without the written, *facsimile, or electronic* prescription of a practitioner. *A prescription for a controlled substance in Schedule II may be dispensed by a facsimile prescription only as specified in administrative regulations promulgated by the cabinet.* No prescription for a controlled substance in Schedule II shall be valid after sixty (60) days from the date issued. No prescription for a controlled substance in Schedule II shall be refilled. All prescriptions for controlled substances classified in Schedule II shall be maintained in a separate prescription file.
- (2) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedules III, IV, and V, which is a prescription drug, shall not be dispensed without a written, *facsimile, electronic, or oral* prescription by a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date issued or be refilled more than five (5) times, unless renewed by the practitioner and a new prescription, written, electronic, or oral shall be required.
- (3)
 - (a) To be valid, a prescription for a controlled substance shall be issued only for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice. Responsibility for the proper dispensing of a controlled substance pursuant to a prescription for a legitimate medical purpose is upon the pharmacist who fills the prescription.
 - (b) A prescription shall not be issued for a practitioner to obtain a controlled substance for the purpose of general dispensing or administering to patients.
- (4) All written *and facsimile* prescriptions for controlled substances shall be dated and signed by the practitioner on the date issued and shall bear the full name and address of the patient, drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.
- (5) All oral, *facsimile*, or electronic prescriptions shall include the full name and address of the patient, drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.
- (6) All oral ~~or electronic~~ prescriptions shall be immediately reduced to writing, dated, and signed by the pharmacist. ~~[A prescription contained in a computer or other electronic format shall not be considered writing.]~~
- (7) A pharmacist refilling any prescription shall record on the prescription or other equivalent record the date, the quantity, and the pharmacist's initials. The maintenance of prescription records under the federal controlled substances laws and regulations containing substantially the same information as specified in this subsection shall constitute compliance with this subsection.
- (8) The pharmacist filling a written, *facsimile*, electronic, or oral prescription for a controlled substance shall affix to the package a label showing the date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner and directions for use and cautionary statements, if any, contained in such prescription or required by law.
- (9) Any person who violates any provision of this section shall:
 - (a) For the first offense, be guilty of a Class A misdemeanor.
 - (b) For a second or subsequent offense, be guilty of a Class D felony.

Signed by Governor March 16, 2011.

CHAPTER 64

(HB 313)

AN ACT relating to concealed deadly weapons.

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

➔Section 1. KRS 527.020 is amended to read as follows:

- (1) A person is guilty of carrying a concealed weapon when he or she carries concealed a firearm or other deadly weapon on or about his or her person.
 - (2) Peace officers and certified court security officers, when necessary for their protection in the discharge of their official duties; United States mail carriers when actually engaged in their duties; and agents and messengers of express companies, when necessary for their protection in the discharge of their official duties, may carry concealed weapons on or about their person.
 - (3) ***The director of the Division of Law Enforcement in the Department of Fish and Wildlife Resources, conservation officers of the Department of Fish and Wildlife Resources, and*** policemen directly employed by state, county, city, or urban-county governments may carry concealed deadly weapons on or about their person at all times within the Commonwealth of Kentucky, when expressly authorized to do so ***by law or*** by the government employing the officer.
 - (4) Persons, except those specified in subsection (5) of this section, licensed to carry a concealed deadly weapon pursuant to KRS 237.110 may carry a firearm or other concealed deadly weapon on or about their persons at all times within the Commonwealth of Kentucky, if the firearm or concealed deadly weapon is carried in conformity with the requirements of that section. Unless otherwise specifically provided by the Kentucky Revised Statutes or applicable federal law, no criminal penalty shall attach to carrying a concealed firearm or other deadly weapon with a permit at any location at which an unconcealed firearm or other deadly weapon may be constitutionally carried. No person or organization, public or private, shall prohibit a person licensed to carry a concealed deadly weapon from possessing a firearm, ammunition, or both, or other deadly weapon in his or her vehicle in compliance with the provisions of KRS 237.110 and 237.115. Any attempt by a person or organization, public or private, to violate the provisions of this subsection may be the subject of an action for appropriate relief or for damages in a Circuit Court or District Court of competent jurisdiction.
 - (5) (a) The following persons, if they hold a license to carry a concealed deadly weapon pursuant to KRS 237.110, may carry a firearm or other concealed deadly weapon on or about their persons at all times and at all locations within the Commonwealth of Kentucky, without any limitation other than as provided in this subsection:
 1. A Commonwealth's attorney or assistant Commonwealth's attorney;
 2. A county attorney or assistant county attorney;
 3. A justice or judge of the Court of Justice; and
 4. A retired or senior status justice or judge of the Court of Justice.(b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.
 - (c) A person specified in this section who is issued a concealed deadly weapon license shall be issued a license which bears on its face the statement that it is valid at all locations within the Commonwealth of Kentucky and may have such other identifying characteristics as determined by the Department of Kentucky State Police.
- (6) (a) Except provided in this subsection, the following persons may carry concealed deadly weapons on or about their person at all times and at all locations within the Commonwealth of Kentucky:
 1. An elected sheriff and full-time and part-time deputy sheriffs certified pursuant to KRS 15.380 to 15.404 when expressly authorized to do so by the unit of government employing the officer;
 2. An elected jailer and a deputy jailer who has successfully completed Department of Corrections basic training and maintains his or her current in-service training when expressly authorized to do so by the jailer; and
 3. The department head or any employee of a corrections department in any jurisdiction where the office of elected jailer has been merged with the office of sheriff who has successfully completed Department of Corrections basic training and maintains his or her current in-service training when expressly authorized to do so by the unit of government by which he or she is employed.

- (b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.
- (7) (a) A full-time paid peace officer of a government agency from another state or territory of the United States or an elected sheriff from another territory of the United States may carry a concealed deadly weapon in Kentucky, on or off duty, if the other state or territory accords a Kentucky full-time paid peace officer and a Kentucky elected sheriff the same rights by law. If the other state or territory limits a Kentucky full-time paid peace officer or elected sheriff to carrying a concealed deadly weapon while on duty, then that same restriction shall apply to a full-time paid peace officer or elected sheriff from that state or territory.
- (b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.
- (8) A **loaded or unloaded** firearm or other deadly weapon shall not be deemed concealed on or about the person if it is located in **any enclosed container, ~~a glove~~ compartment, or storage space** ~~regularly~~ installed **as original equipment** in a motor vehicle by its manufacturer, **including but not limited to a glove compartment, center console, or seat pocket**, regardless of whether said **enclosed container, storage space, or** compartment is locked, unlocked, or does not have a locking mechanism. No person or organization, public or private, shall prohibit a person from keeping a **loaded or unloaded** firearm or ammunition, or both, or other deadly weapon in ~~a glove compartment of a~~ vehicle in accordance with the provisions of this subsection. Any attempt by a person or organization, public or private, to violate the provisions of this subsection may be the subject of an action for appropriate relief or for damages in a Circuit Court or District Court of competent jurisdiction. ***This subsection shall not apply to any person prohibited from possessing a firearm pursuant to KRS 527.040.***
- (9) Carrying a concealed weapon is a Class A misdemeanor, unless the defendant has been previously convicted of a felony in which a deadly weapon was possessed, used, or displayed, in which case it is a Class D felony.

Signed by Governor March 16, 2011.

CHAPTER 65

(HB 320)

AN ACT relating to first responders.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 2 IS CREATED TO READ AS FOLLOWS:

- (1) ***The eleventh day of September each year shall be observed in Kentucky as "9/11 First Responders Day."***
- (2) ***The Governor is authorized and requested to issue a proclamation annually recognizing "9/11 First Responders Day" honoring those men and women who rushed, without hesitation, to save lives as our nation and its people were attacked by terrorists on September 11, 2001. The purpose of "9/11 First Responders Day" is to ensure that we never forget the tragic events of September 11, 2001, and to protect and preserve the honor that is duly deserved for those who responded to the unprecedented emergency on that day.***

Signed by Governor March 16, 2011.

CHAPTER 66

(HB 333)

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

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 227 IS CREATED TO READ AS FOLLOWS:

- (1) *For the purposes of this section, "APA 87-1" means the latest document: Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics written by the American Pyrotechnic Association (APA).*
- (2) *The storage of consumer fireworks, display fireworks, or theatrical pyrotechnic devices, as defined in APA 87-1, at retail, wholesale, storage, or manufacturing facilities shall be reported in writing to the state fire marshal and the local fire chief of the jurisdiction where the facilities are located.*
 - (a) *The report shall be completed by the owner or lessee of the property or the supplier of the fireworks, and shall include the address of the facility, the location of the fireworks to be stored, a copy of the shipping bill, and whether they are consumer fireworks, theatrical pyrotechnic devices, or display fireworks.*
 - (b) *The initial report for permanent business establishments open year round shall be submitted between January 1, 2012, and January 31, 2012, for existing business and fifteen (15) days before storage begins for new businesses. The report for permanent business establishments open year round shall be updated annually and upon a change in location of the stored items.*
- (3) *Seasonal retailers, as defined in Section 7 of this Act, shall submit, at least fifteen (15) days prior to opening for sale each year, a report to the state fire marshal and the local fire chief of the jurisdiction identifying:*
 - (a) *The address where the sales will be taking place;*
 - (b) *The address where the fireworks will be stored; and*
 - (c) *A description of how the fireworks will be stored. Only one (1) report is due if the seasonal retailer stores the same product at the same location for both the June 10 through July 7 and December 26 through January 4 seasons.*
- (4) *Failure to submit a report required under this section shall be cause to cease and desist operation of the facility or site until such time as the required information is properly submitted. Inspectors shall notify the permit holder in writing and may allow twenty-four (24) hours to remedy the violation, unless the violation poses a distinct fire hazard.*

➔Section 2. KRS 227.700 is amended to read as follows:

As used in KRS 227.700 to 227.750, ~~[The term]~~ "fireworks" means ~~[shall mean]~~ any composition or device for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of "consumer fireworks" ~~[common]~~ as defined in Section 3 of this Act or "display ~~[special]~~" fireworks as defined in Section 5 of this Act and as set forth in the United States Department of Transportation's (DOT) hazardous materials regulations. "Fireworks" does not include:

- (1) Exception number 1: Toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with DOT regulations, and packed and shipped according to said regulations, are not considered to be fireworks and shall be allowed to be used and sold at all times.
- (2) Exception number 2: Model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models are not considered to be fireworks.
- (3) Exception number 3: Propelling or expelling charges consisting of a mixture of sulfur, charcoal, and saltpeter are not considered as being designed for producing audible effects.

➔Section 3. KRS 227.702 is amended to read as follows:

As used in KRS 227.700 to 227.750, "consumer~~[Common]~~ fireworks" means~~[are]~~ fireworks **that are** suitable for use by the public, ~~and~~ designed primarily to produce visible effects by combustion, and ~~must~~ comply with the construction, chemical composition, and labeling regulations of the United States Consumer **Product**~~[Products]~~ Safety Commission. The types, sizes, and amount of pyrotechnic contents of these devices are limited as enumerated in this section. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing fifty (50) mg. or less of explosive composition, and aerial devices containing one hundred thirty (130) mg. or less of explosive composition. **Consumer**~~[Common]~~ fireworks are **further defined by the Consumer Product Safety Commission in CPSC, 16 C.F.R. Pts 1500 and 1507, are** classified as **Division 1.4G**~~[class C]~~ explosives by the United States Department of Transportation, and include the following:

(1) Ground and hand-held sparkling devices.

- (a) Dipped stick-sparkler **or wire sparkler. These devices consist of a metal wire or wood dowel that has been**~~[Stick or wire]~~ coated with pyrotechnic composition. **Upon ignition of the tip of the device, a shower of sparks is produced. Sparklers may contain up to**~~[that produces a shower of sparks upon ignition. Total pyrotechnic composition may not exceed]~~ one hundred (100) grams **of pyrotechnic composition** per item. Those devices containing any perchlorate or chlorate salts may not exceed five (5) grams of pyrotechnic composition per item. Wire sparklers which contain no magnesium and which contain less than one hundred (100) grams of composition per item are not included in this category, in accordance with DOT regulations;
- (b) Cylindrical fountain. Cylindrical tube~~[not more than three fourths (3/4) in. (19 mm) inside diameter,]~~ containing **not more than**~~[up to]~~ seventy-five (75) grams of pyrotechnic composition. Upon ignition, a shower of colored sparks, and sometimes a whistling effect **or smoke**, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle, if intended to be hand-held (handle fountain). **When more than one (1) tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred (200) grams, or five hundred (500) grams if the tubes are separated from each other on the base by a distance of at least one-half (1/2) inch;**
- (c) Cone fountain. Cardboard or heavy paper cone containing up to fifty (50) grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. **When more than one (1) cone is mounted on a common base, the total pyrotechnic composition may not exceed two hundred (200) grams, or five hundred (500) grams if the tubes are separated from each other on the base by a distance of at least one-half (1/2) inch;**
- (d) Illuminating torch. Cylindrical tube containing up to one hundred (100) grams of pyrotechnic composition. Upon ignition, colored fire is produced. May be spike, base or hand-held. **When more than one (1) tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred (200) grams, or five hundred (500) grams if the tubes are separated from each other on the base by a distance of at least one-half (1/2) inch;**
- (e) Wheel. A~~[Pyrotechnic]~~ device attached to a post or tree by means of a nail or string. A~~[Each]~~ wheel may **have one (1) or more drivers, each of which may contain not more than**~~[contain up to six (6) "driver" units: tubes not exceeding one half (1/2) in. (12.5 mm) inside diameter and containing up to]~~ sixty (60) grams of pyrotechnic composition. **No wheel may contain more than two hundred (200) grams total pyrotechnic composition.** Upon ignition, the wheel revolves, producing a shower of color and sparks and, sometimes, a whistling effect;
- (f) Ground spinner. Small device **containing not more than twenty (20) grams of pyrotechnic composition**, similar **in operation** to a wheel **but intended to be**~~[in design and effect and]~~ placed on the ground and ignited. A shower of sparks and color is produced by the rapidly spinning device;~~[and]~~
- (g) Flitter sparkler. Narrow paper tube **attached to a stick or wire and** filled with **not more than one hundred (100) grams of** pyrotechnic composition that produces color and sparks upon ignition. ~~[This device does not have a fuse for ignition.]~~ The paper at one (1) end of the tube is ignited to make the device function; **and**
- (h) **Toy smoke device. Small plastic or paper item containing not more than one hundred (100) grams of pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect;**

(2) Aerial devices.

- (a) Sky **rockets and bottle rockets**. **Cylindrical tube containing not more than** ~~rocket. Tube not exceeding one half (1/2) in. (12.5 mm) inside diameter that may contain up to~~ twenty (20) grams of pyrotechnic composition. Sky rockets contain a wooden stick for guidance and stability and rise into the air upon ignition. A burst of color or noise or both is produced at the height of flight;
 - (b) Missile-type rocket. A device similar to a sky rocket in size, composition, and effect that uses fins rather than a stick for guidance and stability;
 - (c) Helicopter, aerial spinner. A tube ~~not more than one half (1/2) in. (12.5 mm) inside diameter and~~ containing up to twenty (20) grams of pyrotechnic composition. A propeller or blade is attached, which, upon ignition, lifts the rapidly spinning device into the air. A visible or audible effect is produced at the height of flight;
 - (d) Roman candles. Heavy paper or cardboard tube ~~not exceeding three eighths (3/8) in. (9.5 mm) inside diameter and~~ containing up to twenty (20) grams of pyrotechnic composition. Upon ignition, up to ten (10) "stars" (pellets of pressed pyrotechnic composition that burn with bright color) are individually expelled at several second intervals; ~~and~~
 - (e) Mine, shell. Heavy cardboard or paper tube **usually** ~~up to two and one half (2 1/2) in. (63.5 mm) inside diameter~~ attached to a wood or plastic base and containing up to **sixty (60)** ~~forty (40)~~ grams of **total chemical composition (lift charge, burst charge, and visible or audible effect)** ~~pyrotechnic~~ composition). Upon ignition, "stars," **components producing reports containing up to one hundred thirty (130) milligrams of explosive composition per report** ~~firecrackers~~, or other devices are propelled into the air. **The term "mine" refers to a device with no internal components containing a bursting charge, and the term "shell" refers to a device that propels a component that subsequently bursts open in the air. A mine or shell device may contain more than one (1) tube provided the tubes fire in sequence upon ignition of one (1) external fuse. The term "cake" refers to a dense-packed collection of mine or shell tubes. Total chemical composition including lift charges of any multiple tube devices may not exceed two hundred (200) grams. The maximum quantity of lift charge in any one (1) tube of a mine or shell device shall not exceed twenty (20) grams, and the maximum quantity of break or bursting charge in any component shall not exceed twenty-five percent (25%) of the total weight of chemical composition in the component. The tube remains on the ground; and**
 - (f) **Aerial shell kit, reloadable tube**. A package kit containing a cardboard, high-density polyethylene (HDPE), or equivalent launching tube with multiple-shot aerial shells. Each aerial shell is limited to a maximum of sixty (60) grams of total chemical composition (lift charge, burst charge, and visible or audible effect composition), and the maximum diameter of each shell shall not exceed one and three-fourths (1-3/4) inches. In addition, the maximum quantity of lift charge in any shell shall not exceed twenty (20) grams, and the maximum quantity of break or bursting charge in any shell shall not exceed twenty-five percent (25%) of the total weight of chemical composition in the shell. The total chemical composition of all the shells in a kit, including lift charge, shall not exceed four hundred (400) grams. The user lowers a shell into the launching tube, at the time of firing, with the fuse extending out of the top of the tube. After the firing, the tube is then reloaded with another shell for the next firing. All launching tubes shall be capable of firing twice the number of shells in the kit without failure of the tube. Each package of multiple-shot aerial shells must comply with all warning label requirements of the Consumer Product Safety Commission.
- (3) Audible ground devices.
- (a) Firecrackers, salutes. Small paper-wrapped or cardboard tube containing not more than fifty (50) mg. of pyrotechnic composition. **Those used in aerial devices may contain not more than one hundred thirty (130) milligrams of explosive composition per report.** Upon ignition, noise and a flash of light is produced; and
 - (b) Chaser. Small paper or cardboard tube that travels along the ground upon ignition. A whistling effect, or other noise, is often produced. The explosive composition used to create the noise may not exceed fifty (50) mg; ~~and~~
- ~~(4) Combination items. Firework devices containing combinations of two (2) or more of the effects described in paragraphs (a), (b), and (c) of subsection (2) of this section].~~

➔Section 4. KRS 227.704 is amended to read as follows:

Items listed in this section are classified as novelties and trick noisemakers and are not classified as ~~consumer[common]~~ fireworks by the United States Department of Transportation, **and their transportation, storage, retail sale, possession, sale, and use shall be allowed throughout the state at all times.**

- (1) Snake, glow worm. Pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning. The ash expands in length as the pellet burns. These devices may not contain mercuric thiocyanate.
- (2) Smoke device. Tube or sphere containing pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.
- (3) Wire sparkler. Wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. These items may not contain magnesium and must not exceed one hundred (100) grams of pyrotechnic composition per item. Devices containing any chlorate or perchlorate salts may not exceed five (5) grams of pyrotechnic composition per item.
- (4) Trick noisemaker. Item that produces a small report intended to surprise the user. These devices include:
 - (a) Party popper. Small plastic or paper item containing not more than sixteen (16) mg. of explosive composition that is friction sensitive. A string protruding from the device is pulled to ignite it, expelling paper streamers and producing a small report.
 - (b) Booby trap. Small tube with string protruding from both ends, similar to a party popper in design. The ends of the string are pulled to ignite the friction sensitive composition, producing a small report.
 - (c) Snapper. Small, paper-wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes producing a small report.
 - (d) Trick match. Kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match a small report or a shower of sparks is produced.
 - (e) Cigarette load. Small wooden peg that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one (1) of the pegs, a small report is produced.
 - (f) Auto burglar alarm. Tube which contains pyrotechnic composition that produces a loud whistle or smoke, or both, when ignited. A small quantity of explosive, not exceeding fifty (50) mg. may also be used to produce a small report. A squib is used to ignite the device.

➔Section 5. KRS 227.706 is amended to read as follows:

As used in KRS 227.700 to 227.750, "display"~~The term "special"~~ **fireworks means pyrotechnic devices or**~~shall mean~~ large fireworks designed primarily to produce visible or audible effects by combustion, deflagration or detonation. This term includes, but is not limited to, firecrackers containing more than two (2) grains (130 mg) of explosive composition, aerial shells containing more than forty (40) grams of pyrotechnic composition, and other display pieces which exceed the limits for classification as ~~"consumer[common]"~~ **"Display"**~~Special~~ fireworks **are defined by the Consumer Product Safety Commission in CPSC, 16 C.F.R. Pts. 1500 and 1507, and are classified as Class B explosives by the United States Department of Transportation.**

➔Section 6. KRS 227.710 is amended to read as follows:

No person, firm, copartnership, or corporation shall offer for sale, expose for sale, sell at retail, keep with intent to sell, possess, use, or explode any **display** fireworks, except as follows:

- (1) (a) In cities the chief of the fire department, or mayor, or similar official where there is no fire department, and in counties outside of cities the county judge/executive, may grant permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.
- (b) Every display shall be handled by a competent **display** operator to be approved by the public official by whom the permit is granted, and shall be of such character, and so located, discharged or fired as in the opinion of the official, after proper inspection, ~~to~~~~shall~~ not be hazardous to property or endanger any person.~~[-]~~
- (c) **"Competent display operator" shall be defined as the person with overall responsibility for the operation and safety of a fireworks display. The competent display operator shall have a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) License and have participated as an assistant in firing at least five (5) public displays. A "competent display operator" is also an employee possessor.**

A permit under paragraph (a) of this subsection shall be issued only to a competent display operator holding an ATF license.

- (d) *At least one (1) competent display operator shall be on site during display set-up and firing. This competent display operator shall maintain a copy of the permit application, as signed by the local authority having jurisdiction as identified in this section, on site and at all times the display is in place, and shall be presented on demand of the state fire marshal or local fire chief. All public displays that require issuance of a permit shall be conducted in accordance with the provisions of National Fire Protection Association (NFPA) 1123 – Code for Fireworks Display (adopted edition).*
 - (e) *Permits shall be filed with the state fire marshal at least fifteen (15) days in advance of the date of the display. After the privilege is granted, sales, possession, use, and distribution of fireworks for the display shall be lawful for that purpose only. No permit granted under this subsection shall be transferable. For the purposes of this subsection, "public display of fireworks" shall include the use of pyrotechnic devices or pyrotechnic materials before a proximate audience, whether indoors or outdoors.*
 - (f) *Any person remaining within the display area shall be identified as licensed by the ATF, or an employee thereof, or be an assistant in training to become a competent display operator. All persons remaining within the display area shall be at least eighteen (18) years of age.*
 - (g) *The Commissioner of the Department of Housing, Buildings and Construction with recommendation from the state fire marshal shall promulgate administrative regulations in accordance with KRS Chapter 13A to administer the provisions of this subsection. The regulations shall address the process by which permits are issued and any other procedures that are reasonably necessary to effectuate this subsection.*
- (2) The sale, at wholesale, of any **display** fireworks for ~~permitted~~^{supervised} displays by any resident manufacturer, wholesaler, dealer, or jobber, in accordance with regulations of the United States Bureau of Alcohol, Tobacco and Firearms, **and Explosives** if the sale is to the person holding a display permit as outlined in subsection (1) of this section. The permit holder shall present the permit along with other verifiable identification at the time of sale.
 - (3) The sale **of display fireworks in accordance with a license issued by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives**, ~~at wholesale, of any kind of fireworks by any resident manufacturer, wholesaler, dealer, or jobber, provided the fireworks are intended for shipment directly out of state in accordance with regulations of the United States Department of Transportation~~.
 - (4) The sale and use in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, and highway use.
 - (5) The use of fuses and railway torpedoes by railroads.
 - (6) The sale and use of blank cartridges for use in a show or theater or for signal or ceremonial purpose in athletics or sports.
 - (7) The use of any pyrotechnic device by military organizations.
 - (8) The use of fireworks for agricultural purposes under the direct supervision of the United States Department of the Interior or any equivalent or local agency.
 - (9) **Nothing in this section shall prohibit a person, firm, co-partnership, non-profit, or corporation from offering for sale, exposing for sale, selling at retail, keeping with intent to sell, possessing or using consumer fireworks as defined in Section 3 of this Act and** ~~The sale of common fireworks~~ as permitted pursuant to KRS 227.715.

➔Section 7. KRS 227.715 is amended to read as follows:

Except as provided in KRS 227.710, the **consumer**~~common~~ fireworks described in KRS 227.702~~(1)~~ may be offered for sale, sold at retail, or kept with the intent to sell, only if the following requirements are met:

- (1) Any person **firm, co-partnership, non-profit**, or business intending to sell **consumer**~~common~~ fireworks **described in KRS 227.702(1)** shall register annually with the state fire marshal, who may assess a fee of no more than **twenty-five dollars (\$25)**~~fifty dollars (\$50)~~ for each site at which fireworks shall be sold. The registration requirement under this section shall not apply to permanent business establishments which are open year round and in which the sale of fireworks is ancillary to the primary course of business. **Each location shall be required to charge sales tax at the current rate imposed on retailers in KRS 139.200;**

- (2) *Permanent business establishments open year round and in which the sale of consumer fireworks is ancillary to the primary course of business shall only be permitted to sell those consumer fireworks described in KRS 227.702(1), or shall meet the criteria for "seasonal retailer" described in subsection (3) of this section;*
- (3) *"Seasonal retailers" shall be defined as any person, firm, co-partnership, non-profit, or corporation intending to sell "consumer fireworks" between June 10th and July 7th, or December 26th and January 4th of each year or both, and shall include permanent businesses, temporary businesses, stores, stands, or tents. A seasonal retailer shall register with the state fire marshal, who may assess a fee of no more than two hundred fifty dollars (\$250) for each site at which fireworks shall be sold. Each location shall be required to charge sales tax at the current rate imposed on retailers in KRS 139.200;*
- (4) *Any person, firm, co-partnership, non-profit, or corporation intending to sell consumer fireworks, as defined in KRS 227.702(2) and (3) as the primary source of business, that is not a seasonal retailer as defined in subsection (3) of this section, shall register with the state fire marshal, who may assess a fee of no more than five hundred dollars (\$500) for each site at which fireworks will be sold. Each location shall be required to charge sales tax at the current rate imposed on retailers in KRS 139.200;*
- (5) *The annual registration required by ~~subsection (1) of~~ this section shall be received by the state fire marshal at least fifteen (15) days prior to offering fireworks for sale at the site for which the registration is intended. Evidence that a sales and use tax permit has been obtained from the Department of Revenue shall be presented to the state fire marshal as a condition of registration. If the registration is received less than fifteen (15) days prior to offering fireworks for sale at the site for which registration is intended, an additional assessment of one hundred dollars (\$100) shall be added to the initial fee;*
- ~~(6)(3)~~ Each site at which fireworks are offered for sale shall have its registration certificate displayed in a conspicuous location at the site;
- ~~(7)(4)~~ Each site at which fireworks are offered for sale shall *comply with all applicable provisions of the International Building Code, with Kentucky Amendments (adopted edition), and NFPA 1124 (National Fire Protection Association) – Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles (adopted edition)*~~[have a working fire extinguisher at the site, in compliance with NFPA Pamphlet 10];~~
- ~~(8)(5)~~~~No common fireworks item shall be offered for sale if it has as part of its device any wings, fins, or other mechanism designed to cause the device to fly, or if it carries a cautionary label which includes in its description any of the following terms: "explosive," "emits flaming pellets," "flaming balls," "firecracker," "report," or "rocket;"~~
- ~~(6)~~ No person or business shall give, offer for sale, or sell any *consumer*~~common~~ fireworks listed in KRS 227.702 to any person under *eighteen (18)*~~sixteen (16)~~ years of age;
- ~~(9)(7)~~ *No person under eighteen (18) years of age may be employed by a fireworks distribution facility, or manufacturing facility. No person under eighteen (18) years of age shall sell consumer fireworks at a consumer fireworks retail sales facility registered under Section 7 of this Act unless the individual is supervised by a parent or guardian;*
- (10) The state fire marshal may revoke the registration of any site which is in violation of a requirement of this section, or any other requirement provided pursuant to this chapter. If the violation renders any property especially susceptible to fire loss, and there is present such hazard to human life or limb that the public safety imperatively requires emergency action, the state fire marshal may take that action, as provided in KRS 227.330(6); *and*
- (11) *A person lawfully possessing consumer fireworks, as defined in KRS 227.702(2) and (3) may use those items if:*
 - (a) *He or she is at least eighteen (18) years of age;*
 - (b) *Fireworks are not ignited within two hundred (200) feet of any structure, vehicle, or any other person; and*
 - (c) *Use of the fireworks does not place him or her in violation of any lawfully enacted local ordinance.*

➔Section 8. KRS 227.750 is amended to read as follows:

- (1) *The state fire marshal, or any fire department having jurisdiction which has been deputized to act on behalf of the state fire marshal, shall cause to be removed at the expense of the owner all stocks of fireworks which are stored and held in violation of this chapter. After a period of sixty (60) days, the seized fireworks may be offered for sale by closed bid to a properly certified fireworks wholesaler.*
- (2) *After a period of sixty (60) days, the seized fireworks may be offered for sale by closed bid to a properly certified manufacturer, distributor, or wholesaler. All seized fireworks or explosives with a Class 1.3G or "Display" designation shall require the notification of the United States Bureau of Alcohol, Tobacco and Firearms. The state fire marshal shall provide the owner or possessor a receipt containing the complete inventory of any fireworks seized within five (5) business days of the seizure.*
- (3) *Before any seized fireworks may be disposed of:*
 - (a) *If the owner of the seized fireworks is known to the state fire marshal, the state fire marshal shall give notice by registered mail or personal service to the owner of the state fire marshal's intention to dispose of the fireworks. The notice shall inform the owner of the state fire marshal's intent. The state fire marshal shall conduct an administrative hearing in accordance with KRS Chapter 13B concerning the disposal of fireworks; or*
 - (b) *If the identity of the owner of any seized fireworks is not known to the state fire marshal, the state fire marshal shall cause to be published, in a newspaper of general circulation in the county in which the seizure was made, notice of the seizure, and of the state fire marshal's intention to dispose of the fireworks. The notice shall be published once each week for three (3) consecutive weeks. If no person claims ownership of the fireworks within ten (10) days of the date of the last publication, the state fire marshal may proceed with disposal of the fireworks. If the owner does claim the fireworks within ten (10) days of the date of the last publication, a hearing as set out in paragraph (a) of this subsection shall be held*
 - (4) *Nothing in KRS 227.700 to 227.750 shall restrict a local government from enacting ordinances that affect the sale or use of fireworks within their jurisdiction.*~~*The state fire marshal shall seize, take, remove, or cause to be removed at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter. All fireworks held, possessed, or used in violation of this chapter shall be destroyed as contraband.*~~

➔Section 9. KRS 227.708 is amended to read as follows:

- (1) Items described in KRS 227.702~~(4)~~ are legal for retail sale provided all applicable federal and state requirements with respect thereto are met.
- (2) Items described in ~~KRS 227.702(2) and (3) and~~ KRS 227.706 are not legal for retail sale but are legal under permits granted pursuant to KRS 227.710 for the purposes specified in this chapter for public displays and may be sold at wholesale as provided in this chapter.
- (3) Items described in KRS 227.704 are legal for retail sale provided all applicable federal and state requirements with respect thereto are met.

➔Section 10. KRS 227.782 is amended to read as follows:

- (1) There is hereby established in the State Treasury a special fund to be known as the fire prevention and public safety fund. The fund shall consist of all moneys recovered as penalties under KRS 227.778 *and moneys collected for fees pursuant to Section 7 of this Act.*~~;~~
- (2) *Notwithstanding KRS 45.229, fund amounts not expended at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.*
- (3) *Any interest earnings of the fund shall become a part of the fund and shall not lapse.*
- (4) The moneys shall be deposited to the credit of the fund and shall, in addition to any other moneys made available for such purpose, be made available to the state fire marshal to *administer Sections 1 to 10 of this Act and to* support fire safety and prevention programs.

➔Section 11. Whereas the ordinary effective date of legislation passed during the 2011 Regular Session of the Kentucky General Assembly would hinder persons subject to the provisions of this Act from complying with its requirements before the July 4 holiday, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 16, 2011.

CHAPTER 67**(HB 342)**

AN ACT relating to financial matters.

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

➔Section 1. KRS 395.005 is amended to read as follows:

The following persons may be appointed as fiduciary:

- (1) Any resident of the state of Kentucky, over eighteen (18) years of age, except as set out in KRS 395.080, and any national bank located in Kentucky having fiduciary powers and any state bank or trust company incorporated under the laws of the state of Kentucky and authorized by law to act as fiduciary;{+}
- (2) ***To the extent permitted pursuant to subsection (6) of Section 6 of this Act and Section 4 of this Act, any bank or trust company organized under the laws of a state other than Kentucky; and***
- (3) Any nonresident of legal age who is as to the decedent, ward, or incompetent, related by consanguinity, marriage, adoption or the spouse of such person so related.

➔Section 2. KRS 286.3-010 is amended to read as follows:

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

- (1) "Bank or state bank" means any bank which is now or may hereafter be organized under the laws of this state or a combined bank and trust company;
- (2) "National bank" or "national bank association" means a bank created by Congress and organized pursuant to the provisions of federal law, including savings and loan associations;
- (3) "Out-of-state bank" means a bank chartered under the laws of any state other than Kentucky;
- (4) "Home state" means:
 - (a) With respect to a state bank or out-of-state state bank, the state by which the bank is chartered; and
 - (b) With respect to a national bank, the state in which the main office of the bank is located;
- (5) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered;
- (6) "Host state" means a state, other than the home state, in which the bank maintains, or seeks to establish and maintain, a branch;
- (7) "Commissioner" means the commissioner of financial institutions;
- (8) "Department" means the Department of Financial Institutions;
- (9) "Population" means the population as indicated by the latest regular United States census;
- (10) "Trust company" includes every corporation authorized by this subtitle to do a trust business;
- (11) "Undivided profits" means the composite of the bank's net retained earnings from current and prior years' operations;
- (12) "Capital stock" shall mean, at any particular time, the sum of:
 - (a) The par value of all shares of the corporation having a par value that have been issued;
 - (b) The amount of the consideration received by the corporation for all shares of the corporation that have been issued without par value except such part of the consideration as has been allocated to surplus in a manner permitted by law; and
 - (c) Such amounts not included in paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether through the issuance of stock dividends, resolution of the bank's board of directors under applicable corporate law or otherwise by law;

- (13) "Surplus" means the amount of consideration received by the corporation for all shares issued without par value that has not been allocated to capital stock or the amount of consideration received by the corporation in excess of par value for all shares with a par value, or both;
- (14) "Municipality" means a county, city, or urban-county government;
- (15) "Political subdivision" means a municipality, school district, or other municipal authority;
- (16) "Corporation" means either a for-profit corporation or limited liability company;
- (17) "Share" means the shares of stock or the unit of equity into which the proprietary interests in a corporation are divided;
- (18) "Stock" means the corporation's shares;
- (19) "Stockholder" or "shareholder" means an owner of the corporation's shares;
- (20) "Board of directors" means the governing body of a corporation elected or otherwise chosen by the shareholders, including the managers of a limited liability company;
- (21) "Director" means a member of the board of directors;
- (22) "Articles of incorporation" means the organizing documents of a corporation filed with the Secretary of State in accordance with KRS Chapter 271B or 275;~~and~~
- (23) "Dividends" means a distribution of money, stock, or other property to shareholders of a corporation;
- (24) *"Out-of-state trust company" means a trust company that is chartered under the laws of a state other than Kentucky; and*
- (25) *"Trust representative office" means an office at which a trust company has been authorized by the commissioner to engage in a trust business other than acting as a fiduciary.*

➔SECTION 3. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *A Kentucky state trust company:*
 - (a) *May, at its trust office or offices in Kentucky or any other state or foreign country, act as a fiduciary and engage in trust business as permitted by Kentucky law or the applicable law of the state or foreign country; and*
 - (b) *May not, at its trust representative office or offices in Kentucky or any other state or foreign country, act as a fiduciary, but it may otherwise engage in other fiduciary related activities, including but not limited to marketing, soliciting, and operating through the trust representative office as permitted by this section.*
- (2) *A Kentucky state trust company may conduct any activities at an office outside of this state that are permissible for a trust company chartered by the host state where the office of the Kentucky state trust company is located, except to the extent the activities are expressly prohibited by the laws of Kentucky or by any applicable law of the host state or foreign country.*
- (3) *A Kentucky state trust company shall have and continuously maintain a principal office in this state.*
- (4) *A Kentucky state trust company may establish or acquire and maintain trust offices or trust representative offices in this state. A Kentucky state trust company desiring to establish or acquire and maintain an office in this state shall:*
 - (a) *File a written notice on a form prescribed by the commissioner setting forth the following:*
 - 1. *The name of the Kentucky state trust company;*
 - 2. *The location of the proposed office or offices; and*
 - 3. *The designation of the additional office or offices as trust offices or trust representative offices;*
 - (b) *Furnish the commissioner with a copy of the resolution adopted by the board of directors authorizing the office;*
 - (c) *Pay the filing fee, if any, prescribed by the commissioner;*

- (d) *Commence business at the office no sooner than thirty-one (31) days after the date the commissioner receives notice as specified by paragraph (a) of this subsection, unless the commissioner specifies an earlier or later date. The thirty (30) day period of review may be extended by the commissioner if he or she determines the notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the Kentucky state trust company may establish or acquire and maintain the additional office only on prior written approval by the commissioner. The commissioner may deny approval of the additional office if the commissioner finds that:*
1. *The Kentucky state trust company lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness;*
 2. *The proposed office would be contrary to the public interest; or*
 3. *The proposed expansion is not authorized by applicable law.*
- (5) *A Kentucky state trust company may establish or acquire and maintain a trust office or a trust representative office in a state other than this state. A Kentucky state trust company desiring to establish or acquire and maintain an office in another state shall:*
- (a) *File a written notice on a form prescribed by the commissioner setting forth the following:*
 1. *The name of the Kentucky state trust company;*
 2. *The location of the proposed office or offices;*
 3. *The designation of the additional office or offices as trust offices or trust representative offices; and*
 4. *An affirmation that the laws of the jurisdiction where the office will be located permit the office to be maintained by the trust company;*
 - (b) *Furnish the commissioner with a copy of the resolution adopted by the board of directors authorizing the out-of-state office;*
 - (c) *Pay the filing fee, if any, prescribed by the commissioner;*
 - (d) *Commence business at the office no sooner than thirty-one (31) days after the date the commissioner receives notice as specified by paragraph (a) of this subsection unless the commissioner specifies an earlier or later date. The thirty (30) day period of review may be extended by the commissioner if he or she determines the notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the Kentucky state trust company may establish or acquire and maintain the additional office only on prior written approval by the commissioner. The commissioner may deny approval of the additional office if the commissioner finds that:*
 1. *The Kentucky state trust company lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness;*
 2. *The proposed office would be contrary to the public interest; or*
 3. *The proposed expansion is not authorized by applicable law.*
- (6) *A Kentucky state trust company acquiring an office in this state or in any other state shall provide evidence to the commissioner that all fiduciary obligations and liabilities of the trust company being acquired have been properly discharged or assumed. An acquiring trust company shall succeed by operation of law to all of the rights, privileges, and obligations of the selling trust company.*

➔SECTION 4. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *An out-of-state trust company may establish or acquire and maintain a trust office or a trust representative office in this state only if trust companies chartered under the laws of Kentucky are permitted to establish or acquire and maintain offices, and engage in substantially similar activities permissible for out-of-state trust companies as established in Section 3 of this Act, in the state where the out-of-state trust company has its principal office. An out-of-state trust company that establishes or acquires and maintains a trust office or trust representative office in Kentucky pursuant to this section may conduct any activity in Kentucky that would be authorized under the laws of this state for a Kentucky state trust company.*
- (2) *An out-of-state trust company:*

- (a) *May, at its trust office or offices in Kentucky, act as a fiduciary in Kentucky, and may conduct any activity at the trust office or offices that would be authorized under the laws of this state for a Kentucky state trust company; and*
 - (b) *May not, at its trust representative office or offices in Kentucky, act as a fiduciary, but it may otherwise engage in other fiduciary related activities including but not limited to marketing, soliciting, and operating through the trust representative office, but only to the extent the home state of the out-of-state trust company permits trust companies chartered in Kentucky to engage in similar activities in the other state.*
 - (3) *An out-of-state trust company shall have and continuously maintain a trust office or trust representative office in this state.*
 - (4) (a) *An out-of-state trust company desiring to establish or acquire and maintain a trust office in this state shall:*
 - 1. *Provide, or cause its home state regulator to provide, on a form prescribed by the commissioner written notice of the proposed transaction. This form shall be provided to the commissioner on or after the date on which the out-of-state trust company applies for approval to establish or acquire and maintain an office in this state. The written notice shall set forth:*
 - a. *The name of the out-of-state trust company;*
 - b. *The location of the proposed office or offices; and*
 - c. *The designation of the additional office or offices as trust offices or trust representative offices;*
 - 2. *Furnish the commissioner with a copy of the resolution adopted by the board of directors of the out-of-state trust company authorizing the office;*
 - 3. *Pay the filing fee, if any, prescribed by the commissioner;*
 - 4. *Commence business at the trust office no sooner than sixty-one (61) days after the date the commissioner receives the notice specified by this subsection, unless the commissioner specifies an earlier or later date. With respect to an out-of-state trust company that is not a depository institution and for which the commissioner shall have conditioned approval upon satisfaction by the out-of-state trust company of any requirement applicable to a Kentucky state trust company, the out-of-state trust company must have satisfied those conditions and provided the commissioner with satisfactory evidence thereof. The sixty (60) day period of review may be extended by the commissioner if he or she determines the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust company may establish or acquire and maintain the office only on prior written approval of the commissioner. The commissioner may deny approval of the office if the commissioner finds that:*
 - a. *The out-of-state trust company lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness;*
 - b. *The proposed office is contrary to the public interest; or*
 - c. *The proposed expansion is not authorized under applicable law.*
- (5) *An out-of-state trust company acquiring an office shall:*
 - (a) *Provide evidence to the commissioner of compliance with:*
 - 1. *Requirements of the trust company's home state regulator and home state law for establishing or acquiring and maintaining the office; and*
 - 2. *Requirements to qualify as a foreign corporation under KRS Chapter 271B; and*
 - (b) *Provide evidence to the commissioner that all fiduciary obligations and liabilities of the trust company being acquired have been properly discharged or assumed. An acquiring trust company shall succeed by operation of law to all of the rights, privileges, and obligations of the selling trust company.*

Fulfillment of the requirements of this subsection shall not result in the establishment of an office of an out-of-state trust company in Kentucky until the commissioner, acting within sixty (60) days after receiving notice pursuant to this subsection, has certified to the home state regulator of the proposed out-of-state trust company that the requirements of this section have been met and the notice has been approved or, if applicable, that any conditions imposed by the commissioner pursuant to this subsection have been satisfied.

- (6) *An out-of-state trust company that establishes or acquires and maintains an office in this state shall confirm in writing to the commissioner prior to commencing to do business in this state, and at least annually thereafter, that for so long as it maintains a trust office or trust representative office in this state it will comply with all applicable laws of this state.*

➔Section 5. KRS 286.3-450 is amended to read as follows:

- (1) Every state bank, branch of an out-of-state state bank, or trust company doing business under the laws of this state shall be subject to inspection by the commissioner or by an examiner appointed by the commissioner. Examination shall be made of each institution at least once every twenty-four (24) months, unless other examinations are accepted as provided in subsections (3), (4), and (5) of this section, and not more than twice unless it appears from examination or from the reports of the institution that it has failed to comply with laws or regulations relating to banks or trust companies, or has engaged in unsafe or unsound banking practices.
- (2) The commissioner, deputy commissioner, and each examiner may compel the appearance of any person for the purpose of the examination, which shall be made in the presence of one (1) of the officers of the institution being examined.
- (3) Any bank that becomes a member of a Federal Reserve Bank shall be subject to the examination required by the Federal Reserve Act, (38 Stat. 251) as amended, and the commissioner may, in his discretion, accept examinations made by the Federal Reserve authorities in lieu of examinations made under state laws. The commissioner shall furnish to the Federal Reserve agent of the district in which the member bank is situated, copies of reports and examinations made of the member bank.
- (4) The commissioner may, in his discretion, accept examinations made by the Federal Deposit Insurance Corporation in lieu of examinations made under state laws.
- (5) The commissioner may, in his discretion, enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch of an out- of- state state bank, ~~or~~ any branch of a state bank in any host state, ***any trust office or trust representative office of an out-of-state trust company, or any trust office or trust representative office of a Kentucky state trust company in any host state.*** The commissioner may accept reports of examinations and reports of investigation from other bank supervisory agencies and home state regulators in lieu of examinations made under state law. The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any bank, bank holding company, branch of an out- of- state state bank, ~~or~~ any branch of a state bank located in any host state, ***any trust office or trust representative office of an out-of-state trust company, or any trust office or trust representative office of a Kentucky state trust company in any host state.*** Information produced or provided under this section shall be considered confidential as provided in KRS 286.3-470.

➔Section 6. KRS 286.3-920 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; and
 - (b) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.
- (2) A Kentucky state bank may establish, maintain, and operate one (1) or more branches in a state other than Kentucky in accordance with an interstate merger transaction in which the Kentucky state bank is the resulting bank, or if the other state permits, by acquisition of a branch or branches in the other state. Not later than the date on which the required application for the interstate merger transaction or branch acquisition is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner and pay the fee prescribed by KRS 286.3-480. The applicant shall also comply with the

applicable provisions of KRS 286.3-180(2) and the commissioner shall base his or her approval or disapproval in the same manner as prescribed in KRS 286.3-180(2).

- (3) An out- of- state state bank may establish, maintain, and operate one (1) or more branches in Kentucky in accordance with an interstate merger transaction in which the out- of- state state bank is the resulting bank in accordance with the requirements of Kentucky laws and administrative regulations. If the laws of the home state of the out- of- state bank place more restrictive terms or requirements on Kentucky state banks seeking to acquire and merge with a bank in that state, the interstate merger of the out- of- state bank may be allowed only under substantially the same terms and conditions as applicable to Kentucky state banks in that state. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner, pay the fee prescribed by KRS 286.3-480, and agree in writing to comply with the laws of this state applicable to its operation of branches in Kentucky. The applicant shall also comply with the applicable provisions of KRS 286.3-180(2) and the commissioner shall base his or her approval or disapproval in the same manner as prescribed in KRS 286.3-180(2).
- (4) No interstate merger transaction under subsection (2) or (3) of this section shall be approved if the transaction would result in a bank holding company having control of banks or branches in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally insured depository institutions in this state as reported in the most recent June 30 quarterly report made by the institutions to their respective supervisory authorities which are available at the time of the transaction.
- (5) An individual or bank holding company that controls two (2) or more banks may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank.
- (6) (a) A branch of an out-of-state state bank may conduct any activities that are authorized under the laws of this state for state banks. Additionally, the branch of an out-of-state state bank is authorized to conduct any activities relating to the administration of trusts that are authorized under the laws of its home state, if the activities are conducted in conformity with the laws of its home state.
 (b) *A branch office of an out-of-state bank may conduct any fiduciary activities that are authorized under the laws of this state for banks, provided that a branch office of a Kentucky bank is permitted, pursuant to the laws of the state under which the out-of-state bank is organized to engage in substantially similar activities.*
- (7) A branch of a Kentucky state bank located in a host state may conduct any activities that are:
 - (a) Authorized under the laws of the host state for banks chartered by the host state; or
 - (b) Authorized for branches of national banks located in the host state, but whose principal location is in a state other than the host state.

Signed by Governor March 16, 2011.

CHAPTER 68

(HB 358)

AN ACT relating to assignment of death benefits.

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

➔Section 1. KRS 61.705 is amended to read as follows:

- (1) Upon the death of a retired member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System who was receiving a monthly retirement allowance based on a minimum of forty-eight (48) months of service or whose retirement allowance based on a minimum of forty-eight (48) months was suspended in accordance with KRS 61.637, a death benefit of five thousand dollars (\$5,000) shall be paid. If the retired member had more than one (1) account in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System, the system

shall pay only one (1) five thousand dollar (\$5,000) death benefit. Application for the death benefit made to the Kentucky Retirement Systems shall include acceptable evidence of death and of the eligibility of the applicant to act on the deceased retired member's behalf.

- (2) The death benefit shall be paid to a beneficiary named by the retired member. Upon retirement or any time thereafter, the retired member may designate on the form prescribed by the board, death benefit designation, a person, the retired member's estate, a trust or trustee, or a licensed funeral home, as the beneficiary of the death benefit. The beneficiary for the death benefit may or may not be the same beneficiary designated in accordance with KRS 61.590(1). If the beneficiary designated under this section is a person and that person dies prior to the member, or if the beneficiary was the retired member's spouse and they were divorced on the date of the retired member's death, then the retired member's estate shall become the beneficiary, unless the retired member has filed a subsequent death benefit designation. If a licensed funeral home is designated as beneficiary and the licensed funeral home cannot be reasonably identified or located by Kentucky Retirement Systems at the time of the retired member's death, then the retired member's estate shall become the beneficiary of the death benefit.
- (3) If, at the time of the retired member's death, a debt to the Kentucky Retirement Systems remains on his or her account, the balance owed shall be deducted from the five thousand dollars (\$5,000) death benefit.
- (4) ***Upon the death of a retired member, the death benefit provided pursuant to this section may be assigned by the designated beneficiary to a bank or licensed funeral home.***

➔Section 2. KRS 161.655 is amended to read as follows:

- (1) Effective July 1, 2000, the Teachers' Retirement System shall:
 - (a) Provide a life insurance benefit in a minimum amount of five thousand dollars (\$5,000) for its members who are retired for service or disability. This life insurance benefit shall be payable upon the death of a member retired for service or disability to the member's estate or to a party designated by the member on a form prescribed by the retirement system; and
 - (b) Provide a life insurance benefit in a minimum amount of two thousand dollars (\$2,000) for its active contributing members. This life insurance benefit shall be payable upon the death of an active contributing member to the member's estate or to a party designated by the member on a form prescribed by the retirement system.
- (2) The member may name one (1) primary and one (1) contingent beneficiary for receipt of the life insurance benefit. To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of the life insurance benefit. Members may designate as beneficiaries only presently identifiable and existing individuals, or trusts where otherwise permitted, without contingency instructions, on forms prescribed by the retirement system. In the event that a member fails to designate a beneficiary, or all designated beneficiaries predecease the member, the member's estate shall be deemed to be the beneficiary. Any beneficiary designation made by the member, including the estate should the estate become the beneficiary by default, shall remain in effect until changed by the member on forms prescribed by the retirement system, except in the event of subsequent marriage or divorce. A valid marriage license shall terminate any previously designated beneficiary, even that of a trust, and establish the spouse as beneficiary unless, subsequent proof of the marriage, the member or retired member redesignates someone other than the new spouse as the beneficiary. A final divorce decree shall terminate the beneficiary status of an ex-spouse unless, subsequent to divorce, the member redesignates the former spouse as a beneficiary. A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust.
- (3) Application for payment of life insurance proceeds shall be made to the Teachers' Retirement System together with acceptable evidence of death and eligibility. The reciprocal provisions of KRS 61.680(2)(a) shall not apply to the coverage and payment of proceeds by the life insurance benefit under this section.
- (4) Suit or civil action shall not be required for the collection of the proceeds of the life insurance benefit provided for by this section, but nothing in this section shall prevent the maintenance of suit or civil action against the beneficiary or legal representative receiving the proceeds of the life insurance benefit.
- (5) ***Upon the death of a member of the Teachers' Retirement System, the life insurance provided pursuant to subsection (1) of this section may be assigned by the designated beneficiary to a bank or licensed funeral home.***

➔Section 3. KRS 61.690 is amended to read as follows:

- (1) Except as otherwise provided by this section *and subsection (4) of Section 1 of this Act*, all retirement allowances and other benefits accrued or accruing to any person under the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, and the accumulated contributions and cash securities in the funds created under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, are hereby exempt from any state, county, or municipal tax, and shall not be subject to execution, attachment, garnishment, or any other process, and shall not be assigned.
- (2) Notwithstanding the provisions of subsection (1) of this section, retirement benefits accrued or accruing to any person under the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852 on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.
- (3) Qualified domestic relations orders issued by a court or administrative agency shall be honored by the retirement system if:
 - (a) The benefits payable pursuant to the order meet the requirements of a qualified domestic relations order as provided by 26 U.S.C. sec. 414(p). The retirement system shall follow applicable provisions of 26 U.S.C. sec. 414(p) in administering qualified domestic relations orders;
 - (b) The order meets the requirements established by the retirement system and by subsections (3) to (11) of this section. The board of trustees of the retirement system shall establish the requirements, procedures, and forms necessary for the administration of qualified domestic relations orders by promulgation of administrative regulations in accordance with KRS Chapter 13A; and
 - (c) The order is on the form established by the retirement system pursuant to the retirement system's authority provided under paragraph (3)(b) of this subsection.
- (4) A qualified domestic relations order shall not:
 - (a) Require the retirement system to take any action not authorized under state or federal law;
 - (b) Require the retirement system to provide any benefit, allowance, or other payment not authorized under state or federal law;
 - (c) Grant or be construed to grant the alternate payee any separate right, title, or interest in or to any retirement benefit other than to receive payments from the participant's account in accordance with the administrative regulations promulgated by the retirement system and as provided by subsections (3) to (11) of this section; or
 - (d) Grant any separate interest to any person other than the participant.
- (5) Any qualified domestic relations order submitted to the retirement system shall specify the dollar amount or percentage amount of the participant's benefit to be paid to the alternate payee. In calculating the amount to be paid to the alternate payee, the court or administrative agency that is responsible for issuing the order shall follow the requirements set forth in the administrative regulations promulgated by the board of trustees. Notwithstanding any other statute to the contrary, the board shall not be required to honor a qualified domestic relations order that does not follow the requirements set forth in the administrative regulations promulgated by the board of trustees.
- (6) If the qualified domestic relations order meets the requirements established by the system and by subsections (3) to (11) of this section, payments to the alternate payee shall begin under the following conditions:
 - (a) If the participant is retired and is receiving a monthly benefit, the month following the date the retirement system receives a qualified domestic relations order that complies with the administrative regulations promulgated by the retirement system and subsections (3) to (11) of this section; or
 - (b) If the participant is not retired, the month of the participant's effective retirement date in which the first retirement allowance is payable to the participant or the month in which the participant receives a refund of contributions as provided by KRS 61.625.
- (7) An alternate payee's benefits and rights under a qualified domestic relations order shall terminate upon the earlier of:
 - (a) The death of the participant;
 - (b) The death of the alternate payee; or

- (c) The termination of the participant's benefits under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.
- (8) An alternate payee shall not receive a monthly payment under a qualified domestic relations order if the participant is not receiving a monthly retirement allowance.
- (9) The cost of living adjustment provided to the participant pursuant to KRS 61.691 shall be divided between the participant and alternate payee in a qualified domestic relations order as follows:
 - (a) If the order specifies the alternate payee is to receive a percentage of the participant's benefit, then the cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or
 - (b) If the order specifies that the alternate payee is to receive a set dollar amount of the participant's benefit, then the order shall specify that:
 - 1. The cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or
 - 2. The alternate payee shall receive no cost of living adjustment.

If the order does not specify the division of the cost of living adjustment as required by this paragraph, then no cost of living adjustment shall be payable to the alternate payee. If no cost of living adjustment is provided to the alternate payee, then the participant shall receive the full cost of living adjustment he or she would have received if the order had not been applied to the participant's account.
- (10) Except in cases involving child support payments, the retirement system may charge reasonable and necessary fees and expenses to the recipient and the alternate payee of a qualified domestic relations order for the administration of the qualified domestic relations order by the retirement system. All fees and expenses shall be established by administrative regulations promulgated by the board of trustees of the retirement system. The qualified domestic relations order shall specify whether the fees and expenses provided by this subsection shall be paid:
 - (a) Solely by the participant;
 - (b) Solely by the alternate payee; or
 - (c) Equally shared by the participant and alternate payee.
- (11) The retirement system shall honor a qualified domestic relations order issued prior to July 15, 2010, if:
 - (a) The order was on file and approved by the retirement system prior to July 15, 2010. All benefits, including cost of living adjustments payable to the alternate payee, for orders that meet the requirements of this paragraph shall not be eliminated or reduced as a result of the provisions of subsections (3) to (10) of this section and KRS 61.510(27) and 78.510(26); or
 - (b) The order or an amended version of the order meets the requirements established by this section and the administrative regulations promulgated by the retirement system. The order shall not apply to benefit payments issued by the retirement system prior to the date the order was approved by the retirement system.

➔Section 4. KRS 161.700 is amended to read as follows:

- (1) Except as otherwise provided by this section *and subsection (5) of Section 2 of this Act*, the right of a member to a retirement allowance and to the return of contributions, any benefit or right accrued or accruing to any person under KRS 161.220 to 161.716, and the money in the various funds established pursuant to KRS 161.220 to 161.716 are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or other process, and shall not be assigned.
- (2) Notwithstanding subsection (1) of this section, retirement benefits accrued or accruing to any person under this retirement system on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.
- (3) Retirement allowance, disability allowance, accumulated contributions, or any other benefit under the retirement system shall not be classified as marital property pursuant to KRS 403.190(1), except to the extent permitted under KRS 403.190(4). Retirement allowance, disability allowance, accumulated contributions, or

any other benefit under the retirement system shall not be considered as an economic circumstance during the division of marital property in an action for dissolution of marriage pursuant to KRS 403.190(1)(d), except to the extent permitted under KRS 403.190(4).

- (4) Qualified domestic relations orders issued by a court or administrative agency shall be honored by the retirement system if:
 - (a) The benefits payable pursuant to the order meet the requirements of a qualified domestic relations order as provided by 26 U.S.C. sec. 414(p). The retirement system shall follow applicable provisions of 26 U.S.C. sec. 414(p) in administering qualified domestic relations orders;
 - (b) The order meets the requirements established by the retirement system and by subsections (4) to (12) of this section. The board of trustees of the retirement system shall establish the requirements, procedures, and forms necessary for the administration of qualified domestic relations order by promulgation of administrative regulations in accordance with KRS Chapter 13A; and
 - (c) The order is on the form established by the retirement system pursuant to the retirement system's authority provided under paragraph (b) of this subsection.
- (5) A qualified domestic relations order shall not:
 - (a) Require the retirement system to take any action not authorized under state or federal law;
 - (b) Require the retirement system to provide any benefit, allowance, or other payment not authorized under state or federal law;
 - (c) Grant or be construed to grant the alternate payee any separate right, title, or interest in or to any retirement benefit other than to receive payments from the participant's account in accordance with the administrative regulations promulgated by the system and as provided by subsections (4) to (12) of this section; or
 - (d) Grant any separate interest to any person other than the participant.
- (6) Any qualified domestic relations order submitted to the retirement system shall specify the dollar amount or percentage amount of the participant's benefit to be paid to the alternate payee. In calculating the amount to be paid to the alternate payee, the court or administrative agency that is responsible for issuing the order shall follow the requirements set forth in the administrative regulations promulgated by the board of trustees. Notwithstanding any other statute to the contrary, the board shall not be required to honor a qualified domestic relations order that does not follow the requirements set forth in the administrative regulations promulgated by the board of trustees.
- (7) If the qualified domestic relations order meets the requirements established by the system and by subsections (4) to (12) of this section, payments to the alternate payee shall be distributed under the following conditions:
 - (a) If the participant is retired and is receiving a monthly benefit, the month following the date the retirement system receives a qualified domestic relations order that complies with the administrative regulations promulgated by the retirement system and subsections (4) to (12) of this section; or
 - (b) If the participant is not retired, the month of the participant's effective retirement date in which the first retirement allowance is payable to the participant or the month in which the participant receives a refund of contributions as provided by KRS 161.470(6).
- (8) An alternate payee's benefits and rights under a qualified domestic relations order shall terminate upon the earlier of:
 - (a) The death of the participant;
 - (b) The death of the alternate payee; or
 - (c) The termination of benefits to the participant under any provision of KRS 161.220 to 161.716.
- (9) An alternate payee shall not receive a monthly payment under a qualified domestic relations order if the participant is not receiving a monthly retirement allowance.
- (10) The cost of living adjustment provided to the participant pursuant to KRS 161.620 shall be divided between the participant and alternate payee in a qualified domestic relations order as follows:
 - (a) If the order specifies the alternate payee is to receive a percentage of the participant's benefit, then the cost of living adjustment shall be divided between the participant and the alternate payee based upon

the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or

- (b) If the order specifies that the alternate payee is to receive a set dollar amount of the participant's benefit, then the order shall specify that:
 - 1. The cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or
 - 2. The alternate payee shall receive no cost of living adjustment.

If the order does not specify the division of the cost of living adjustment as required by this paragraph, then no cost of living adjustment shall be payable to the alternate payee. If no cost of living adjustment is provided to the alternate payee, then the participant shall receive the full cost of living adjustment he or she would have received if the order had not been applied to the participant's account.

- (11) Except in cases involving child support payments, the retirement system may charge reasonable and necessary fees and expenses to the recipient and the alternate payee of a qualified domestic relations order for the administration of the qualified domestic relations order by retirement system. All fees and expenses shall be established by the administrative regulations promulgated by the board of trustees of the retirement system. The qualified domestic relations order shall specify whether the fees and expenses provided by this subsection shall be paid:
 - (a) Solely by the participant;
 - (b) Solely by the alternate payee; or
 - (c) Equally shared by the participant and alternate payee.
- (12) The retirement system shall honor a qualified domestic relations order issued prior to July 15, 2010, for prospective benefit payments if the order or an amended version of the order meets the requirements established by this section and the administrative regulations promulgated by the retirement system. The order shall not apply to benefit payments issued by the retirement system prior to the date the order was approved by the retirement system.

Signed by Governor March 16, 2011.

CHAPTER 69

(HB 382)

AN ACT relating to consumer protection.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) ***For the first thirty (30) days following a motor vehicle accident, a person, as that term is defined in KRS 446.010, shall not directly solicit or knowingly permit another person to directly solicit an individual, or a relative of an individual, involved in a motor vehicle accident for the provision of any service related to a motor vehicle accident.***
- (2) ***For the purposes of this section, "solicit":***
 - (a) ***Means to initiate communication in anticipation of financial gain or remuneration for value; and***
 - (b) ***Does not include:***
 - 1. ***Advertising directed to the general public;***
 - 2. ***Communications by fire, police, or emergency medical personnel dispatched to a motor vehicle accident; and***

3. *Communications by an insurer as defined by KRS 304.1-040, an agent as defined by KRS 304.9-020, or an adjuster licensed pursuant to Subtitle 9 of KRS Chapter 304, as those terms are defined in KRS Chapter 304, or an employee of an insurer or agent.*

(3) *A person who knowingly violates this section shall be subject to a one thousand dollar (\$1,000) fine.*

(4) *In addition to the penalty provided in subsection (3) of this section:*

- (a) *A person licensed or certified by a regulating authority in Kentucky who violates this section may be sanctioned by the licensing or regulating authority;*
- (b) *Any charges owed by or on behalf of an individual involved in a motor vehicle accident for services rendered by or on or behalf of a person who violates this section shall be void; and*
- (c) *Any moneys paid by or on behalf of a victim of a motor vehicle accident for services rendered by or on behalf of a person who violates this section shall be forfeited and returned to the payor.*

➔Section 2. KRS 21A.310 is amended to read as follows:

- (1) Notwithstanding KRS 21A.160, any person violating any provision of KRS 21A.300 shall, upon conviction, be guilty of a Class A misdemeanor.
- (2) The Kentucky Supreme Court may discipline any attorney who violates any provision of KRS 21A.300.
- (3) A penalty may be imposed on an attorney pursuant to subsection (1) of this section, subsection (2) of this section, or both subsections.
- (4) *In addition to any penalties imposed pursuant to subsections (1) and (2) of this section, the penalties provided under subsection (4)(b) and (c) of Section 1 of this Act shall be imposed.*

➔SECTION 3. A NEW SECTION OF KRS 199.892 TO 199.896 IS CREATED TO READ AS FOLLOWS:

- (1) *A child-care center licensed under KRS 199.896 shall have a written plan for evacuation in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to the children in the center. The plan shall include but not be limited to:*
 - (a) *A designated relocation site and evacuation route;*
 - (b) *Procedures for notifying parents of the relocation and ensuring family reunification;*
 - (c) *Procedures to address the needs of individual children including children with special needs;*
 - (d) *Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;*
 - (e) *Coordination with local emergency management officials; and*
 - (f) *A program to ensure that appropriate staff are familiar with the plan's components.*
- (2) *A child-care center shall update the evacuation plan by December 31 each year.*
- (3) *A child-care center shall retain an updated copy of the plan for evacuation, provide an updated copy to appropriate local emergency management officials, and provide a copy to each parent, custodian, or guardian of the child at the time of the child's enrollment in the program and whenever the plan is updated.*

➔Section 4. Section 3 of this Act takes effect December 31, 2011.

Signed by Governor March 16, 2011.

CHAPTER 70

(HB 387)

AN ACT relating to advance deposit account wagering licenses.

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

➔SECTION 1. KRS 230.210 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

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

- (1) *"Advance deposit account wagering" means a form of pari-mutuel wagering in which an individual may establish an account with a person or entity licensed by the racing commission, and may place a pari-mutuel wager through that account that is permitted by law;*
- (2) *"Advance deposit account wagering licensee" means a person or entity licensed by the racing commission to conduct advance deposit account wagering and accept deposits and wagers, issue a receipt or other confirmation to the account holder evidencing such deposits and wagers, and transfer credits and debits to and from accounts;*
- (3) *"Appaloosa race" or "Appaloosa racing" means that form of horse racing in which each horse participating in the race is registered with the Appaloosa Horse Club of Moscow, Idaho, and is mounted by a jockey;*
- (4) *"Arabian" means a horse that is registered with the Arabian Horse Registry of Denver, Colorado;*
- (5) *"Association" means any person licensed by the Kentucky Horse Racing Commission under KRS 230.300 and engaged in the conduct of a recognized horse race meeting;*
- (6) *"Harness race" or "harness racing" means trotting and pacing races of the standardbred horses;*
- (7) *"Horse race meeting" means horse racing run at an association licensed and regulated by the Kentucky Horse Racing Commission, and may include thoroughbred, harness, and quarter horse racing;*
- (8) *"Host track" means the track conducting racing and offering its racing for intertrack wagering, or, in the case of interstate wagering, means the Kentucky track conducting racing and offering simulcasts of races conducted in other states or foreign countries;*
- (9) *"Intertrack wagering" means pari-mutuel wagering on simulcast horse races from a host track by patrons at a receiving track;*
- (10) *"Interstate wagering" means pari-mutuel wagering on simulcast horse races from a track located in another state or foreign country by patrons at a receiving track or simulcast facility;*
- (11) *"Kentucky Quarter Horse Purse Program" means a purse program established to receive funds from the racing commission for purse programs established in KRS 230.3771(4) to supplement purses for quarter horse races. The purse program shall be administered by the Kentucky Quarter Horse Racing Association;*
- (12) *"Kentucky resident" means:*
 - (a) *An individual domiciled within this state;*
 - (b) *An individual who maintains a place of abode in this state and spends, in the aggregate, more than one hundred eighty-three (183) days of the calendar year in this state; or*
 - (c) *An individual who lists a Kentucky address as his or her principal place of residence when applying for an account to participate in advance deposit account wagering;*
- (13) *"Principal" means any of the following individuals associated with a partnership, trust, association, limited liability company, or corporation that is licensed to conduct a horse race meeting or an applicant for a license to conduct a horse race meeting:*
 - (a) *The chairman and all members of the board of directors of a corporation;*
 - (b) *All partners of a partnership and all participating members of a limited liability company;*
 - (c) *All trustees and trust beneficiaries of an association;*
 - (d) *The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;*
 - (e) *All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and*
 - (f) *Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation;*
- (14) *"Quarter horse" means a horse that is registered with the American Quarter Horse Association of Amarillo, Texas;*

- (15) *"Racing commission" means the Kentucky Horse Racing Commission;*
- (16) *"Receiving track" means a track where simulcasts are displayed for wagering purposes. A track that submits an application for intertrack wagering shall meet all the regulatory criteria for granting an association license of the same breed as the host track, and shall have a heated and air-conditioned facility that meets all state and local life safety code requirements and seats a number of patrons at least equal to the average daily attendance for intertrack wagering on the requested breed in the county in which the track is located during the immediately preceding calendar year;*
- (17) *"Simulcast facility" means any facility approved pursuant to the provisions of KRS 230.380 to simulcast racing and conduct pari-mutuel wagering;*
- (18) *"Simulcasting" means the telecast of live audio and visual signals of horse races for the purpose of pari-mutuel wagering;*
- (19) *"Telephone account wagering" means a form of pari-mutuel wagering where an individual may deposit money in an account at a track and may place a wager by direct telephone call or by communication through other electronic media owned by the holder of the account to the track;*
- (20) *"Thoroughbred race" or "thoroughbred racing" means a form of horse racing in which each horse participating in the race is a thoroughbred, (i.e., meeting the requirements of and registered with The Jockey Club of New York) and is mounted by a jockey; and*
- (21) *"Track" means any association duly licensed by the Kentucky Horse Racing Commission to conduct horse racing. "Track" shall include any facility or real property that is owned, leased, or purchased by a track within the same geographic area within a sixty (60) mile radius of a track but not contiguous to track premises, upon racing commission approval, and provided the noncontiguous property is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.*

➔ Section 2. KRS 230.260 is amended to read as follows:

The racing commission, in the interest of breeding or the improvement of breeds of horses, shall have all powers necessary and proper to carry out fully and effectually the provisions of this chapter including, but without limitation, the following:

- (1) The racing commission is vested with jurisdiction and supervision over all horse race meetings in this Commonwealth and over all associations and all persons on association grounds and may eject or exclude therefrom or any part thereof, any person, licensed or unlicensed, whose conduct or reputation is such that his presence on association grounds may, in the opinion of the racing commission, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing or racing at horse race meetings; provided, however, no persons shall be excluded or ejected from association grounds solely on the ground of race, color, creed, national origin, ancestry, or sex;
- (2) The racing commission is vested with jurisdiction over any *person or entity that offers advance deposit account wagering to Kentucky residents*~~[SPMO that offers and accepts pari-mutuel wagers on races conducted at any racing association within the Commonwealth]~~. *Any such person or entity*~~[An SPMO]~~ under the jurisdiction of the racing commission shall be licensed by the racing commission, and the racing commission may impose a license fee~~[on an SPMO]~~ not to exceed ten thousand dollars (\$10,000) annually. The racing commission shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish conditions and procedures for the licensing of *advance deposit account wagering providers*~~[SPMOs, and]~~ *to include but not be limited to:*
 - (a) A fee schedule for applications for licensure; *and*
 - (b) *Reporting requirements to include quarterly reporting on:*
 - 1. *The amount wagered on Kentucky races; and*
 - 2. *The total amount wagered by Kentuckians;*
- (3) The racing commission is vested with jurisdiction over any totalisator company that provides totalisator services to a racing association located in the Commonwealth. A totalisator company under the jurisdiction of the racing commission shall be licensed by the racing commission, regardless of whether a totalisator company is located in the Commonwealth or operates from a location or locations outside of the Commonwealth, and

the racing commission may impose a license fee on a totalisator company. The racing commission shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish conditions and procedures for the licensing of totalisator companies, and a fee schedule for applications for licensure;

- (4) The racing commission is vested with jurisdiction over any manufacturer, wholesaler, distributor, or vendor of any equine drug, medication, therapeutic substance, or metabolic derivative which is purchased by or delivered to a licensee or other person participating in Kentucky horse racing by means of the Internet, mail delivery, in-person delivery, or other means;
- (5) The racing commission is vested with jurisdiction over any horse training center or facility in the Commonwealth that records official timed workouts for publication;
- (6) The racing commission may require an applicant for a license under subsections (2) and (3) of this section to submit to a background check of the applicant, or of any individual or organization associated with the applicant. An applicant shall be required to reimburse the racing commission for the cost of any background check conducted;
- (7) The racing commission, its representatives and employees, may visit, investigate and have free access to the office, track, facilities, or other places of business of any licensee, or any person owning a horse or performing services regulated by this chapter on a horse registered to participate in a breeders incentive fund under the jurisdiction of the racing commission;
- (8) The racing commission shall have full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting;
- (9) Applications for licenses shall be made in the form, in the manner, and contain information as the racing commission may, by administrative regulation, require. Fees for all licenses issued under KRS 230.310 shall be prescribed by and paid to the racing commission;
- (10) The racing commission shall establish by administrative regulation minimum fees for jockeys to be effective in the absence of a contract between an employing owner or trainer and a jockey. The minimum fees shall be no less than those of July 1, 1985;
- (11) The racing commission may refuse to issue or renew a license, revoke or suspend a license, impose probationary conditions on a license, issue a written reprimand or admonishment, impose fines or penalties, deny purse money, require the forfeiture of purse money, or any combination thereof with regard to a licensee or other person participating in Kentucky horse racing for violation of any federal or state statute, regulation, or steward's or racing commission's directive, ruling, or order to preserve the integrity of Kentucky horse racing or to protect the racing public. The racing commission shall, by administrative regulation, establish the criteria for taking the actions described in this subsection;
- (12) The racing commission may issue subpoenas for the attendance of witnesses before it and for the production of documents, records, papers, books, supplies, devices, equipment, and all other instrumentalities related to pari-mutuel horse racing within the Commonwealth. The racing commission may administer oaths to witnesses and require witnesses to testify under oath whenever, in the judgment of the racing commission, it is necessary to do so for the effectual discharge of its duties;
- (13) The racing commission shall have authority to compel any racing association licensed under this chapter to file with the racing commission at the end of its fiscal year, a balance sheet, showing assets and liabilities, and an earnings statement, together with a list of its stockholders or other persons holding a beneficial interest in the association; and
- (14) The racing commission shall promulgate administrative regulations establishing safety standards for jockeys, which shall include the use of rib protection equipment. Rib protection equipment shall not be included in a jockey's weight.

Signed by Governor March 16, 2011.

(HB 470)

AN ACT relating to mortgage originator licensing.

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

➔Section 1. KRS 286.8-290 is amended to read as follows:

- (1) The following mortgage loan originators shall be subject to subsections (3) and (4) of this section, but shall be exempt from the registration and regulatory requirements of KRS 286.8-255:
 - (a) An individual employed by the following institutions and acting on behalf of such institutions:
 1. A depository institution;
 2. A subsidiary that is:
 - a. Owned and controlled by a depository institution; and
 - b. Regulated by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, or the Federal Deposit Insurance Corporation; or
 3. An institution regulated by the Farm Credit Administration;
 - (b) A licensed attorney who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
 - (c) A natural person who originates a mortgage loan on behalf of an immediate family member of the natural person unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;~~[-and]~~
 - (d) A natural person who originates a mortgage loan secured by a dwelling that served as the natural person's residence unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator; *and*
 - (e) *A person who originates a mortgage loan secured by a dwelling; and*
 1. *Who is exempted by an order of the commissioner; and*
 2. *Whose exemption would not be contrary to the registration requirements of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto.*
- (2) The following mortgage loan processors shall be subject to subsections (3) and (4) of this section, but shall be exempt from the registration and regulatory requirements of KRS 286.8-255:
 - (a) Any natural person exempted in subsection (1) of this section; and
 - (b) Any natural person employed by a person exempted in KRS 286.8-020(1)(a), (b), (c), (d), (e), (f), or (g) and acting on behalf of such person.
- (3) Notwithstanding any provisions to the contrary set forth in this subtitle, no mortgage loan originator or mortgage loan processor shall impede the commissioner or an examiner of the commissioner from interviewing any person regarding any potential violations of this subtitle.
- (4) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan originator and mortgage loan processor shall make available and grant access to the commissioner or an examiner of the commissioner the records in the originator's or processor's possession or control that are subject to the provisions of this subtitle.

Signed by Governor March 16, 2011.

CHAPTER 72**(HB 464)**

AN ACT relating to the correction of factual errors in state-adopted textbooks.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 156 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Board of Education shall promulgate administrative regulations to establish procedures for reviewing and resolving claims of factual errors found in textbooks after adoption by the State Textbook Commission.*
- (2) *The administrative regulations shall include:*
 - (a) *A process for an individual who believes that a factual error or errors have been found to file notice of his or her findings;*
 - (b) *A methodology for validating the accuracy of a claim of factual error;*
 - (c) *The development of conditions to include in publishers' contracts specifying protocols for correcting errors which take into account the following:*
 1. *The extensiveness of the errors found;*
 2. *The remaining time left until the next textbook adoption cycle at the time the claim is determined to be valid;*
 3. *Conditions that would necessitate replacement of a book in its entirety; and*
 4. *Conditions that could be addressed through the insertion of corrections in textbooks without replacement;*
 - (d) *Notice to school districts of errors, if found, and the resolution determined to be available; and*
 - (e) *Notice to the claimant relative to the validation review and the resolution determined to be available if the claim of error was validated.*

Signed by Governor March 16, 2011.

CHAPTER 73**(HB 478)**

AN ACT relating to budget memoranda.

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

➔Section 1. KRS 13A.222 is amended to read as follows:

- (1) In a new administrative regulation, there shall be no underlining or bracketing.
- (2) In an amendment to an administrative regulation, the new words shall precede the deleted words. Exceptions may be permitted by the regulations compiler. The administrative body shall:
 - (a) Underline all new words; and
 - (b) Place the deleted words in brackets and strike through these words.
- (3)
 - (a) An administrative regulation shall not be amended by reference to a section only. An amendment shall contain the full text of the administrative regulation being amended.
 - (b) A section of an administrative regulation shall not be reserved for future use.
- (4) In drafting administrative regulations, the administrative body shall comply with the following:

- (a) The administrative body shall use plain and unambiguous words that are easily understood by laymen. The administrative body shall avoid ambiguous, indefinite, or superfluous words and phrases;
- (b) A duty, obligation, or prohibition shall be expressed by "shall" or "shall not." "Should," "could," or "must" shall not be used. The future tense shall not be expressed by the word "shall." A discretionary power shall be expressed by "may;"
- (c) The words "said," "aforesaid," "hereinabove," "hereinafter," "beforementioned," "whatsoever," or similar words of reference or emphasis shall not be used. Where an article may be used, the administrative body shall not use the word "such." It shall not use the expression "and/or" and shall not separate alternatives with a slash. It shall not use contractions. When a number of items are all mandatory, the word "and" shall be used. When all of a number of items are not mandatory, the word "or" shall be used;
- (d) Certain words are defined in the Kentucky Revised Statutes. Where applicable, these definitions shall be used. Definitions appearing in the Kentucky Revised Statutes shall not be duplicated in a proposed administrative regulation. A reference shall be made to the chapters and sections of the Kentucky Revised Statutes in which the definitions appear;
- (e) If definitions are used, they shall be placed in alphabetical order in the first section of an administrative regulation or in a separate administrative regulation. The section or administrative regulation shall be titled "Definitions." If definitions are placed in the first section of an administrative regulation, the definitions shall govern only the terms in that administrative regulation. If definitions are placed in a separate administrative regulation, that administrative regulation shall be the first administrative regulation of the specific chapter of the Kentucky Administrative Regulations Service to which the definitions apply. The title of the administrative regulation shall also contain the number of the chapter of the Kentucky Administrative Regulations Service to which the definitions apply. In the text of an administrative regulation, the word defined in the definitions section, rather than the definition, shall be used. Definitions shall be used only:
 - 1. When a word is used in a sense other than its dictionary meaning, or is used in the sense of one of several dictionary meanings;
 - 2. To avoid repetition of a phrase; or
 - 3. To limit or extend the provisions of an administrative regulation;
- (f) If a word has the same meaning as a phrase, the word shall be used;
- (g) The present tense and the indicative mood shall be used. Conditions precedent shall be stated in the perfect tense if their happening is required to be completed;
- (h) The same arrangement and form of expression shall be used throughout an administrative regulation, unless the meaning requires variations;
- (i) "If" or "except" shall be used rather than "provided that" or "provided, however." "If" shall be used to express conditions, rather than the words "when" or "where;"
- (j) A word importing the masculine gender may extend to females. A word importing the singular number may extend to several persons or things;
- (k) Any reference in an administrative regulation to "medical doctor," "M.D.," or "physician" shall be deemed to include a doctor of osteopathy or D.O., unless either of those terms is specifically excluded.
- (l) An administrative body shall use the phrases specified in this subsection:

| | |
|---------------------------|-------------------------|
| Do Not Use: | Use: |
| And/or | "and" for a conjunctive |
| | "or" for a disjunctive |
| Any and all | either word |
| As provided in this | |
| administrative regulation | ---- |
| At the time | when |

| | |
|--------------------------------|---|
| And the same hereby is | is |
| Either directly or indirectly | ---- |
| Except where otherwise | State specific |
| provided | exemption. |
| Final and conclusive | final |
| Full force and effect | force or effect |
| In the event that; In case | if |
| Is authorized; Is empowered | may |
| Is defined and shall be | |
| construed to mean | means |
| Is hereby required to | shall |
| It shall be lawful | may |
| Latin words | Do not use unless medical or scientific terminology. |
| Null and void and of no effect | void |
| Order and direct | either word |
| Provision of law | law |
| Until such time as | until |
| Whenever | if |

- (m) 1. Unless the authority for an administrative regulation is an appropriation provision that is not codified in the Kentucky Revised Statutes, the specific chapter and section number of the Kentucky Revised Statutes authorizing the promulgation of an administrative regulation shall be cited.
2. a. If an act has not been codified in the Kentucky Revised Statutes at the time an administrative regulation is promulgated, or if the authority is any branch budget bill, the citation shall be as follows: "(year) Ky. Acts ch. (chapter number), sec. (section number)." When an act has been codified, the administrative body shall notify the regulations compiler of the proper citation in writing. Upon receipt of the written notice, the regulations compiler shall correct the citation.
- b. For acts of extraordinary sessions, the citation shall be as follows: "(year) (Extra. Sess.) Ky. Acts ch. (chapter number), sec. (section number)." If there is more than one (1) extraordinary session of the General Assembly in the year, the citation shall specify the specific extraordinary session, as follows: "(year) (2d Extra. Sess.) Ky. Acts ch. (chapter number), sec. (section number)."
3. When an act has been codified, the administrative body shall notify the regulations compiler of the proper citation of the Kentucky Revised Statutes in writing. Upon receipt of the written notice, the regulations compiler shall correct the citation.
4. ~~{a.} If the statutory authority is an appropriation act, the citation shall be as follows: "(year) Ky. Acts ch. (chapter number), Part (part and subpart numbers)."~~
~~{b.} If appropriate, the citation of an appropriation act shall include a citation to the appropriate part of the budget memorandum.~~
5. If the authority is an executive order, the citation shall be as follows: "EO (year executive order issued)-(number of executive order)."
- (n) If the statutory authority is a federal law, the citation shall be the:
1. United States Code (U.S.C.), if it has been codified; or

2. Public Law (Pub. L.) and official session laws, if it has not been codified.
- (o) 1. If the statutory authority is a federal regulation codified in the Code of Federal Regulations, the citation shall include the title, part, and section number, as follows: "(title number) C.F.R. (part and section number)."
2. a. If the statutory authority is a federal regulation that has not been codified in the Code of Federal Regulations, the citation shall be to the Federal Register, as follows: "(volume number) Fed. Reg. (page number) (effective date of the federal regulation) (section of Code of Federal Regulations in which it will be codified)."
- b. When the federal regulation is codified, the citation shall be amended to read as provided by subparagraph 1. of this paragraph.
3. a. If the statutory authority is a federal regulation that has been amended, and the amendment is not reflected in the current issue date of the volume of the Code of Federal Regulations in which the federal regulation is codified, the citation shall be to the Federal Register as follows: "(federal regulation that has been amended), (volume number) Fed. Reg. (page number) (effective date of the amendment)."
- b. When the amendment is codified in the appropriate volume of the Code of Federal Regulations, the citation shall be amended to read as provided by subparagraph 1. of this paragraph.
- (p) Citations of items in the "RELATES TO" paragraph of an administrative regulation shall comply with paragraphs (m), (n), and (o) of this subsection.
- (q) An administrative regulation may cite the popular name of a federal or state law if the popular name is accompanied by the citation required by this paragraph.

➔Section 2. KRS 26A.164 is amended to read as follows:

- (1) There is created a court facility use allowance contingency fund. The fund shall consist of money appropriated to it in the judicial branch budget by the General Assembly. Money in the fund shall not lapse but shall be carried forward to the next fiscal year or biennium.
- (2) The Court of Justice may agree to increase the budgeted scope of a court project or project pool authorized in a judicial branch budget bill enacted by the General Assembly, and may use the use allowance contingency fund to cover any resulting increase in the budgeted annual use allowance, if and only if:
 - (a) The appropriate unit of government first submits a proposal for the increase to the Court Facilities Standards Committee, and the Court Facilities Standards Committee approves the increase;
 - (b) The annual use allowance for the project or project pool, adjusted for the proposed increase in scope, would not exceed the annual use allowance specified for that project or project pool in the multiyear use allowance schedule set out in the judicial branch budget bill~~[-or memorandum]~~ by more than fifteen percent (15%); and
 - (c) The requirements of KRS 26A.166 have been met.

➔Section 3. KRS 26A.166 is amended to read as follows:

- (1) Before the Court of Justice gives final approval to an increase in the budgeted scope of an authorized project or project pool listed in a judicial branch budget bill which would result in an increased use allowance, the director of the Administrative Office of the Courts shall submit a proposal for the increase to the Capital Projects and Bond Oversight Committee at least fourteen (14) days prior to the committee meeting. The proposal shall include:
 - (a) The multiyear use allowance specified in the judicial branch budget bill~~[-or memorandum]~~;
 - (b) The proposed increase in the use allowance;
 - (c) The reasons and necessity for the proposed increase;
 - (d) A statement as to whether or how the proposed use of funds conforms with the requirements of the law; and
 - (e) Any other information that the committee requests.

- (2) Within thirty (30) days after receiving a proposal to increase the use allowance, the Capital Projects and Bond Oversight Committee shall either approve or disapprove the proposal and shall then promptly notify the director of the Administrative office of the Courts of its decision.
- (3) If the Capital Projects and Bond Oversight Committee disapproves the proposal, the director of the Administrative Office of the Courts shall take one (1) of the following actions and shall notify the committee of its decision in writing within thirty (30) days of receiving the committee's notice of disapproval:
 - (a) Revise the proposal to comply with the committee's objections;
 - (b) Cancel and take no further action on the proposal; or
 - (c) Determine to implement the proposal over the committee's objection.
- (4) The Administrative Office of the Courts shall report to the Capital Projects and Bond Oversight Committee within thirty (30) days of any action taken by the Court of Justice to approve a scope increase of a project within a pool which would increase the use allowance for that project.
- (5) The Capital Projects and Bond Oversight Committee shall maintain records of proposals, findings, decisions, and actions taken under this section. When appropriate, the committee shall provide this information to other legislative committees or to the General Assembly.

➔Section 4. KRS 26A.168 is amended to read as follows:

- (1) The Administrative Office of the Courts shall provide to the Capital Projects and Bond Oversight Committee, at the committee's January, April, July, and October regular meetings, a status report of all incomplete court facilities projects. The Capital Projects and Bond Oversight Committee shall prescribe data elements for the quarterly status reports. For each project, the status report shall include:
 - (a) The project title;
 - (b) The county in which the project is located;
 - (c) The scope and use allowance authorized for the project in the judicial branch budget~~[-and budget memorandum]~~, and any increases to the scope or use allowance under KRS 26A.164;
 - (d) The current status of the project;
 - (e) Estimated completion date of the project;
 - (f) An explanation of any delay or major change in the project, including deletion or modification of project components; and
 - (g) Any other information that the committee requests.
- (2) On August 1 of each year, the Administrative Office of the Courts shall prepare a financial report on the court facility use allowance contingency fund for the fiscal year ending on June 30 of that year. The report shall include, with explanations, allotments, expenditures, encumbrances, and the available balance.

➔Section 5. KRS 45.031 is amended to read as follows:

- (1) Any department, board, commission, agency, advisory council, interstate compact, corporate body, or instrumentality of the Commonwealth of Kentucky applying for federal funds, aids, loans, or grants shall file a summary notification of the intended application with the Department for Local Government in accordance with the existing A-95 procedures.
- (2) When as a condition to receiving federal funds, the Commonwealth of Kentucky is required to match the federal funds, a statement shall be filed with the notice of intent or summary of the application stating:
 - (a) The amount and source of state funds needed for matching purposes;
 - (b) The length of time the matching funds shall be required;
 - (c) The growth of the program;
 - (d) How the program will be evaluated;
 - (e) What action will be necessary should the federal funds be canceled, curtailed, or restricted; and
 - (f) Any other financial and program management data required by the Finance and Administration Cabinet or by law.

- (3) Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, must be approved by the secretary of the Finance and Administration Cabinet, the Legislative Research Commission, and the Chief Justice for their respective branches of government or their designated agents prior to its filing with the appropriate federal agency. Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, when funds have not been appropriated for that express purpose, must be approved by the General Assembly, if in session. When the General Assembly is not in session, the application shall be reported to and reviewed by the Interim Joint Committee on Appropriations and Revenue, as provided by KRS 48.500(3)~~[(4)]~~.
- (4) When any federal funds, aids, loans, or grants are received by any department, board, commission or agency of the Commonwealth of Kentucky, a report of the amount of funds received shall be filed with the Finance and Administration Cabinet; and this report shall specify the amount of funds which would reimburse an agency for indirect costs as provided for under OMB Circular A-87.
- (5) The secretary of the Finance and Administration Cabinet may refuse to issue his warrant for the disbursement of any state or federal funds from the State Treasury as the result of any application which is not approved as provided by this section, or in regard to which the statement or reports required by this section were not filed.
- (6) The secretary of the Finance and Administration Cabinet shall be responsible for the orderly administration of this section and for issuing the appropriate guidelines and regulations from each source of fund used.

➔Section 6. KRS 45.760 is amended to read as follows:

The provisions of any other law notwithstanding:

- (1) During any biennium the amount allotted, from all sources, for expenditure on any project in the state capital construction program for that biennium shall not exceed the estimated cost of the project during that biennium, as shown in any branch budget bill~~[-, statutory budget memorandum, and biennial budget report]~~ enacted by the General Assembly, except as provided in this section and KRS 45.770 and 45.780.
- (2) When the General Assembly disapproves a capital project or item of equipment that was previously approved, it shall be eliminated as a capital project or major item of equipment in the Capital Projects Program. General fund moneys appropriated for that project or item of equipment but not allotted, and general fund moneys allotted but not expended to the project or equipment account, shall be transferred to the capital construction and equipment purchase contingency account in the capital construction fund. Agency or federal funds for a disapproved project or item, that have been appropriated but unallotted or allotted but unexpended, shall be returned to the appropriate agency fund. Road fund moneys for a disapproved project or item that have been appropriated but unallotted or allotted but unexpended, shall be returned to the Road Fund Surplus Account.
- (3) Capital projects and major items of equipment disapproved under subsection (2) of this section shall be terminated.
- (4) During any biennium, the amount allotted from all sources for expenditure for the purchase of any major item of equipment shall not exceed the estimated cost of the item as shown in any branch budget bill~~[-, statutory budget memorandum, and biennial budget report]~~ enacted by the General Assembly and authorizing the purchase, except as provided in subsections (5) and (6) of this section and in KRS 45.770 and 45.780.
- (5) A major item of equipment to be used for medical, scientific, or research purposes, excluding computer equipment and aircraft, may be authorized even though it is not specifically listed in any branch budget bill~~[-, statutory budget memorandum, and biennial budget report]~~ enacted for the current biennium, subject to the following conditions and procedures:
 - (a) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be reallocated for expenditure on the item; moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs;
 - (b) Funds are available for the purchase and the method of financing the purchase will not require an additional appropriation of state funds to acquire the item; and
 - (c) The purchasing agency shall, within thirty (30) days after making the purchase, report the purchase to the Capital Projects and Bond Oversight Committee. The report shall include a description of the item, the purpose for which it will be used, the necessity for the purchase, and the amount expended for the purchase from each source of funds used.

- (6) Moneys from any source may be transferred to the allotment account of any capital project authorized by the General Assembly under this section, subject to the following conditions and procedures:
- (a) The total amount transferred shall not exceed fifteen percent (15%) of the amount authorized by the General Assembly unless:
 - 1. The source of funds is private or federal; or
 - 2. An unforeseen decision by a federal or state court or regulatory agency requires the transfer.
 - (b) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallocated for expenditure on the capital project.
 - (c) Moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs.
 - (d) The relevant entity head, or his designee, shall submit the capital project to the Capital Projects and Bond Oversight Committee at least fourteen (14) days prior to the committee meeting. The submission shall include a written certification to the committee that the transfer, in excess of fifteen percent (15%) of the amount authorized by the General Assembly, is:
 - 1. Paid for out of private or federal funds; or
 - 2. Required by an unforeseen decision by a federal or state court or regulatory agency; and
 - 3. Not allotted or reallocated from moneys specifically budgeted and appropriated by the General Assembly for another purpose; and
 - 4. Not jeopardizing any existing program and not requiring the use of any current general funds specifically dedicated to existing programs.
 - (e) If a capital project is financed with road funds, the cost overruns or scope increases shall be paid out of the highway contingency account established pursuant to KRS 45.247.
- (7) A capital construction project or a major item of equipment may be authorized even though it is not specifically listed in any branch budget bill, ~~statutory budget memorandum, and biennial budget report,~~ subject to the following conditions and procedures:
- (a) Fifty percent (50%) or more of the actual cost shall be funded by federal or private funds, and fifty percent (50%) or less of the actual cost shall be funded by moneys appropriated to the capital construction and equipment purchase contingency account or, if the purpose of the project or equipment is to reduce energy costs, the relevant entity head certifies projected energy cost savings associated with the project or equipment are reasonable and sufficient to produce an aggregate simple payback period, as defined by KRS 56.770, of five (5) years or less;
 - (b) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallocated for expenditure on the project or major item of equipment; moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs; and
 - (c) The relevant entity head, or his designee, shall submit the project or major item of equipment to the committee for review as provided by KRS 45.800.
- (8) The capital construction and equipment purchase contingency fund may be used to advance funds to projects authorized to be financed by bonds, to finance feasibility studies for projects which may be contemplated for future funding, or to audit the capital projects program when authorized by the General Assembly.
- (9) On or before October 1, each branch of government shall submit to the committee the following information:
- (a) A complete list and summary description of every capital construction project and major item of equipment not completed as of June 30 of the prior fiscal year; and
 - (b) For each project and major item of equipment, as of July 1, of the current fiscal year:
 - 1. The project phase;
 - 2. The project account number, project name, and any other term employed to identify the project or major item of equipment;

3. The available balance in the project or major item of equipment account, and any sums considered available for that project or major item of equipment;
 4. A statement of the transfers of funds to or from the project or major item of equipment account; and, any account to which transfers from each project or major item of equipment has been made;
 5. The year in which the project or major item of equipment was approved, with specific reference to the legislation by which the project or item was approved;
 6. Total expenditure on the project or major item of equipment;
 7. The current estimated completion cost, including the amount required for annual inflation; and
 8. A statement that additional funds for the completion of the project or major item of equipment are or are not required; and, if required, why sufficient funds for completion are not available; and
- (c) The balance in the appropriated, but unallotted account; and the balance in any account, however designated, that contains appropriated, but unallotted funds for capital construction.
- (10) When the General Assembly authorizes a capital construction item in the capital construction section of a branch budget bill, the entity head charged with executing the branch budget shall construct the capital construction item according to the requirements set forth in the branch budget bill, ~~statutory budget memorandum,~~ supporting documentation considered by the General Assembly, and branch budget records. The entity head shall not deviate from these requirements with regard to:
- (a) Purpose or location to the extent that the capital construction item no longer meets the identified needs; or
 - (b) Configuration for reasons other than practical accommodation to the construction site or specific program to be accommodated within that capital construction item.

➔Section 7. KRS 45.780 is amended to read as follows:

- (1) There is created within the capital construction fund the emergency repair, maintenance, and replacement account. The account shall consist of moneys appropriated to the fund by the General Assembly.
- (2) The Finance and Administration Cabinet may transfer money from the emergency repair, maintenance, and replacement account to the allotment account of an emergency repair, replacement, or maintenance project, for expenditure thereon, even though the specific project is not included in any branch budget bill, ~~statutory budget memorandum, and biennial budget report,~~ enacted for that biennium. Moneys may be transferred from the emergency repair, maintenance, and replacement account to the allotment account of an emergency repair, replacement, or maintenance project only if no other funding source is available.
- (3) The Finance and Administration Cabinet shall report each transfer, including the necessity, purpose, and amount of the transfer, to the Capital Projects and Bond Oversight Committee not later than thirty (30) days after the transfer.

➔Section 8. KRS 48.111 is amended to read as follows:

- (1) The Governor shall include in the executive branch budget recommendation and in the draft branch budget bill for the executive branch submitted to each even-numbered-year regular session of the General Assembly pursuant to KRS 48.110, for the biennium period beginning July 1, 1992, and for each biennium thereafter, a recommended program for rental of any space for which the annual rental cost will exceed two hundred thousand dollars (\$200,000).
- (2) The recommended program for leased space shall include:
 - (a) A summary description of each specific two hundred thousand dollar (\$200,000) lease project recommended for funding during the biennium; and
 - (b) For each project:
 1. The name of the agency for which space will be leased;
 2. The purpose and justification for the lease;

3. Whether the lease contains a purchase option which will be exercised during the biennium pursuant to KRS 56.806(4) and the estimated purchase price;
 4.
 - a. Whether the lease contains a lease-purchase which will be completed during the biennium pursuant to KRS 56.806(5) prior to the total amortization, through lease payments, of the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease; and
 - b. The estimated sum of money that will have to be paid in addition to rent paid to complete the purchase;
 5. The estimated cost of the lease; and
 6. The recommended sources of funds.
- (3) All information required by subsection (2) of this section shall be included in the executive branch budget recommendation. The branch budget bill for the executive branch shall contain only the information specified in subparagraphs 1. and 2. of subsection (2)(b) of this section.
- (4) Except as provided in subsection (5) of this section, no lease with an annual rental cost which will exceed two hundred thousand dollars (\$200,000) shall be executed unless the lease has been identified and included in the branch budget bill. The branch budget bill for the executive branch shall authorize the expenditure by the budget unit that will occupy the premises.
- (5) A lease with an annual rental cost exceeding two hundred thousand dollars (\$200,000) may be authorized even though it is not specifically listed in the ~~the biennial budget report and~~ branch budget bill, subject to the following conditions and procedures:
- (a) A lease is awarded as the result of the consolidation of leases in which case, in addition to subsection (6) of this section, the provisions of KRS 56.803 and 56.823(2) or of KRS 56.805(2) and 56.823(3) shall apply, as appropriate; or
 - (b) A lease is awarded as the result of an agency occupying substantially less space than it should, under the standards for space set by the Department for Facilities Management, in which case, in addition to subsection (6) of this section, the provisions of KRS 56.803 and 56.823(2) or of KRS 56.805(2) and 56.823(3) shall apply, as appropriate. The space allocated under the new lease shall not exceed the space which should be allocated pursuant to the standards for space; or
 - (c) A lease with an annual rental cost of less than two hundred thousand dollars (\$200,000) is renewed or replaced for an annual rental cost that exceeds two hundred thousand dollars (\$200,000), but only if that request and subsequent renewal or replacement lease is:
 1. From the same state agency lessee whose initial lease was under two hundred thousand dollars (\$200,000);
 2. For the same or substantially the same square footage as the initial lease that was under two hundred thousand dollars (\$200,000);
 3. The result of the competitive leasing process authorized by KRS 56.803;
 4. For an annual lease payment of less than two hundred and fifty thousand dollars (\$250,000); and
 5. Effective only until June 30 of the next even-numbered year unless authorized in the ~~the biennial budget report and~~ branch budget bill; or
 - (d) A lease is awarded as the result of an emergency in which case the provisions of KRS 56.805(3) and (4) and KRS 56.823(5) shall apply; or
 - (e)
 1. Fifty percent (50%) or more of the actual cost shall be funded by federal or private funds; and
 2. Money specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallocated for expenditure on the lease. Money utilized shall not jeopardize any existing program and shall not require the use of current general funds specifically dedicated to existing programs; and
 3. The Finance and Administration Cabinet shall comply with the requirements of subsection (6) of this section.

- (6) (a) No later than five (5) business days after an advertisement for lease proposals pursuant to paragraph (a) or (b) of subsection (5) of this section, the cabinet shall provide the Capital Projects and Bond Oversight Committee with a copy of the advertisement and shall state in writing to the committee that the copy is being provided in compliance with this paragraph.
- (b) Prior to final authorization of a lease pursuant to paragraph (e) of subsection (5) of this section, the cabinet shall report to the Capital Projects and Bond Oversight Committee:
 - 1. The name of the agency for which space will be leased;
 - 2. The purpose and justification for the lease;
 - 3. The estimated cost of the lease;
 - 4. The source of funds; and
 - 5. Whether the requirements of paragraph (e) of subsection (5) of this section have been met.
- (c) Within thirty (30) days after the report required in paragraph (b) of this subsection has been submitted to the committee, the committee shall conduct its review and decide whether to approve or disapprove the proposed lease authorization. The Legislative Research Commission shall promptly transmit the committee's findings and determinations to the Finance and Administration Cabinet.
- (d) If the committee disapproves a proposed lease authorization, the secretary of the Finance and Administration Cabinet shall:
 - 1. Revise the proposed lease authorization to comply with the objection of the committee; or
 - 2. Cancel the proposed lease authorization; or
 - 3. Determine to proceed with the proposed lease authorization disapproved by the committee.
- (e) The decision made by the secretary of the Finance and Administration Cabinet under paragraph (d) of this subsection shall be communicated to the committee in writing within thirty (30) days of the committee's disapproval.
- (f) The Legislative Research Commission shall maintain records of the committee's disapproval of a proposed lease authorization and the cabinet's report of its actions on a disapproved proposed lease authorization. If the committee disapproves a proposed lease authorization, the Legislative Research Commission shall transmit the committee's disapproval and the cabinet's action on the disapproval to the appropriate interim joint committee of the Legislative Research Commission and to the General Assembly when next convened in an even-numbered-year regular session.
- (g) If, after committee review, a lease is authorized, the lease shall be awarded pursuant to this section and KRS 43.050 and 56.800 to 56.823 and shall be subsequently reviewed pursuant to the appropriate subsection of KRS 56.823.

➔Section 9. KRS 48.195 is amended to read as follows:

- (1) The General Assembly shall set the salaries of the justices and judges of the Court of Justice in the judicial branch budget bill. The Chief Justice shall include in the judicial branch budget recommendation the salaries of the justices and the judges. If the General Assembly concurs with the recommended judicial salaries contained in the judicial branch budget recommendation, then the judicial salaries shall be set in the judicial branch budget bill by incorporating by reference the judicial branch budget recommendation. If the General Assembly sets judicial salaries different from the judicial branch budget recommendation, then the General Assembly shall set forth the salaries of the justices and judges or the incremental changes in the judicial branch budget bill. ~~[In every case the judicial salaries shall be set forth in the judicial branch budget memorandum as provided for in KRS 48.300.]~~
- (2) The Chief Justice shall include in the judicial branch budget recommendation:
 - (a) The filing fees and costs, and any changes in the fees and costs, set under KRS 23A.200 or 24A.170 during the fiscal biennium immediately preceding the biennium for which the recommendation is submitted; and
 - (b) A statement of whether, and to what extent, the Supreme Court intends to raise or anticipates raising the fees and costs set under KRS 23A.200 or 24A.170 during the biennium for which the recommendation is submitted.

➔Section 10. KRS 48.300 is amended to read as follows:

- (1) ~~{(a)}~~ The financial plan for each fiscal year as presented in the branch budget recommendation shall be adopted, with any modifications made by the General Assembly, by the passage of a branch budget bill for each branch of government, and any revenue and other acts as necessary.

- (2) ~~{(b)}~~ With regard to the Transportation Cabinet, the General Assembly shall:

- (a) ~~{1}~~ Enact, as a separate bill, a branch budget for the Transportation Cabinet;

- (b) ~~{2}~~ Enact, as a separate bill, the biennial highway construction plan, as amended by the General Assembly, including identification of projects from the last four (4) years of the six (6) year road plan that may be moved forward, and the conditions and requirements under which the identified projects may be moved forward; and

- (c) ~~{3}~~ Adopt the last four (4) years of the six (6) year road plan, as amended by the General Assembly, as a joint resolution.

- ~~{(2)}~~ Prior to the passage of a branch budget bill and any other acts necessary, the appropriations committees of the General Assembly shall prepare a budget memorandum for each branch of government. The budget memorandum shall enumerate the changes made by the appropriations committees to a branch budget recommendation, and shall explain such changes in detail sufficient to convey the intent of the appropriations committees.

- ~~{(3)}~~ In administering the provisions of a branch budget bill, a branch head shall interpret provisions of the branch budget bill in conformity with the budget memorandum.

➔Section 11. KRS 48.500 is amended to read as follows:

- (1) Subject to the provisions of this section, when the General Assembly is not in session, all questions that arise as to the meaning of items in a branch budget bill shall be decided by the Finance and Administration Cabinet for the executive branch budget bill and the Transportation Cabinet budget bill, and by the Chief Justice and the Legislative Research Commission for their respective branches of government.

- (2) ~~{A decision made under subsection (1) of this section shall conform to the appropriate budget memorandum provided for by KRS 48.300.}~~

- ~~{(3)}~~ The secretary of the Finance and Administration Cabinet, the Chief Justice, and the Legislative Research Commission shall transmit decisions made under subsection (1) of this section to the Interim Joint Committee on Appropriations and Revenue of the Legislative Research Commission and shall include, in detail, the reasons for such decisions.

- (3) ~~{(4)}~~ If the Interim Joint Committee on Appropriations and Revenue disapproves a decision made under this section, the decision shall not be implemented unless it is:

- (a) Revised to comply with the objections of the committee; or

- (b) The committee is informed, in writing, in detail, within thirty (30) days of the committee's disapproval, that a determination has been made not to comply with the objections of the committee.

➔Section 12. KRS 48.610 is amended to read as follows:

By June 1 of the preceding fiscal year, each branch of government shall submit to the Finance and Administration Cabinet a schedule of quarterly allotments of appropriations for each budget unit of the branch for the next fiscal year. Allotments shall conform with the appropriations in the enacted branch budget bills~~{}~~ or other appropriation provisions~~{, and the budget unit structure in the statutory budget memorandum.}~~.

➔Section 13. KRS 48.620 is amended to read as follows:

- (1) Allotments shall be made as provided by the allotment schedule, and may be revised upon the written certification of the Governor, the Chief Justice, and the Legislative Research Commission for their respective branches of government. No revisions of the allotment schedule may provide for an allotment or allotments in excess of the amount appropriated to that budget unit in a branch budget bill, or for expenditure for any other purpose than specified in a branch budget bill~~{ and a budget memorandum provided for by KRS 48.300.}~~.

- (2) Revisions of allotments under this section shall be reported and reviewed as provided by KRS 48.500(3) ~~{(4)}~~.

➔Section 14. KRS 48.630 is amended to read as follows:

- (1) An unbudgeted appropriation shall not be allotted without prior review and action by the Interim Joint Committee on Appropriations and Revenue as provided for in this section.
- (2) Except as otherwise provided in this section, any request for allotment of unbudgeted appropriations from any fund source shall be made in writing by the head of the budget unit and transmitted simultaneously to the state budget director and the Interim Joint Committee on Appropriations and Revenue.
- (3) The state budget director may recommend a proposed revision to a specified appropriation in any branch budget bill to the Interim Joint Committee on Appropriations and Revenue by the seventh day of each month.
- (4) If the Interim Joint Committee on Appropriations and Revenue fails to review and act upon the proposed revision by the last day of the month, the proposed revision shall be deemed to have been reviewed and favorably acted upon.
- (5) The Interim Joint Committee on Appropriations and Revenue shall review the proposed expenditure of the unbudgeted appropriation for conformance with the purposes of the proposed appropriation and the enacted branch budget bill~~, the statutory budget memorandum~~, and any other relevant statute, by the last day of each month.
- (6) If the Interim Joint Committee on Appropriations and Revenue disapproves of the proposed revision of the enacted appropriation, the budget adjustment shall be invalid unless it is:
 - (a) Revised to comply with the objections of the committee; or
 - (b) The committee is informed, in writing, in detail, within thirty (30) days of the committee's disapproval, that a determination has been made not to comply with the objections of the committee.
- (7) If an emergency unbudgeted appropriation revision is required due to a declared natural disaster, calamity, or impending deficit in an enacted appropriation as certified by the Governor, the state budget director may effect an emergency revised appropriation, with the approval of the secretary of the Finance and Administration Cabinet, and with concurrent notification to the Interim Joint Committee on Appropriations and Revenue of the action and its justification.
- (8) If a budget unit not listed in any enacted branch budget bill receives unanticipated restricted funds or federal funds, the secretary of the Finance and Administration Cabinet, upon written request from the agency head with appropriate documentation of the amount, source, purpose, necessity, and use of the moneys, may authorize the credit and expenditure of these funds for statutory purposes, upon recommendation of the state budget director and review and action by the Interim Joint Committee on Appropriations and Revenue pursuant to the conditions and procedures prescribed by this section. The secretary shall cause to be established a separate discrete restricted funds or federal funds account, as appropriate, for the receipt and disbursement of these funds and shall establish the maximum sum which may be credited and expended from the authorized account.
- (9) Institutions of higher education shall be exempt from all conditions and procedures in this section with respect to the authority of the state budget director and the secretary of the Finance and Administration Cabinet to review and approve unbudgeted restricted funds or federal funds or revisions to appropriations in excess of any enacted branch budget bill; however, in the event of a revision, an institution of higher education shall report unbudgeted restricted funds and federal funds to the state budget director and the Interim Joint Committee on Appropriations and Revenue.
- (10) Unbudgeted appropriations for expenditure in the judicial branch budget and the legislative branch budget shall be exempt from all conditions and procedures in this section, except that each branch head, or its designee, shall report unbudgeted restricted funds and federal funds to the Interim Joint Committee on Appropriations and Revenue and transmit an informational copy to the state budget director.
- (11) The Legislative Research Commission shall maintain records of the findings of the Interim Joint Committee on Appropriations and Revenue and the determinations and reports of actions by the state budget director and transmit these records to the General Assembly when next convened.

➔Section 15. KRS 64.056 is amended to read as follows:

Compensation of clerks of the Circuit Court shall be set in accordance with the judicial personnel system. The Chief Justice shall include anticipated salary increases for clerks of the Circuit Court in the judicial branch budget recommendation. The increases may be limited by the General Assembly in the judicial branch budget bill ~~or in the judicial branch budget memorandum as provided in KRS 48.300~~.

Signed by Governor March 16, 2011.

CHAPTER 74

(HB 247)

AN ACT relating to licensure and making an appropriation therefor.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 18 of this Act, unless the context requires otherwise:

- (1) *"Alter" means to change or modify a building or building design, or to revise, rather than repair, a mitigation system or mitigation system design;*
- (2) *"Analytical analysis" means the act of analyzing the radon or radon progeny concentrations with active measurement devices;*
- (3) *"Applicant" means a radon laboratory or a person who applies for certification as a radon measurement contractor or radon mitigation contractor;*
- (4) *"Building" means any structure used or intended to be used for supporting or sheltering any use or occupancy;*
- (5) *"Cabinet" means Cabinet for Health and Family Services;*
- (6) *"Certified" means meeting the requirements of Section 5, 6, or 8 of this Act in order to perform radon measurement, radon mitigation, or radon laboratory analysis;*
- (7) *"Commercial building" means any building other than a residential building, including those buildings intended for public purposes;*
- (8) *"Commissioner" means the commissioner of the Department for Public Health;*
- (9) *"Committee" means the Kentucky Radon Program Advisory Committee;*
- (10) *"Compensation" means something of value given or received in exchange for radon measurement, radon mitigation, or laboratory analysis;*
- (11) *"Contractor" means a person or business entity that provides goods or services to another person under the terms specified in a contract or verbal agreement, and who is not an agent or employee of that person;*
- (12) *"Direct supervision" means constant onsite supervision by a certified person;*
- (13) *"General supervision" means intermittent onsite supervision by a certified person who accepts responsibility for ensuring compliance by his or her employees or subcontractors with all applicable requirements under Sections 1 to 18 of this Act;*
- (14) *"Government agency" means the Commonwealth of Kentucky, a state agency, a political subdivision, or any entity of local government;*
- (15) *"Laboratory analysis" means the act of analyzing the radon or radon progeny concentrations with passive measurement devices, or the act of calibrating radon or radon progeny measurement devices, or the act of exposing radon or radon progeny devices to controlled concentrations of radon or radon progeny;*
- (16) *"Measurement" means the act of testing the air, water, or soil using an active or passive measurement device for the presence of radon or radon progeny in the indoor environment of a building;*
- (17) *"Measurement device" means any cabinet-approved active or passive device used for the measurement of radon or radon progeny in air, water, or soil in the indoor environment of a building;*
- (18) *"Measurement contractor" means a person who meets the requirements of Section 5 of this Act and is certified by the cabinet to conduct radon measurement for compensation;*

- (19) *"Mitigation" means the act of installing, repairing, or altering an active or passive system, for the purpose in whole or in part of reducing the concentration of radon or radon progeny in the indoor environment of a building;*
- (20) *"Mitigation contractor" means a person who meets the requirements of Section 6 of this Act and is certified by the cabinet to conduct radon mitigation for compensation;*
- (21) *"Mitigation system" means any active or passive system designed to reduce radon concentrations in the indoor environment of a building;*
- (22) *"Person" has the same meaning as in KRS 446.010;*
- (23) *"Radon" means a naturally occurring radioactive element that exists as a colorless, odorless, and tasteless inert gas;*
- (24) *"Radon decay products" means the four (4) short-lived radioactive elements polonium (Po-218), lead (Pb-214), bismuth (Bi-214), and polonium (Po-214) which exist as solids and immediately follow radon (Rn-222) in the decay chain;*
- (25) *"Radon laboratory" means a business entity that meets the requirements of Section 8 of this Act and is certified by the cabinet to conduct laboratory analysis for compensation;*
- (26) *"Radon progeny" means any combination of the radioactive decay products of radon;*
- (27) *"Research" means cabinet-approved scientific investigation that includes radon measurement, radon mitigation, or laboratory analysis;*
- (28) *"Residential building" means detached one (1) to four (4) family dwellings not more than three (3) stories in height where occupants are primarily permanent in nature; and*
- (29) *"Standard operating procedure" means a written document that describes in detail commonly accepted methods for the performance of certain tasks.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Radon Program Advisory Committee is hereby created and shall be attached to the Cabinet for Health and Family Services for administrative purposes. Each member of the committee shall be a citizen and resident of the Commonwealth of Kentucky. The committee shall consist of nine (9) members as follows:*
 - (a) *Four (4) members shall be either a radon measurement contractor, a radon mitigation contractor, or a person associated with a radon laboratory conducting laboratory analysis and shall be appointed by the Governor from a list of six (6) names submitted to the Governor by the Kentucky Association of Radon Professionals;*
 - (b) *One (1) member shall be a representative of the home building industry and shall be appointed by the Governor from a list of three (3) names submitted to the Governor by the Home Builders Association of Kentucky;*
 - (c) *One (1) member shall be a real estate salesperson or broker licensed under KRS Chapter 324 and shall be appointed by the Governor from a list of three (3) names submitted to the Governor by the Kentucky Association of Realtors;*
 - (d) *One (1) member shall be a representative of a public health organization and shall be appointed by the Governor from a list of three (3) names submitted to the Governor by the Kentucky Cancer Consortium;*
 - (e) *One (1) member shall be the commissioner of the Department for Public Health, Cabinet for Health and Family Services, or his or her designee; and*
 - (f) *One (1) member shall be a citizen at large appointed by the Governor who shall represent the public and shall not be associated with or financially interested in the practice of radon measurement, mitigation, or laboratory analysis.*
- (2) (a) *To be eligible for initial appointment as a member of the committee under subsection (1)(a) of this section, a person shall have been actively engaged in the practice of radon measurement, mitigation, or laboratory analysis for not less than three (3) years immediately preceding the date of appointment to the committee.*

- (b) *Upon expiration of the initial appointments, to be eligible for appointment as a member of the committee under subsection (1)(a) of this section, a person shall have been actively engaged in the practice of radon measurement, mitigation, or laboratory analysis for not less than three (3) years immediately preceding the date of the appointment to the committee and hold a valid certification as a radon measurement contractor or radon mitigation contractor, or be associated with a radon laboratory with a valid certification.*
- (3) *Except for the commissioner, who shall serve as long as he or she holds his or her appointment as commissioner, the Governor shall initially appoint two (2) members for a term of four (4) years, two (2) members for a term of three (3) years, two (2) members for a term of two (2) years, and two (2) members for a term of one (1) year. All appointments shall expire on June 30 of the last year of the terms. Thereafter, members shall be appointed for terms of four (4) years. No person shall serve more than two (2) consecutive terms. Members shall serve until their successors are appointed.*
- (4) *Upon recommendation of the committee, the Governor may remove any member of the committee appointed by the Governor for poor attendance, neglect of duty, misfeasance, or malfeasance in office.*
- (5) *Vacancies in the membership of the committee for any cause shall be filled by appointment by the Governor for the balance of the unexpired term.*
- (6) *A majority of the committee shall constitute a quorum to do business. The committee shall meet at least once each calendar quarter in a location designated by the chairperson. The committee may meet upon special call by the chairperson or a majority of the committee.*
- (7) *The committee shall elect a chairperson and a vice chairperson. The chairperson shall preside at all meetings at which the chairperson is present. The vice chairperson shall preside at all meetings in the absence of the chairperson.*
- (8) *If the chairperson and vice chairperson are absent from a meeting of the committee when a quorum exists, the members who are present may elect a presiding officer who shall serve as acting chairperson until the conclusion of the meeting or until the arrival of the chairperson or vice chairperson.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

The committee shall:

- (1) *Advise the cabinet with the review, development, and maintenance of standard operating procedures for radon measurement, radon mitigation, laboratory analysis, and quality control;*
- (2) *Advise the cabinet with preparing an annual budget for the use of moneys received by the cabinet from the collection of fees and fines, receipt of grants, and all other radon-related activities;*
- (3) *Review and comment on relevant administrative regulations that are promulgated pursuant to Sections 1 to 18 of this Act and make recommendations to and otherwise advise the cabinet on these matters;*
- (4) *Keep minutes of committee meetings and a record of all proceedings;*
- (5) *Make recommendations to the cabinet provided that the final determination rests with the cabinet;*
- (6) *Hold the first meeting of the committee no later than October 1, 2011, to be convened by the commissioner; and*
- (7) *Perform any other duties and responsibilities relating to the topic of radon that may be assigned by the cabinet.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

No person or business entity shall conduct radon measurement, mitigation, or laboratory analysis in this Commonwealth after January 1, 2013, without the appropriate certification pursuant to Sections 1 to 18 of this Act. No person or business entity shall advertise or claim to be a "certified measurement contractor," "certified mitigation contractor," or "certified radon laboratory," unless certified pursuant to Sections 1 to 18 of this Act. Certification requirements under Sections 1 to 18 of this Act shall apply to a radon measurement contractor, radon mitigation contractor, or radon laboratory, but shall not apply to:

- (1) *A person performing measurement or mitigation on a single-family residential building that he or she owns and occupies;*
- (2) *A person performing measurement on a residential or commercial building that he or she owns;*

- (3) *An apprentice in the process of learning radon measurement, mitigation, or laboratory analysis who assists and is under the general supervision of a measurement or mitigation contractor;*
- (4) *An agent of the federal, state, or local government agency acting within an official capacity who shall make payment of certification fees but who shall not otherwise be required to comply with Sections 1 to 18 of this Act;*
- (5) *A person performing measurement or mitigation as part of a scientific research project approved by the cabinet;*
- (6) *A retail store or any other organization that sells or distributes radon measurement devices and is not engaged in a relationship with the client for other services, such as home inspection or real estate brokerage, and that does not conduct measurement, mitigation, or laboratory analysis; or*
- (7) *A person performing measurement or mitigation as part of radon training approved by the cabinet.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall issue a certification as a radon measurement contractor to any person who:*
 - (a) *Submits a complete and accurate application for certification on a form prescribed by the cabinet through promulgation of an administrative regulation;*
 - (b) *Pays the certification fee established by the cabinet through promulgation of an administrative regulation within the following restrictions:*
 - 1. *An initial certification fee shall not exceed two hundred fifty dollars (\$250);*
 - 2. *An annual renewal fee shall not exceed two hundred fifty dollars (\$250);*
 - 3. *A duplicate certificate fee shall not exceed twenty dollars (\$20); and*
 - 4. *A late renewal fee shall not exceed one hundred dollars (\$100);*
 - (c) *Provides the cabinet with documentation of successful completion of a cabinet-approved radon measurement course and exam;*
 - (d) *For renewal of certification, provides proof of completion of at least eight (8) hours of continuing education per year;*
 - (e) *Submits a quality control program plan that meets the minimum standard operating procedures requirements as established by the cabinet through promulgation of an administrative regulation; and*
 - (f) *Furnishes evidence of financial responsibility to the cabinet consisting of a license and permit bond, errors and omissions coverage, and a liability insurance policy that satisfies the requirements of Section 7 of this Act.*
- (2) *A measurement contractor shall:*
 - (a) *Ensure all measurements are conducted in accordance with the measurement standard operating procedures established by the cabinet through promulgation of an administrative regulation;*
 - (b) *Maintain a quality control program plan that meets the minimum standard operating procedures requirements established by the cabinet through promulgation of an administrative regulation;*
 - (c) *Ensure all measurement activities are conducted under the general supervision of an individual certified to conduct radon measurement;*
 - (d) *Use or sell only cabinet-approved devices to conduct radon measurement; and*
 - (e) *Ensure all services procured from a radon laboratory are procured from a radon laboratory certified by the cabinet.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall issue a certification as a mitigation contractor to any person who:*
 - (a) *Submits a complete and accurate application for certification on a form prescribed by the cabinet through promulgation of an administrative regulation;*

- (b) *Pays the certification fee established by the cabinet through promulgation of an administrative regulation within the following restrictions:*
 - 1. *An initial certification fee shall not exceed two hundred fifty dollars (\$250);*
 - 2. *An annual renewal fee shall not exceed two hundred fifty dollars (\$250);*
 - 3. *A duplicate certificate fee shall not exceed twenty dollars (\$20); and*
 - 4. *A late renewal fee shall not exceed one hundred dollars (\$100);*
 - (c) *Provides the cabinet with documentation of successful completion of a cabinet-approved radon mitigation course and exam;*
 - (d) *For renewal of certification, provides proof of completion of at least eight (8) hours of continuing education credit per year;*
 - (e) *Submits a quality control program plan that meets the minimum standard operating procedures requirements established by the cabinet through promulgation of an administrative regulation; and*
 - (f) *Furnishes evidence of financial responsibility to the cabinet consisting of a license and permit bond and a liability insurance policy that satisfies the requirements of Section 7 of this Act.*
- (2) *A mitigation contractor shall:*
- (a) *Ensure all mitigations are conducted in accordance with mitigation standard operating procedures established by an administrative regulation promulgated by the cabinet;*
 - (b) *Maintain a quality control program plan that meets the minimum standard operating procedures requirements established by the cabinet through promulgation of an administrative regulation;*
 - (c) *Ensure all mitigation activities are conducted under the general supervision of an individual certified to conduct radon mitigation;*
 - (d) *Ensure post-mitigation measurement is conducted by a person certified to conduct measurement; and*
 - (e) *Ensure all radon mitigation systems repaired or altered on or after January 1, 2013, meet the mitigation standard operating procedures established by an administrative regulation promulgated by the cabinet.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *Each mitigation or measurement contractor shall maintain an insurance policy that:*
- (a) *Is issued by an insurance company or other legal entity permitted to transact insurance business in the Commonwealth of Kentucky;*
 - (b) *Provides for general liability coverage in an amount of at least five hundred thousand dollars (\$500,000), and for measurement contractors, errors and omissions coverage in an amount of at least five hundred thousand dollars (\$500,000) that is maintained in effect at all times during the certification period;*
 - (c) *Lists the cabinet as a certificate holder of any insurance policy issued under this subsection; and*
 - (d) *States that cancellation or nonrenewal of the underlying liability insurance policy is not effective until the cabinet receives at least ten (10) days' written notice of the cancellation or nonrenewal.*
- (2)
- (a) *Before a mitigation or measurement contractor is certified, he or she shall file with the cabinet a license and permit bond to be approved by the cabinet and shall maintain the license and permit bond during the term of the certification payable to the Commonwealth in the sum of ten thousand dollars (\$10,000).*
 - (b) *The bond shall be conditioned on the applicant's compliance with the provisions of Sections 1 to 18 of this Act and any administrative regulations promulgated thereunder by the cabinet.*
 - (c) *The bond shall be on a form prescribed by the cabinet through promulgation of an administrative regulation.*
 - (d) *The license and permit bond shall be executed by a corporate surety authorized to transact surety business in the Commonwealth of Kentucky.*

- (e) *The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the cabinet of its intent to cancel the bond. The cancellation shall be effective ten (10) days after the notice is sent to the cabinet. Cancellation by the surety shall not affect the surety's obligation for liability that accrued under the bond prior to the effective date of cancellation.*
- (f) *Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one (1) continuous obligation. Regardless of the number of years the bond remains in effect, the number of premiums paid, the number of renewals of the license, or the number of claims made, the aggregate liability of the surety shall not exceed the penal amount of the bond.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall issue a certification as a radon laboratory to any person or entity that:*
 - (a) *Submits a complete and accurate application for certification on a form prescribed by the cabinet through promulgation of an administrative regulation that includes the name of at least one (1) measurement contractor who is responsible for analytical activities;*
 - (b) *Pays the certification fee as established by the cabinet through promulgation of an administrative regulation within the following restrictions:*
 - 1. *An initial certification fee shall not exceed two hundred fifty dollars (\$250);*
 - 2. *An annual renewal fee shall not exceed two hundred fifty dollars (\$250);*
 - 3. *A duplicate certificate fee shall not exceed twenty dollars (\$20); and*
 - 4. *A late renewal fee shall not exceed one hundred dollars (\$100);*
 - (c) *Submits a quality control program plan that meets the minimum standard operating procedures requirements established by the cabinet through promulgation of an administrative regulation;*
 - (d) *Utilize only cabinet-approved measurement devices and analytical services, and submit a description of each type of measurement device and analytical service utilized; and*
 - (e) *Provide documentation of enrollment and good standing within a cabinet-approved independent laboratory accreditation program for each type of measurement device and analytical service utilized.*
- (2) *A radon laboratory shall:*
 - (a) *Employ as a staff member at least one (1) measurement contractor who shall direct the analytical activities of the laboratory;*
 - (b) *Ensure all laboratory analysis activities are conducted in accordance with the minimum standard operating procedures requirements established by the cabinet through promulgation of an administrative regulation for each type of measurement device and analytical service utilized; and*
 - (c) *Ensure all radon laboratory analyses are conducted in compliance with applicable state and federal regulations.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person certified and given a certification number by the cabinet as a measurement or mitigation contractor shall:*
 - (a) *Prominently display his or her certification number on all advertising disseminated, whether directly or indirectly, to the general public, except when advertising pertains to novelty items such as small mass-produced items of minimal value;*
 - (b) *Prominently display his or her certification number on all vehicles utilized in advertising, using letters and numbers at least three (3) inches in height. The certification number shall be legible and visible at all times the vehicle is being operated; and*
 - (c) *When operating under the name of a business entity, satisfy the requirements of subsections (a) and (b) of this section by displaying the certification number of the measurement or mitigation contractor, as applicable, employed by the business entity.*
- (2) *A person certified as both a measurement and mitigation contractor who conducts mitigation on a residential or commercial building shall not conduct measurement on that same building to determine the*

need for mitigation, or the successful completion of mitigation activities, unless the measurement shall be used for diagnostic purposes only. At a minimum, the results of any measurement conducted to determine the need for mitigation, or the successful completion of mitigation activities, shall be sent directly to the person providing compensation for the mitigation activities by the independent measurement contractor conducting the measurement.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

A business entity may engage in the business of radon measurement, mitigation, or laboratory analysis if the owner or an employee associated with the business entity is certified as a measurement or mitigation contractor, or radon laboratory as applicable. A measurement or mitigation contractor directly in charge of measurement or mitigation activities within the business entity shall notify the cabinet in writing immediately upon termination of a relationship with the business entity.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *A person seeking annual renewal of certification shall pay the renewal fee not to exceed two hundred fifty dollars (\$250) as promulgated by the cabinet in an administrative regulation and shall submit an application for renewal on a form prescribed by the cabinet. An application for renewal is deemed filed on the date that it is received by the cabinet.*
- (2) *Certificates not renewed within thirty (30) days after the renewal date shall pay a late renewal fee not to exceed one hundred dollars (\$100) as promulgated by the cabinet in administrative regulation.*
- (3) *Certificates not renewed within ninety (90) days of the renewal date shall lapse and may only be reinstated upon payment of a late renewal fee and initial certificate fee as promulgated by the cabinet in an administrative regulation and providing proof of insurance and the license and permit bond as required under Section 7 of this Act.*
- (4) *A certified person shall report any change of information submitted in applying for certification in writing to the cabinet within ten (10) days of such change taking place. The cabinet shall not be responsible for a certified person not receiving notices, communications, and other correspondence caused by failure of the certified person to report changes.*
- (5) *The cabinet shall promulgate administrative regulations for establishing an inactive certification status.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

A person seeking certification may obtain state certification by reciprocity if:

- (1) *The applicant holds certification or licensure in another jurisdiction that grants the same privileges to persons certified by the Commonwealth of Kentucky as the Commonwealth of Kentucky grants to persons certified by the other jurisdiction;*
- (2) *The certification or licensure requirements of the other jurisdiction are substantially similar to the requirements of Sections 1 to 18 of this Act; and*
- (3) *The person seeking certification states that he or she has studied, is familiar with, and shall abide by Sections 1 to 18 of this Act and the administrative regulations promulgated thereunder by the cabinet.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to an administrative hearing conducted in accordance with KRS Chapter 13B, the cabinet may revoke, suspend, or restrict the certificate of a certificate holder, refuse to issue or renew certification, reprimand, censure, place on probation, or impose a fine not to exceed five hundred dollars (\$500) on a person who:*
 - (a) *Has been convicted of a felony under the laws of the Commonwealth of any crime that involves theft or dishonesty, or is a sex crime as defined by KRS 17.500;*
 - (b) *Has had disciplinary action taken against a professional license, certification, registration, or permit held by the person seeking certification;*
 - (c) *Engaged in fraud or deceit in obtaining certification;*
 - (d) *Attempts to transfer the authority granted by the certificate to another person;*

- (e) *Disregards or violates the building codes, electrical codes, or related laws of this Commonwealth or ordinances of any city, county, urban-county government, consolidated local government, charter county government, or unified local government;*
 - (f) *Aids or abets any person attempting to evade the provisions of Sections 1 to 18 of this Act or the administrative regulations promulgated thereunder by the cabinet;*
 - (g) *Uses unfair or deceptive trade practices; or*
 - (h) *Knowingly violates any of the provisions of Sections 1 to 18 of this Act or any administrative regulation promulgated thereunder by the cabinet pertaining to radon measurement, mitigation, or laboratory analysis.*
- (2) *If an application for certification or renewal of certification is denied, the person seeking certification shall not conduct radon measurement, mitigation, or laboratory analysis within the Commonwealth of Kentucky.*
 - (3) *Notwithstanding the existence or pursuit of any other civil or criminal remedy, the cabinet may institute proceedings in the Circuit Court of the county where the person resides for an order enjoining the person from engaging or attempting to engage in activities that violate any provisions of Sections 1 to 18 of this Act or any administrative regulation promulgated thereunder by the cabinet pertaining to radon measurement, mitigation, or laboratory analysis.*
 - (4) *Any final order of the cabinet may be appealed to the Circuit Court of the county in which the person resides after a written decision is rendered in accordance with KRS Chapter 13B.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

The cabinet shall promulgate administrative regulations concerning the continuing education required for renewal of certified persons and shall:

- (1) *Establish procedures for approving individual courses submitted by a person or entity providing continuing education;*
- (2) *Prescribe the content, duration, and organization of the continuing education courses that contribute to the competence of certified persons; and*
- (3) *Include eight (8) hours of continuing education for measurement contractors and eight (8) hours of continuing education for mitigation contractors per year.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet may examine records of mitigation contractors, measurement contractors, and radon laboratories, and conduct inspections of mitigation system installations in order to ensure radon mitigation systems are installed in compliance with mitigation standard operating procedures established by the cabinet through promulgation of an administrative regulation.*
- (2) *The cabinet may examine records of measurement contractors, mitigation contractors, and radon laboratories to ensure radon measurements are conducted in compliance with measurement standard operating procedures established by the cabinet through promulgation of an administrative regulation.*
- (3) *The cabinet may test any equipment used for measurement or mitigation, photograph or sketch any portion of a site, building, or equipment involved in measurement or mitigation, or copy any documents or records pertaining to measurement or mitigation.*
- (4) *No person shall use or continue to use, or permit the use or continued use of, any radon mitigation system if an agent or inspector of the cabinet finds that the radon mitigation system was not constructed, installed, or altered in accordance with the mitigation standard operating procedures established by the cabinet through promulgation of an administrative regulation.*
- (5) *For purposes of enforcing the provisions of Sections 1 to 18 of this Act or any administrative regulation promulgated by the cabinet pertaining to radon measurement, mitigation, or laboratory analysis, an agent or inspector of the cabinet shall have the power to enter upon premises at all reasonable times to make an inspection, question all persons, and require the production of radon mitigation system plans, sketches, diagnostic information and other evidence.*
- (6) *Agents and inspectors of the cabinet shall be empowered to issue a stop order to any owner, agent, or occupant of real property requiring that the radon mitigation system thereon cease operation if that system has been found to be in violation of Sections 1 to 18 of this Act or any administrative regulation*

promulgated thereunder by the cabinet pertaining to radon measurement, mitigation, or laboratory analysis.

- (7) *A person shall not interfere with an inspection conducted by an agent or inspector of the cabinet.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *Any certified person shall report to the cabinet the discovery of any apparent noncompliance with any provision of Sections 1 to 18 of this Act or any administrative regulation promulgated thereunder by the cabinet pertaining to radon measurement, mitigation, or laboratory analysis.*
- (2) *Records required by this chapter or administrative regulations promulgated under Sections 1 to 18 of this Act, including but not limited to records of radon measurement, mitigation, quality control program plans, calibration certifications, laboratory analysis activities, worker health and safety plans, and equipment repairs shall be retained by certificate holders, as applicable, for a minimum period of five (5) years or the length of time of any warranty or guarantee, whichever is greater.*
- (3) *Any measurement or mitigation contractor applying for certification or renewal of certification shall specify, for approval by the cabinet, the location where records required under this section shall be maintained for inspection by the cabinet. This location shall be within the Commonwealth of Kentucky or within fifty (50) miles of the border of the Commonwealth of Kentucky and at the location where the certificate holder who supervises the quality control program plan is located.*

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

- (1) *There is created the radon mitigation and control fund as a separate trust and agency fund in the State Treasury, to be administered by the cabinet. All fees, fines, and other moneys received by the cabinet pursuant to Sections 1 to 18 of this Act shall be deposited in the fund and shall be used for the implementation of Sections 1 to 18 of this Act, and are hereby appropriated for those purposes.*
- (2) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.*
- (3) *Any interest earnings of the fund shall become part of the fund and shall not lapse.*

➔Section 18. KRS 211.855 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall be the regulatory agency for the control of radon in the Commonwealth of Kentucky.
- (2) The ~~cabinet~~~~[Cabinet for Health and Family Services]~~ shall develop and conduct programs for evaluation and control of activities related to radon including laboratory analyses, mitigation, and measurements.
- (3) *The cabinet shall:*
- (a) *Promulgate administrative regulations in accordance with KRS Chapter 13A to administer, coordinate, and enforce the provisions of Sections 1 to 18 of this Act;*
 - (b) *Maintain a list of all certified persons;*
 - (c) *Issue certificates and certificate renewals to qualified persons;*
 - (d) *Promulgate administrative regulations establishing requirements for:*
 1. *A quality control program plan for certified persons, including what each certified person administering a plan shall submit and maintain; and*
 2. *Mitigation and measurement standard operating procedures;*
 - (e) *Promote the control of radon in the Commonwealth;*
 - (f) *Design and administer, or participate in the design and administration of educational and research programs to ensure citizens of the Commonwealth are informed about the health risks associated with radon;*
 - (g) *Appoint personnel to perform duties and fix their compensation;*
 - (h) *Issue subpoenas, administer oaths, examine witnesses, investigate allegations of wrongdoing, and conduct administrative hearings in accordance with KRS Chapter 13B to enforce the provisions of Sections 1 to 18 of this Act; and*

- (i) *Collect or receive all fees, fines, and other moneys owed pursuant to Sections 1 to 18 of this Act, and deposit all those moneys into the radon mitigation and control fund established by Section 17 of this Act.*

➔Section 19. KRS 227A.060 is amended to read as follows:

- (1) The department shall issue a license as an "electrical contractor" to an applicant who meets the following requirements:
- (a) Has paid to the department the application fee not to exceed two hundred dollars (\$200) and the appropriate examination fee, which shall not exceed the actual cost of examination;
 - (b) Has achieved a passing score, as set by the department, on all portions of the examination required by the department. The department shall promulgate administrative regulations to specify who shall take the examination if the applicant is a business entity; and
 - (c) Has submitted proof that he or she has complied with workers' compensation and unemployment insurance laws and administrative regulations and has obtained a general liability insurance policy of not less than five hundred thousand dollars (\$500,000).
- (2) The department shall issue a license as a "master electrician" to an applicant who meets the following requirements:
- (a) Has paid to the department the application fee not to exceed one hundred dollars (\$100) and the appropriate examination fee not to exceed the actual cost of the examination;
 - (b) Has completed:
 - 1. a. Six (6) years of verifiable experience in the electrical trade *since his or her sixteenth birthday*; and
 - b. A training course in electrical work, acceptable to the department, or an additional two (2) years of verifiable experience in the electrical trade; or
 - 2. a. Five (5) years of verifiable experience in the electrical trade *since his or her sixteenth birthday*; and
 - b. An associate's degree or diploma program in electrical technology at a college within the Kentucky Community and Technical College System after 1998; and
 - (c) Has achieved a passing score, as set by the department, on all portions of the examination required by the department.
- (3) The department shall issue a license as an "electrician" to an applicant who meets the following requirements:
- (a) Has paid to the department the application fee not to exceed fifty dollars (\$50) and the appropriate examination fee not to exceed the actual cost of the examination;
 - (b) Has completed:
 - 1. a. Four (4) years of verifiable experience in the electrical trade *since his or her sixteenth birthday*; and
 - b. A training course in electrical work, acceptable to the department, or an additional two (2) years of verifiable experience in the electrical trade; or
 - 2. a. Three (3) years of verifiable experience in the electrical trade *since his or her sixteenth birthday*; and
 - b. An associate's degree or diploma program in electrical technology at a college within the Kentucky Community and Technical College System after 1998; and
 - (c) Has achieved a passing score, as set by the department, on all portions of the examination required by the department.

➔Section 20. KRS 339.230 is amended to read as follows:

A minor who has passed his or her fourteenth birthday but is under eighteen (18) years of age may be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except:

- (1) If he or she is under sixteen (16) years of age, he or she may not be employed during regular school hours, unless:
- (a) The school authorities have made arrangements for him or her to attend school at other than the regular hours, in which event he or she may be employed subject to regulations of the commissioner of workplace standards during such of the regular school hours as he or she is not required to be in attendance under the arrangement; or
 - (b) He or she has graduated from high school.
- (2) A minor who has passed his or her fourteenth birthday but is under eighteen (18) years of age, may not be employed, permitted, or suffered to work:
- (a) In any place of employment or at any occupation, that the commissioner of workplace standards shall determine to be hazardous or injurious to the life, health, safety, or welfare of such minor ***unless:***
 - 1. The minor is at least sixteen (16) years of age;***
 - 2. The minor is employed by his or her parent or a person standing in place of a parent and works under adult supervision; and***
 - 3. The minor is engaged in non hazardous aspects of the electrical trades including but not limited to activities such as pulling wire, setting boxes, or bending conduit;***
 - (b) More than the number of days per week, nor more than the number of hours per day that the commissioner of workplace standards shall determine to be injurious to the life, health, safety, or welfare of such minor. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments, but in no event may he or she make them less restrictive;
 - (c) During the hours of the day that the commissioner of workplace standards shall determine to be injurious to the life, health, safety, or welfare of such minor. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he or she make them less restrictive; and
 - (d) In, about, or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold for consumption, or dispensed unless permitted by the rules and regulations of the Alcoholic Beverage Control Board (except that he or she may be employed in places where the sale of alcoholic beverages by the package is merely incidental to the main business actually conducted); or in a pool or billiard room.
- (3) The commissioner of workplace standards shall promulgate regulations to properly protect the life, health, safety, or welfare of minors. He or she may consider sex, age, premises of employment, substances to be worked with, machinery to be operated, number of hours, hours of the day, nature of the employment, and other pertinent factors. The commissioner of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he or she make them less restrictive, provided, however, these regulations shall have no effect on the definition of "gainful occupation" under KRS 339.210. To advise the commissioner with respect to the regulations, the Governor shall appoint a committee of four (4) persons which shall consist of a representative from the Cabinet for Health and Family Services, the Department of Education, the Kentucky Commission on Human Rights and the Personnel Cabinet. The regulations promulgated in accordance with this section shall be reviewed by such committee whenever deemed necessary by the commissioner of workplace standards.

➔Section 21. The following KRS sections are repealed:

- 211.856 Certification of persons engaged in radon analysis, mitigation, or testing -- Fees.
- 211.857 Injunctive relief against violators.
- 211.858 Penalty for violations of KRS 211.855 to 211.858.

Signed by Governor March 16, 2011.

CHAPTER 75

(SB 8)

AN ACT relating to a one-stop-shop to conduct business in the Commonwealth and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 14 IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State, Finance and Administration Cabinet, the Cabinet for Economic Development, and the Commonwealth Office of Technology shall jointly establish a one-stop electronic business portal that shall serve as a single, unified entry point for business owners to access and complete initial and ongoing state services and requirements in relation to the creation or ongoing operation of a business located in the Commonwealth of Kentucky. The agencies identified in this subsection shall coordinate, manage, and implement the portal based on the results of an assessment conducted by the One-Stop Business Portal Advisory Committee under subsection (3) of this section.*
- (2) *The One-Stop Business Portal Advisory Committee is hereby established to provide guidance in the creation and implementation of the one-stop business portal. The committee shall consist of the Secretary of State, the secretary of the Governor's Executive Cabinet, secretary of the Economic Development Cabinet or his or her designee, secretary of the Finance and Administration Cabinet or his or her designee, secretary of the Education and Workforce Cabinet or his or her designee, secretary of the Public Protection Cabinet or his or her designee, secretary of the Transportation Cabinet or his or her designee, secretary of the Tourism, Arts and Heritage Cabinet or his or her designee, and the secretary of the Energy and Environment Cabinet or his or her designee. The Governor may appoint other members to the committee at his or her discretion. The committee shall be co-chaired by the Secretary of State and the secretary of the Governor's Executive Cabinet.*
- (3) *The One-Stop Business Portal Advisory Committee shall prepare an assessment detailing recommendations for the creation, ongoing operation, and management of the one-stop business portal, to be presented to the Governor, the Secretary of State, and the Legislative Research Commission by December 31, 2011. This assessment shall include the following:*
 - (a) *An estimate of the costs for full implementation of the portal, including those associated with technology, maintenance, sharing agency data, information security, and other start-up costs;*
 - (b) *An estimate of the costs of establishing and maintaining a call center staffed with persons trained to answer questions and help businesses obtain information and services, along with a recommendation as to where the call center should be located and the number of staff necessary to operate it;*
 - (c) *Recommendations on the location, design, and functionality of the portal;*
 - (d) *Recommendations as to the roles of the state agencies identified in subsection (1) of this section regarding the day-to-day operational management of the portal;*
 - (e) *Recommendations on the time line for developing and testing the portal;*
 - (f) *Identification of any statutory or regulatory changes that need to be made to existing law to effectuate the portal's functionality;*
 - (g) *Identification of other state agencies that possess business-related functions and content so that those functions can be added to the portal;*
 - (h) *Identification of any impediments posed by federal law and recommended ways to address the impediment;*
 - (i) *A comprehensive analysis of the processes of all state agencies, with a view toward streamlining and reducing the paperwork necessary for businesses to interact with each agency; and*
 - (j) *Recommendations on the scope of services to be provided by the portal. At a minimum, services shall include:*
 1. *Application and renewal of business related licenses and fees incident to the start-up and operation of a business;*

2. *Electronic payment of taxes and related costs imposed by state law incident to the operation of a business;*
3. *Filing of documents and papers imposed by state law associated with the operation of a business; and*
4. *Creation of individual electronic accounts for each business which allows the business to monitor its filings, payments, and other business compliance activities.*

(4) *The One-Stop Business Portal Advisory Committee shall:*

- (a) *Ensure that the portal has a Web site, the ability to process new business registrations as handled by the Secretary of State's Office, and be in a testing phase for the Department of Revenue's tax registration application by December 31, 2012; and*
- (b) *Ensure that subsequent and additional online business applications maintained by the Commonwealth shall be evaluated and prioritized.*

➔Section 2. KRS 11.202 is amended to read as follows:

(1) The duties of the Commission on Small Business Advocacy shall include, but not be limited to:

- (a) Coordinate and promote the awareness of the Federal Small Business Regulatory Enforcement Fairness Act of 1996, and its subsequent amendments within the small business community of the Commonwealth;
- (b) Develop a process by which the small business community is made aware of state legislation and administrative regulations affecting it, both prior to its enactment and during its implementation;
- (c) Advocate for the small business sectors when state legislation and administrative regulations are overly burdensome, costly, or harmful to the success and growth of the sector;
- (d) Collect information and research those public policies and government practices which are helpful or detrimental to the success and growth of the small business community; and
- (e) Review administrative regulations that may impact small business. The commission may seek input from other agencies, organizations, or interested parties. In acting as an advocate for small business, the commission may submit a written report to the promulgating administrative body to be considered as comments received during the public comment period required by KRS 13A.270(1)(c). The report may specify the commission's findings regarding the administrative regulation, including an identification and estimate of the number of small businesses subject to the administrative regulation, the projected reporting, recordkeeping, and other administrative costs required for compliance with the administrative regulation, and any suggestions the commission has for reducing the regulatory burden on small businesses through the use of tiering or exemptions, in accordance with KRS 13A.210. A copy of the report shall be filed with the regulations compiler of the Legislative Research Commission.

(2) By September 1 of each year, the commission shall submit a report to the Governor and the Interim Joint Committee on Economic Development and Tourism detailing its work in the prior fiscal year, including, but not limited to the following:

- (a) Activities and achievements of the commission in accomplishing its purposes and duties;
- (b) Findings of the commission related to its collection of information and research on public policies and government practices affecting small businesses, including specific legislation and administrative regulations that are helpful or detrimental to the success of small businesses; and
- (c) Specific recommendations of ways state government could better promote the economic development efforts of small businesses in the Commonwealth.

(3) *Beginning December 1, 2012, and on every December 1 thereafter, the commission shall submit an annual report to the Secretary of State and the Legislative Research Commission setting forth an analysis of how the one-stop electronic business portal established in Section 1 of this Act may be improved to make the business portal more user friendly for businesses.*

➔Section 3. KRS 42.730 is amended to read as follows:

- (1) The executive director of the Commonwealth Office of Technology shall be the principal adviser to the Governor and the executive cabinet on information technology policy, including policy on the acquisition and management of information technology and resources.
- (2) The executive director shall carry out functions necessary for the efficient, effective, and economical administration of information technology and resources within the executive branch. Roles and duties of the executive director shall include but not be limited to:
 - (a) Assessing, recommending, and implementing information technology governance and organization design to include effective information technology personnel management practices;
 - (b) Integrating information technology and resources plans with agency business plans;
 - (c) Overseeing shared Commonwealth information technology resources and services;
 - (d) Performing as the focal point and representative for the Commonwealth in information technology and related areas with both the public and private sector;
 - (e) Establishing appropriate partnerships and alliances to support the effective implementation of information technology projects in the Commonwealth;
 - (f) Identifying information technology applications that should be statewide in scope, and ***assisting agencies in avoiding duplicate services***~~ensuring that these applications are not developed independently or duplicated by individual state agencies of the executive branch~~;
 - (g) Establishing performance measurement and benchmarking policies and procedures;
 - (h) Preparing annual reports and plans concerning the status and result of the state's specific information technology plans and submitting these annual reports and plans to the Governor and the General Assembly; and
 - (i) Managing the Commonwealth Office of Technology and its budget.

➔Section 4. Whereas, because it is important to encourage and assist businesses wishing to do business in Kentucky in these difficult economic times, by taking whatever steps are necessary to simplify the requirements for doing business, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 16, 2011.

CHAPTER 76

(SB 12)

AN ACT relating to principal selection.

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

➔Section 1. KRS 160.345 is amended to read as follows:

- (1) For the purpose of this section:
 - (a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school;
 - (b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal and is not a program or part of another school. The term "school" does not include district-operated schools that are:
 1. Exclusively vocational-technical, special education, or preschool programs;
 2. Instructional programs operated in institutions or schools outside of the district; or
 3. Alternative schools designed to provide services to at-risk populations with unique needs;

- (c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state, with the exception of principals and assistant principals; and
 - (d) "Parent" means:
 - 1. A parent, stepparent, or foster parent of a student; or
 - 2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.
- (2) Each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:
- (a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. A parent representative on the council shall not be an employee or a relative of an employee of the school in which that parent serves, nor shall the parent representative be an employee or a relative of an employee in the district administrative offices. A parent representative shall not be a local board member or a board member's spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees;
 - (b)
 - 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. A teacher elected to a school council shall not be involuntarily transferred during his or her term of office. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected. The principal shall be the chair of the school council.
 - 2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:
 - a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and
 - b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty;
 - (c)
 - 1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.
 - 2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection;

- (d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy;
- (e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply;
- (f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals;
- (g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council. The school council shall consult with the school media librarian on the maintenance of the school library media center, including the purchase of instructional materials, information technology, and equipment;
- (h) Personnel decisions at the school level shall be as follows:
 1. From a list of *qualified* applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, consistent with ~~paragraph~~~~subsection (2)~~(i)10. of this ~~subsection~~~~section~~. ***The superintendent shall provide additional applicants to the principal upon request when qualified applicants are available.*** The superintendent may forward to the school council the names of qualified applicants who have pending certification from the Education Professional Standards Board based on recent completion of preparation requirements, out-of-state preparation, or alternative routes to certification pursuant to KRS 161.028 and 161.048. Requests for transfer shall conform to any employer-employee bargained contract which is in effect.
 2. If the vacancy to be filled is the position of principal, the ***outgoing principal shall not serve on the council during the principal selection process. The superintendent or the superintendent's designee shall serve as the chair of the council for the purpose of the hiring process and shall have voting rights during the selection process. The council shall have access to the applications of all persons certified for the position. The principal shall be elected on a majority vote of the membership of the council. No principal who has been previously removed from a position in the district for cause may be considered for appointment as principal.***~~school council shall select the new principal from among those persons recommended by the local superintendent, except as provided in subparagraph 4. of this paragraph. The superintendent shall provide additional applicants upon request when qualified applicants are available.~~ The school council shall receive training in recruitment and interviewing techniques prior to carrying out the process of selecting a principal. The council shall select the trainer to deliver the training.
 3. Personnel decisions made at the school level under the authority of subparagraphs 1., 2., and 4. of this paragraph shall be binding on the superintendent who completes the hiring process.
 4. If the vacancy for the position of principal occurs in a school that has an index score that places it in the lowest one-third (1/3) of all schools below the assistance line and the school has completed a scholastic audit under KRS 158.6455 that includes findings of lack of effectiveness of the principal and school council, the superintendent shall appoint the principal after consulting with the school council.
 5. Applicants subsequently employed shall provide evidence that they are certified prior to assuming the duties of a position in accordance with KRS 161.020~~[- The superintendent shall provide additional applicants upon request when qualified applicants are available];~~
- (i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:
 1. Determination of curriculum, including needs assessment, curriculum development and responsibilities under KRS 158.6453(7);
 2. Assignment of all instructional and noninstructional staff time;

3. Assignment of students to classes and programs within the school;
 4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
 5. Determination of use of school space during the school day;
 6. Planning and resolution of issues regarding instructional practices;
 7. Selection and implementation of discipline and classroom management techniques as a part of a comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;
 8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision;
 9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal; and
 10. Procedures to assist the council with consultation in the selection of personnel by the principal, including, but not limited to, meetings, timelines, interviews, review of written applications, and review of references. Procedures shall address situations in which members of the council are not available for consultation; and
- (j) Each school council shall annually review data as shown on state and local student assessments and program assessments required under KRS 158.6453. The data shall include but not be limited to information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, and participation in the federal free and reduced price lunch program. After completing the review of data, each school council, with the involvement of parents, faculty, and staff, shall develop and adopt a plan to ensure that each student makes progress toward meeting the goals set forth in KRS 158.645 and 158.6451(1)(b) by April 1 of each year and submit the plan to the superintendent and local board of education for review as described in KRS 160.340. The Kentucky Department of Education shall provide each school council the data needed to complete the review required by this paragraph no later than November 1 of each year. If a school does not have a council, the review shall be completed by the principal with the involvement of parents, faculty, and staff.
- (3) The policies adopted by the local board to implement school-based decision making shall also address the following:
- (a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;
 - (b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;
 - (c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;
 - (d) Professional development plans developed pursuant to KRS 156.095;
 - (e) Parent, citizen, and community participation including the relationship of the council with other groups;
 - (f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;
 - (g) Requirements for waiver of district policies;
 - (h) Requirements for record keeping by the school council; and
 - (i) A process for appealing a decision made by a school council.
- (4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for

the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.

- (5) ~~[After July 13, 1990, any school in which two thirds (2/3) of the faculty vote to implement school based decision making shall do so.]~~ All schools shall implement school-based decision making ~~[by July 1, 1996]~~, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school meeting its goal as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.
- (6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making no later than one hundred twenty (120) days after the beginning of the service year for which they are elected to serve. Experienced members may participate in the training for new members to fulfill their training requirement. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education. By November 1 of each year, the principal through the local superintendent shall forward to the Department of Education the names and addresses of each council member and verify that the required training has been completed. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.
- (7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making, including but not limited to a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the commissioner of education and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.
- (8) The Kentucky Board of Education, upon recommendation of the commissioner of education, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development in compliance with requirements specified in KRS 156.095, except as provided in KRS 158.649. School councils of small schools shall be encouraged to work with other school councils to maximize professional development opportunities.
- (9) (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.
- (b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.
- (c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.

- (d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.
- (10) Notwithstanding subsections (1) to (9) of this section, a school's right to establish or maintain a school-based decision making council and the powers, duties, and authority granted to a school council may be rescinded or the school council's role may be advisory if the commissioner of education or the Kentucky Board of Education takes action under KRS 160.346.
- (11) Each school council of a school containing grades K-5 or any combination thereof, or if there is no school council, the principal, shall develop and implement a wellness policy that includes moderate to vigorous physical activity each day and encourages healthy choices among students. The policy may permit physical activity to be considered part of the instructional day, not to exceed thirty (30) minutes per day, or one hundred and fifty (150) minutes per week. Each school council, or if there is no school council, the principal, shall adopt an assessment tool to determine each child's level of physical activity on an annual basis. The council or principal may utilize an existing assessment program. The Kentucky Department of Education shall make available a list of available resources to carry out the provisions of this subsection. The department shall report to the Legislative Research Commission no later than November 1 of each year on how the schools are providing physical activity under this subsection and on the types of physical activity being provided. The policy developed by the school council or principal shall comply with provisions required by federal law, state law, or local board policy.

Signed by Governor March 16, 2011.

CHAPTER 77

(SB 24)

AN ACT relating to the enactment of an interstate racing and wagering compact.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

The Governor of this Commonwealth is authorized and directed to execute a compact on behalf of the Commonwealth with any of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States, legally joining therein in the form substantially as follows:

ARTICLE I

PURPOSES

The purposes of this compact are:

- (A) *To enable member states to act jointly and cooperatively to create more uniform, effective, and efficient practices, programs, rules, and regulations relating to live pari-mutuel horse or greyhound racing and to pari-mutuel wagering activities, both on-track and off-track, that occur in or affect a member state;*
- (B) *To facilitate the health and growth of the industry by simplifying the process of participating in live horse and greyhound racing and pari-mutuel wagering, improving the quality and integrity of racing and wagering, more effectively regulating simulcast and wagering systems and activities, and through cooperative action reducing the costs incurred by each member state or participant;*
- (C) *To authorize the Kentucky Horse Racing Commission to participate in this compact;*
- (D) *To permit officials from the member states to participate in this compact and, through the compact commission established by this compact, to enter into contracts with governmental agencies and other persons to carry out the purposes of this compact; and*
- (E) *To establish the compact commission created by this compact as an interstate governmental entity duly authorized to request and to receive criminal history record information from the Federal Bureau of Investigation and from state, local, and foreign law enforcement agencies.*

ARTICLE II
DEFINITIONS

For the purposes of this compact, the following terms shall have the following meaning:

- (A) *"Commissioner" means the chairperson of the member state racing commission, or such person's designee, who represents the member state as a voting member of the compact commission and anyone who is serving as such person's alternate;*
- (B) *"Compact commission" means the organization of officials from the member states that is authorized and empowered by this compact to carry out the purposes of this compact;*
- (C) *"Compact rule" means a rule or regulation adopted by a member state through the compact to govern, for two (2) or more member states, any part of live pari-mutuel horse and greyhound racing or pari-mutuel wagering activities, whether on-track or off-track, that occur in or affect such states;*
- (D) *"Live racing" means live horse or greyhound racing with pari-mutuel wagering;*
- (E) *"Member state" means each state that has enacted this compact;*
- (F) *"National industry stakeholder" means a non-governmental organization that the compact commission determines from a national perspective significantly represents one (1) or more categories of participants in live racing and pari-mutuel wagering;*
- (G) *"Participants in live racing and pari-mutuel wagering" means all persons who participate in, operate, provide industry services for, or are involved with live racing and pari-mutuel wagering;*
- (H) *"State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States; and*
- (I) *"State racing commission" means the state racing commission, or its equivalent, in each member state. Where a member state has more than one (1), it shall mean all such racing commissions, or their equivalents.*

ARTICLE III
COMPOSITION AND MEETINGS OF COMPACT COMMISSION

The member states shall create and participate in a compact commission as follows:

- (A) *This compact shall come into force when enacted by any six (6) eligible states, and shall thereafter become effective as to any other member state that enacts this compact. Any state that has adopted or authorized pari-mutuel wagering or live horse or greyhound racing shall be eligible to become a party to this compact. A compact rule, fee, practice, or program shall not become effective in a new member state based merely upon it entering the compact.*
- (B) *The member states hereby create the racing and wagering commission, a body corporate and an interstate governmental entity of the member states, to coordinate the decision-making and actions of each member state racing commission through a compact commission.*
- (C) *The compact commission shall consist of one (1) commissioner, the chairperson of the state racing commission or such person's designee, from each member state. When a commissioner is not present to perform any duty in the compact commission, a designated alternate may serve instead. The person who represents a member state in the compact commission shall serve and perform such duties without compensation or remuneration; provided that, subject to the availability of budgeted funds, each may be reimbursed for ordinary and necessary costs and expenses. The designation of a commissioner, including the alternate, shall be effective when written notice has been provided to the compact commission. The commissioner, including the alternate, must be a member or employee of the state racing commission.*
- (D) *The compact commissioner from each state shall participate as an agent of the state racing commission. Each commissioner shall have the assistance of the state racing commission in regard to all decision making and actions of the state in and through the compact commission.*
- (E) *Each member state, by its commissioner, shall be entitled to one (1) vote in the compact commission. A majority vote of the total number of commissioners shall be required to issue or renew a license, to receive and distribute any funds, and to adopt, amend, or rescind the by-laws. A compact rule, fee, practice, or*

program shall take effect in and for each member state whose commissioner votes affirmatively to adopt it. Other compact actions shall require a majority vote of the commissioners who are meeting.

- (F) *Meetings and votes of the compact commission may be conducted in person or by telephone or other electronic communication. Meetings may be called by the chairperson of the compact commission or by any two (2) commissioners. Reasonable notice of each meeting shall be provided to all commissioners serving in the compact commission.*
- (G) *No action may be taken at a compact commission meeting unless there is a quorum, which is either a majority of the commissioners in the compact commission or, where applicable, all the commissioners from any member states who propose or are voting affirmatively to adopt a compact rule, fee, practice, or program.*
- (H) *Once effective, the compact shall continue in force and remain binding according to its terms upon each member state; provided that, a member state may withdraw from the compact by repealing the statute that enacted the compact into law. The racing commission of a withdrawing state shall give written notice of such withdrawal to the compact chairperson, who shall notify the member state racing commissions. A withdrawing state shall remain responsible for any unfulfilled obligations and liabilities. The effective date of withdrawal from the compact shall be the effective date of the repeal.*

ARTICLE IV

OPERATION OF COMPACT COMMISSION

The compact commission is hereby granted, so that it may be an effective means to pursue and achieve the purposes of each member state in this compact, the power and duty:

- (A) *To adopt, amend, and rescind by-laws to govern its conduct, as may be necessary or appropriate to carry out the purposes of the compact; to publish them in a convenient form; and to file a copy of them with the state racing commission of each member state;*
- (B) *To elect annually from among the commissioners (including alternates) a chairperson, vice-chairperson, and treasurer with such authority and duties as may be specified in the by-laws;*
- (C) *To establish and appoint committees which it deems necessary for the carrying out of its functions, including advisory committees which shall be comprised of national industry stakeholders and organizations, and such other persons as may be designated in accordance with the by-laws, to obtain their timely and meaningful input into the compact rule, fee, practice, and program making processes;*
- (D) *To establish an executive committee, with membership established in the by-laws, which shall oversee the day-to-day activities of compact administration and management by the executive director and staff; hire and fire as may be necessary after consultation with the compact commission; administer and enforce compliance with the provisions, by-laws, rules, fees, practices, and programs of the compact; and perform such other duties as the by-laws may establish;*
- (E) *To create, appoint, and abolish all those offices, employments, and positions, including an executive director, useful to fulfill its purposes; to hire persons for them; to prescribe their powers, duties, and qualifications; and to provide for their term, tenure, removal, compensation, fringe and retirement benefits, and other conditions of employment;*
- (F) *To delegate day-to-day management and administration of its duties, as needed, to an executive director and support staff, such as the Association of Racing Commissioners International, Inc., or its successor;*
- (G) *To adopt an annual budget sufficient to provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities. The budget shall be fully funded by means established by the compact commission. A member state may choose to participate in funding by means other than a compact fee or fees, in which case the compact commission shall make a finding of how much the member state, including its racing and wagering, may benefit from budget items (less program costs funded by user fees); and the member state may provide such funding by its own means. Indivisible benefits to live racing shall be allocated by proportion of annual purses. Nothing in this provision shall prevent the compact commission from paying obligations accrued in a prior year or from revising its finding of the benefit to a member state from the preceding year; and*
- (H) *To provide a mediation and a binding dispute resolution service for member states who decide to use them to resolve a compact dispute among each other; provided, that the design and implementation of each program shall be established by compact rule making.*

ARTICLE V

GENERAL POWERS AND DUTIES

To allow each member state, as and when it chooses, to achieve the purpose of this compact through joint and cooperative action, the member states are hereby granted the power and duty, by and through the compact commission:

- (A) To act jointly and cooperatively to create a more equitable and uniform pari-mutuel racing and wagering interstate regulatory framework, including but not limited to the adoption of standardized rules of racing and equine drug regulations, closing inequalities in how regulatory standards and statutory requirements apply to industry participants; improving wagering monitoring and integrity; and making industry and participant information more available to government officials;*
- (B) To collaborate with national industry stakeholders and industry organizations, such as the Racing Medication and Testing Consortium, in the design and implementation of compact rules, fees, practices, and programs in a manner that serves the best interests of racing;*
- (C) To create more uniform, effective, or efficient practices and programs, with the consent of each member state that shall participate in them, relating to any part of live pari-mutuel horse or greyhound racing or pari-mutuel wagering activities, whether on-track or off-track, that occur in or affect a member state;*
- (D) To adopt compact rules, which shall have the force and effect of state rules or regulations in the member states who vote to adopt them, to govern all or any part of live pari-mutuel horse and greyhound racing or pari-mutuel wagering activities;*
- (E) To charge and collect a fee for services provided by the compact, including licensure and renewal of each license applicant, and for defraying the actual cost of compact commission administration, procedures, activities and programs; and*
- (F) To issue and renew licenses for participants in live racing and pari-mutuel wagering who are found by the compact commission to have met its licensure or renewal requirements in categories it chooses to license. It shall establish the term for each category, and the license criteria and weight given to character and integrity information that in its judgment meet the most restrictive requirements of the member states. The compact commission shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible, it shall notify the applicant that it will not be able to process the application any further, which shall not constitute and shall not be considered to be the denial of a license. Although an applicant shall have the right to present further evidence and to be heard, the final decision on issuance or renewal of a license shall be made by the compact commission pursuant to its established requirements. The compact commission shall have the power and duty to investigate license applicants and, as permitted by federal and state law, to gather information, including criminal history records from the Federal Bureau of Investigation and from state, local, and foreign country law enforcement agencies (including the Royal Canadian Mounted Police), necessary to decide whether an applicant meets its license requirements. Such criminal history record information may be received and reviewed only by the officials on, and employees of, the compact commission, and that information may be used only for the purposes of this compact. No such official or employee may disclose or disseminate such criminal history record information to any person or entity other than another official on, or employee of, the compact commission. The compact commission, its employees, or its designee shall take the fingerprints of each license applicant and, pursuant to Public Law 92-544 or Public Law 100-413, forward the fingerprints to a state identification bureau, the Association of Racing Commissioners International (an association of state officials regulating pari-mutuel wagering, designated by the Attorney General of the United States), or another entity with an equivalent designation, for submission to the Federal Bureau of Investigation or other receiving law enforcement agency. The compact commission shall cooperate with the Interstate Compact on Licensure of Participants in Live Racing with Pari-Mutuel Wagering and, if requested by that entity, assume all of its licensing and employer duties and responsibilities with the authority of and pursuant to all of the licensing standards, laws, rules and regulations applicable to that entity.*

ARTICLE VI

OTHER POWERS AND DUTIES

The compact commission may exercise such incidental powers and duties as may be necessary and proper for it to function in a useful manner, including but not limited to the power and duty:

- (A) *To enter into contracts and agreements with governmental agencies and other persons, including officers and employees of a member state, to provide personal services for its activities and such other services as may be necessary;*
- (B) *To borrow, accept, and contract for the services of personnel from any state, federal, or other governmental agency, or from any other person or entity;*
- (C) *To receive information from and to provide information to each member state racing commission, including its officers and staff, on such terms and conditions as may be established in the by-laws;*
- (D) *To acquire, hold, and dispose of any real or personal property by gift, grant, purchase, lease, license, and similar means and to receive additional funds through gifts, grants, and appropriations;*
- (E) *To purchase and maintain insurance and bonds, and to require others to do so;*
- (F) *When authorized by a compact rule, to conduct hearings, issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, and render decisions and orders;*
- (G) *To establish in the by-laws the requirements that shall describe and govern its duties to conduct open or public meetings and to provide public access to compact records and information, which shall include the exceptions established by law in one (1) or more member states and shield any confidential submissions made in connection with license applications; and*
- (H) *To enforce compliance with the provisions, by-laws, rules, fees, practices, and programs of the compact using such means as may be consistent with this compact.*

ARTICLE VII

COMPACT RULE MAKING

In the exercise of its rule making authority, the compact commission shall:

- (A) *Engage in formal rule making pursuant to a process that substantially conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the actions and operations of the compact commission;*
- (B) *Gather information and engage in discussions with advisory committees, national industry stakeholders, and others to foster and conduct a collaborative approach in the design and advancement of compact rules in a manner that serves the best interests of racing and as established in the by-laws;*
- (C) *Not publish a proposed compact rule in a member state over its objection. The affirmative vote of a member state for a proposed compact rule shall be necessary and sufficient to adopt, amend, or rescind a compact rule as applicable to that member state; and*
- (D) *Have a standing committee that reviews at least quarterly the participation in and value of compact rules and, when it determines that a revision is appropriate or when requested to by any member state, submits a revising proposed compact rule. To the extent a revision would only add or remove a member state or states from where a compact rule has been adopted, the vote required by this article shall be required of only such state or states.*

ARTICLE VIII

COMPACT FEES

- (A) *The compact commission may charge and collect a fee for services provided by the compact, including licensure and renewal of each license applicant, and for defraying the actual cost of compact commission administration, procedures, activities, and programs; provided that such latter fee or fees shall not create a disproportionate cost for any member state.*
- (B) *Compact fees must relate to participation in live horse or greyhound racing and pari-mutuel wagering activities, whether on-track or off-track, that occur in or affect a member state. No fee shall be adopted except after consultation with relevant advisory committees and interested national industry stakeholders.*
- (C) *The establishment of a compact fee may include a requirement that a participant in live horse or greyhound racing with pari-mutuel wagering, as a condition of continued participation, collect, hold, and remit to the compact commission funds that belong to a third party, with which it conducts related transactions, that is obliged to pay the compact fee.*

- (D) *The compact commission may require fee payments to occur on a periodic basis, accompanied by a sworn report attesting to accuracy and completeness, and may provide that it shall have the power to examine the books and records of any persons required to pay or remit it, for the purpose of ascertaining whether the proper amounts are being paid. Such books and records shall not thereby be made available for public inspection.*
- (E) *No fee shall be adopted before the completion of a period of public notice and participation substantially conforming, as may be appropriate to the actions and operations of the compact commission, for making rules under the Model State Administrative Procedure Act of 1981 as amended.*

ARTICLE IX

STATUS AND RELATIONSHIP TO MEMBER STATES

- (A) *The compact commission, as an interstate governmental entity, shall be exempt from all taxation in and by the member states.*
- (B) *The compact commission shall not pledge the credit of any member state except by and with the appropriate legal authority of that state.*
- (C) *The compact commission shall adopt an annual budget that is sufficient to provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities, and by which member states shall fully fund the compact commission by the means set forth in this compact.*
- (D) *Each member state shall reimburse or otherwise pay the expenses of its commissioner, including any alternate, in the compact commission.*
- (E) *No member state, except as provided in Article XII of this compact, shall be held liable for the debts or other financial obligations incurred by the compact commission.*
- (F) *No member state shall have, while it participates in the compact commission, any claim to or ownership of any property held by or vested in the compact commission or to any compact commission funds held pursuant to this compact except for state license or other fees or moneys collected by the compact commission as its agent.*
- (G) *The compact dissolves upon the date of the withdrawal of the member state that reduces membership in the compact to one (1) state. Upon dissolution, the compact becomes null and void and shall be of no further force or effect, although rules and programs adopted through this compact shall remain rules and programs in each member state that had adopted or consented to them, and the business and affairs of the racing and wagering compact shall be concluded and any surplus funds shall be distributed to the former member states in accordance with the by-laws.*

ARTICLE X

RIGHTS AND RESPONSIBILITIES OF MEMBER STATES

- (A) *Each member state in the compact shall accept the decisions, duly applicable to it, of the compact commission in regard to compact rules, fees, practices, and programs, and the issuance or renewal of licenses.*
- (B) *When the compact commission determines that an application shall not be processed further, the member states shall not treat this as the denial of a license or otherwise penalize the applicant because of such action by the compact commission.*
- (C) *Each member state in the compact shall have and exercise the right:*
 - (1) *To charge a fee for the use of a compact license within that member state equal to the fee charged for a comparable state license;*
 - (2) *To apply its own standards and procedures to determine whether the use of a compact commission license should be suspended or revoked in its jurisdiction;*
 - (3) *To apply its own standards for licensure or renewal of state applicants who do not meet the licensure requirements of the compact commission, who are within a category of participants in racing and wagering that the compact commission does not license, or who apply to the member state for a state license; and*

- (4) *To apply its own standards and procedures, except as may be provided by rule, to determine whether a participant in live racing or pari-mutuel wagering has violated any rule or regulation in its jurisdiction and to impose an appropriate penalty.*
- (D) *Each member state racing commission shall promptly notify the compact commission, or its designee, whenever the member state has adjudged a violation of any state or compact rule and imposed a suspension or revocation upon a compact commission licensee.*
- (E) *All departments, agencies, bodies, officers, and employees of each member state and its political subdivisions are authorized to cooperate with the compact commission and shall take all necessary and appropriate action, such as to publish proposed and adopted rules in state registries and administrative codes, to effectuate and in furtherance of compact duties or actions that may affect the state.*
- (F) *This compact shall not be construed to diminish or limit the powers and responsibilities of the member state racing commission, or to invalidate any action it has previously taken, except to the extent it has, by its compact commissioner, expressed its consent to a specific rule or other action of the compact commission. The compact commissioner from each state shall serve as the agent of the state racing commission and shall possess substantial racing and wagering knowledge and experience as a regulator or participant in the racing and wagering industry in order to participate effectively in compact rule making.*

ARTICLE XI

ENFORCEMENT OF COMPACT

- (A) *Any member state in the compact and the compact commission may initiate legal action in the United States District Court, in any federal district where the compact commission has an office, to enforce compliance by any member state or the compact commission with the compact provisions, by-laws, fees, findings, practices, and programs.*
- (B) *Any member state in the compact and the compact commission may initiate legal action, in any state or federal court, to enforce the compact provisions, fees, practices, and programs against any person, including a non-member state or political subdivision. Member states that benefit from the compact commission, its employees, or one of its provisions, by-laws, fees, findings, practices, or programs shall provide or share in the cost of legal services to defend or uphold them.*
- (C) *The compact commission shall have standing to intervene in any legal action that pertains to the subject matter of the compact and might affect its powers, duties, or actions.*
- (D) *The courts and executive in each member state shall enforce the compact and take all actions necessary and appropriate to effectuate its purposes and intent. Compact provisions, by-laws, and rules shall be received by all judges, departments, agencies, bodies, and officers of each member state and its political subdivisions as evidence of them.*
- (E) *The compact commission may require, from the date a compact fee was required to be paid, interest not to exceed the rate of one percent (1%) per month and a penalty not to exceed five percent (5%). The compact commission may, if it determines that any fees received by it were paid in error, and provided that an application for it is filed with the compact commission within one (1) year from the time the erroneous payment is made, correct the error by a refund, without interest, including from other collected fees.*
- (F) *The compact commission, if it determines that a payment or report is in error, may make a finding that fixes the correct amount of the fee. It must issue the finding within three (3) years from when a fee or report was due or filed. The finding shall be final and conclusive unless an application for a hearing is filed by the subject within thirty (30) days. The action of the compact commission in making a final finding, after a hearing, shall be reviewable in state court as provided in this compact.*

ARTICLE XII

LEGAL ACTIONS AGAINST COMPACT

- (A) *Any person may commence a claim, action, or proceeding against the compact commission in state court for damages or to challenge a compact rule, fee, practice, or program that is duly applicable to that state. The compact commission shall have the benefit of the same limits of liability, defenses, rights to indemnity and defense by the state, and other legal rights and defenses for non-compact matters of the state racing commission in the state. All legal rights and defenses that arise from this compact shall also be available to the compact commission.*

- (B) *A compact commissioner, alternate, or other member or employee of a state racing commission who undertakes compact activities or duties does so in the course of business of their state racing commission, and shall have the benefit of the same limits of liability, defenses, rights to indemnity and defense by the state, and other legal rights and defenses for non-compact matters of state employees in their state. The executive director and other employees of the compact commission shall have the benefit of these same legal rights and defenses of state employees in the member state in which they are primarily employed. All legal rights and defenses that arise from this compact shall also be available to them.*
- (C) *Each member state shall be liable for and pay judgments filed against the compact commission to the extent related to its participation in the compact. Where liability arises from action undertaken jointly with other member states, the liability shall be divided equally among the states for whom the applicable rule, fee, practice, program, or action or omission of the executive director or other employees of the compact commission was undertaken; and no member state shall contribute to or pay, or be jointly or severally or otherwise liable for, any part of any judgment beyond its share as determined in accordance with this article.*

ARTICLE XIII

RESTRICTIONS ON AUTHORITY

- (A) *Notwithstanding anything to the contrary herein, the compact commission shall not adopt any practice, program, or rule that may change Kentucky requirements governing the amount and distribution of the takeout, retention, or breakages on intrastate wagers or that imposes licensure requirements for non-racing or non-wagering employees of any racetrack or off-site wagering facility operating wholly within the state.*
- (B) *Kentucky state laws applicable to pari-mutuel racing and wagering shall remain in full force and effect.*
- (C) *Notwithstanding anything to the contrary herein, no fee except for services provided by the compact commission shall be adopted by the compact commission in Kentucky without the prior consent of any horsemen (as expressed by their recognized horsemen's organization) licensed by the state racing commission who, or any franchised or state racing commission licensed racing corporation that, would be obliged to pay the fee.*

ARTICLE XIV

CONSTRUCTION, SAVING AND SEVERABILITY

- (A) *This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or of any member state, or the applicability of this compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person, or circumstance shall not be affected. If all or some portion of this compact is held to be contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the state affected as to all severable matters.*
- (B) *In the event of any allegation, finding, or ruling against the compact or its procedures or actions, provided that a member state has followed the compact's stated procedures, any rule it purported to adopt using the procedures of this statute shall constitute a duly adopted and valid state rule, and any program that it purported to create or agree to using the procedures of this statute shall constitute a duly made and valid state program and multilateral agreement with the other consenting member states.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

This Act shall only take effect with respect to any compacting state which has enacted an interstate compact entitled "Interstate Racing and Wagering Compact" and having an identical effect to that added by Section 1 of this Act upon the enactment into law by at least six (6) eligible states, but if such states have already enacted such legislation, this Act shall take effect immediately; provided, however, that the provisions of Section 1 of this Act shall expire upon reduction of the membership in such compact to one (1) state.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

- (I) *Each proposed compact rule under consideration for adoption in Kentucky shall be forwarded to the Administrative Regulation Review Subcommittee ("ARRS") and the subcommittee or standing committee of appropriate jurisdiction over the subject matter of the proposed compact rule ("subject matter committee")*

by the Kentucky compact commissioner for review when a rule is initially proposed and, if a rule is substantially modified during the compact commission rule-making process, when the rule is modified.

- (2) *Each proposed compact rule adopted by the compact commission and upon which the Kentucky compact commissioner has voted in favor shall be forwarded to the ARRS and the subject matter committee simultaneously by the Kentucky compact commissioner for review within sixty (60) days after adoption.*
- (3) *Upon receipt of a proposed, modified, or adopted compact rule, the ARRS and subject matter committee shall review the rule and may forward their respective findings to the Kentucky compact commissioner in writing within ten (10) calendar days.*

Signed by Governor March 16, 2011.

CHAPTER 78

(SB 25)

AN ACT relating to annexation maps and declaring an emergency.

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

➔Section 1. KRS 81A.470 is amended to read as follows:

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

➔Section 2. KRS 81.420 is amended to read as follows:

- (1) Elections shall be held at the next regular election if the ordinances of the legislative bodies of the cities desiring merger or consolidation have been filed with the county clerk not later than the second Tuesday in August preceding the regular election. The qualifications of voters and all other matters in regard to the election shall be governed by the general election laws. The question shall be submitted in substantially the following form:

"Are you in favor of merging or consolidating the city of and the city of into one city, to be known as the city of"?

yes

no

- (2) If a majority of the legal votes cast at the election in all of the cities, each city being a separate unit in the elections, proposing to merge or consolidate shall favor the merger or consolidation, then thirty (30) days after the certification of the results of the election the cities shall become one (1) city of the class and organizational structure of the largest of the old cities, but if a majority of the legal voters in either city vote "No," the merger or consolidation shall fail.
- (3) *In addition to other public notice requirements, a merged or consolidated city shall comply with the provisions of KRS 81A.470, but shall not be required to comply with the provisions of KRS 81A.475.*

➔Section 3. Whereas Section 1 of this Act was amended by 2010 Kentucky Acts Chapters 10 and 117, which were in conflict, and Acts Chapter 117 prevailed as the last enacted by the General Assembly, and whereas it was the intent of Acts Chapter 10 to repeal the requirement for annexation maps to be filed with the Department for Local Government, an emergency is declared to exist, and Section 1 of this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

➔Section 4. Section 1 of this Act shall apply retroactively to July 15, 2010.

Signed by Governor March 16, 2011.

CHAPTER 79

(SB 26)

AN ACT relating to identification cards for people experiencing homelessness.

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

➔Section 1. KRS 186.531 is amended to read as follows:

- (1) The cost of operators' licenses and permits shall be as follows:
 - (a) The fee for a four (4) year original or renewal motor vehicle license shall be twenty dollars (\$20);
 - (b) The fee for a four (4) year original or renewal motorcycle operator's license shall be twenty-four dollars (\$24), twelve dollars (\$12) of which shall be distributed in accordance with the provisions of subsections (2) to (4) of this section, and twelve dollars (\$12) of which shall be forwarded to the road fund. The fee for a combination motor vehicle-motorcycle operator's license shall be thirty dollars (\$30), eighteen dollars (\$18) of which shall be distributed in accordance with the provisions of subsections (2) to (4) of this section, and twelve dollars (\$12) of which shall be forwarded to the road fund;
 - (c) The fee for an instruction permit for a motor vehicle shall be twelve dollars (\$12) including four dollars (\$4) for preparing and acknowledging the application. Of the remaining eight dollars (\$8), two dollars (\$2) of the fee shall be distributed in accordance with the provisions of subsections (2) to (4) of this section, and six dollars (\$6) shall be forwarded to the road fund;
 - (d) The fee for an instruction permit for a motorcycle shall be twelve dollars (\$12) including one dollar (\$1) for preparing and acknowledging the application. Of the remaining eleven dollars (\$11), five dollars (\$5) of the fee shall be distributed in accordance with the provisions of subsections (2) to (4) of this section, and six dollars (\$6) shall be forwarded to the road fund;
 - (e) The fee for a duplicate license shall be twelve dollars (\$12), six dollars (\$6) of which shall be distributed in accordance with the provisions of subsections (2) to (4) of this section, and six dollars (\$6) of which shall be forwarded to the road fund;
 - (f)
 1. The fee for an identification card shall be twelve dollars (\$12), four dollars (\$4) of which shall be distributed in accordance with the provisions of subsections (2) to (4) of this section, and eight dollars (\$8) of which shall be forwarded to the road fund.
 2. The fee for a duplicate identification card shall be twelve dollars (\$12), two dollars (\$2) of which shall be distributed in accordance with the provisions of subsections (2) to (4) of this section, and ten dollars (\$10) of which shall be forwarded to the road fund.
 3.
 - a. *The fee for an identification card for a person who does not have a fixed, permanent address shall be four dollars (\$4), two dollars (\$2) of which shall be used to cover the Transportation Cabinet's cost of equipment and supplies, and two dollars (\$2) of which shall be an administrative fee of the circuit clerk for issuing the card that 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 adjustment to deputy clerks.*

- b. The fee for a second or subsequent duplicate identification card for a person who does not have a fixed, permanent address shall be as set forth in subparagraph 2. of this paragraph; and*
- (g) Any applicant under the age of twenty-one (21) who meets the requirements for the issuance of a valid driver's license shall be issued a license valid until the date the applicant attains the age of twenty-one (21). The fee for the license shall be two dollars (\$2) per year for the requisite number of years as set forth herein. The applicant shall have thirty (30) days after his twenty-first birthday in which to renew his driver's license.
- (2) Except as provided in subsection (3) of this section, the circuit clerk shall deposit in the State Treasury to the credit of the general fund except as provided in paragraph (a), paragraph (f), and paragraph (g) of this subsection fees pertaining to applications and license fees in the following manner:
- (a) Twenty-two percent (22%) of the cost for the issuance of any original and renewal license shall be deposited in a trust and agency account to the credit of the Administrative Office of the Courts and shall be used to assist circuit clerks in hiring additional employees and providing salary adjustments for employees;
 - (b) One dollar (\$1) for issuance of any instruction permit;
 - (c) One dollar (\$1) for preparing and acknowledging an application for an instruction permit;
 - (d) One dollar and twenty-five cents (\$1.25) for preparing and acknowledging an application for a duplicate;
 - (e) One dollar and twenty-five cents (\$1.25) for each identification card;
 - (f) For each original or renewal license one dollar (\$1) shall be credited to a special account within the state road fund and shall be used by the Transportation Cabinet exclusively for the purpose of issuing a photo license. For each original or renewal motorcycle operator's license and each motorcycle instruction permit, four dollars (\$4) shall be credited to a restricted fund and shall be used exclusively for the purpose of the motorcycle safety education program fund pursuant to KRS 15A.358;
 - (g) An applicant for an original or renewal motor vehicle operator's license, commercial driver's license, motorcycle operator's license, or personal identification card shall be requested by the clerk to make a donation of one dollar (\$1) to promote an organ donor program. The one dollar (\$1) donation shall be added to the regular fee for an original or renewal motor vehicle operator's license, commercial driver's license, motorcycle operator's license, or personal identification card. One (1) donation may be made per issuance or renewal of a license or any combination thereof. The fee shall be paid to the circuit clerk and shall be retained by the clerk to be used exclusively for the purpose of promoting an organ donor program. Organ donation shall be voluntary and may be refused by the applicant at the time of issuance or renewal of a license; and
 - (h) Three dollars (\$3) for a combination motor vehicle-motorcycle operator's license.
- (3) The following fees shall be deposited in a trust and agency account to the credit of the Administrative Office of the Courts and shall be used to assist circuit clerks in hiring additional employees, providing salary adjustments for employees, providing training for employees, and purchasing additional equipment used in administering the issuance of driver's licenses:
- (a) One dollar (\$1) for issuing of an instruction permit;
 - (b) Three dollars (\$3) for preparing and acknowledging an application for an instruction permit;
 - (c) Four dollars (\$4) for preparing and acknowledging an application for a duplicate license;
 - (d) Ten dollars (\$10) for preparing and acknowledging an application for a reinstatement fee; and
 - (e) These fees shall be in addition to other funds provided to the circuit clerk through the regular appropriation made by the General Assembly to the Administrative Office of the Courts.
- (4) The remainder of all fees, and other moneys collected by the circuit clerk shall be forwarded to road fund.
- ➔Section 2. 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. Except as provided in subsection (8)(b) and (c) of this section, 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 Homeland Security, United States Bureau of Citizenship and Immigration Services:
- (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 Homeland Security, United States Bureau of Citizenship and Immigration Services 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 Homeland Security, United States Bureau of Citizenship and Immigration Services, 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 Homeland Security, United States Bureau of Citizenship and Immigration Services, 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 that if the personal identification card is issued to a person who does not have a fixed, permanent address, then the personal identification card shall be valid for one (1) year 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 Homeland Security, United States Bureau of Citizenship and Immigration Services 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) 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.
- (b) Upon receipt of proper documentation provided by the Department of Corrections, the circuit clerk of the county in which a released felony offender resides shall issue to any felony offender, if the felony offender is eligible, released from the Department of Corrections on home incarceration, parole, completed service of sentence, shock probation, or pardon, a personal identification card or, if the felony offender is eligible, an operator's license. Proper documentation under this paragraph shall consist of:
 1. The offender's certificate of birth;
 2. A copy of the offender's resident record card and parole certificate or notice of discharge;
 3. A photograph of the offender, printed on plastic card or paper; and
 4. A release letter that shall contain the offender's:
 - a. Full legal name, subject to the information available to the Department of Corrections;
 - b. Discharge/release date;
 - c. Signature;
 - d. Social Security number;
 - e. Date of birth;
 - f. Present Kentucky address where he or she resides; and
 - g. Physical description.

The offender shall present this documentation to the circuit clerk within thirty (30) calendar days from the date of the release letter and shall be responsible for paying the fee for the personal identification card or operator's license pursuant to KRS 186.531. The provisions of this paragraph shall apply only to persons released on or after July 15, 2010.

- (c) Upon receipt of proper documentation provided by the Department of Corrections, the circuit clerk of the county in which a felony offender resides shall issue to any felony offender, if the felony offender is

eligible, probated or conditionally discharged by the court and under the supervision of the Division of Probation and Parole, a personal identification card or, if the felony offender is eligible, an operator's license. Proper documentation under this paragraph shall consist of:

1. The offender's certificate of birth;
2. The offender's sentencing order;
3. A photograph of the offender, printed on plastic card or paper; and
4. A notarized release letter, signed by the supervising officer verifying the offender's status on supervision, that shall contain the offender's:
 - a. Full legal name, subject to the information available to the Division of Probation and Parole;
 - b. Signature;
 - c. Social Security number;
 - d. Date of birth;
 - e. Present Kentucky address where he or she resides; and
 - f. Physical description.

The offender shall present this documentation to the circuit clerk within thirty (30) calendar days from the date of the notarized release letter. The offender shall be responsible for paying the fee for the personal identification card or operator's license pursuant to KRS 186.531. The provisions of this paragraph shall apply only to persons released on or after July 15, 2010.

- (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 KRS 311.1917.
- (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.

Signed by Governor March 16, 2011.

CHAPTER 80

(SB 39)

AN ACT relating to state government contracts.

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

➔Section 1. KRS 14A.9-010 is amended to read as follows:

- (1) A foreign entity shall not transact business in this state until it obtains a certificate of authority from the Secretary of State.
- (2) The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:
 - (a) Maintaining, defending, or settling any proceeding;
 - (b) Holding meetings of the board of directors, shareholders, partners, members, managers, beneficial owners, or trustees or carrying on other activities concerning the internal affairs of the foreign entity;
 - (c) Maintaining bank accounts;
 - (d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign entity's own securities or maintaining trustees or depositaries with respect to those securities;
 - (e) Selling through independent contractors;
 - (f) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts;
 - (g) Creating or acquiring indebtedness, mortgages, and security interests in real, personal, or intangible property;
 - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
 - (i) Owning, without more, real or personal property;
 - (j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one (1) in the course of repeated transactions of a like nature; and
 - (k) Transacting business in interstate commerce.
- (3) The list of activities in subsection (2) of this section is not exhaustive.
- (4) This section shall not apply to:
 - (a) Foreign limited liability partnerships; and
 - (b) Foreign general partnerships.
- (5) This section shall not apply in determining the contacts or activities that may subject a foreign entity to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.
- (6) ***Notwithstanding any other law to the contrary, a foreign entity exempt under paragraph (j) of subsection (2) of this section or subsection (4) of this section shall obtain a certificate of authority from the Secretary of State under KRS 14A.9-030 to be eligible for award of a state contract under KRS Chapter 45A or 176.***

➔Section 2. KRS 45A.480 is amended to read as follows:

- (1) (a) No state contract for building, construction, reconstruction, renovation, demolition, or maintenance, or for any activity related to building, construction, reconstruction, renovation, demolition, or maintenance shall be awarded by any agency, department, or office of the Commonwealth of Kentucky or any political subdivision of the Commonwealth of Kentucky to any person until that person ~~assures~~^{assures} ~~[shall assure]~~, by affidavit, that all contractors and subcontractors employed, or that will be employed, under the provisions of the contract shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.
- (b) ***An agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by Section 1 of this Act to obtain a certificate of authority from the Secretary of State under KRS 14A.9-030 unless the person produces the required certificate of authority within fourteen (14) days of the bid or proposal opening.***
- (2) Any person who fails to comply with the assurances ***or to produce the certificate of authority from the Secretary of State*** required under subsection (1) of this section, upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars (\$4,000), or an amount equal to the sum of uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.

- (3) The penalty imposed in subsection (2) of this section shall be enforced by the county attorney for the county in which the violation occurred.

➔Section 3. KRS 176.085 is amended to read as follows:

- (1) (a) No contract for building, construction, reconstruction, renovation, demolition, or other type work on any state road, waterway, or aviation-related work, shall be awarded by any agency, department, or office of the Commonwealth of Kentucky or any political subdivision of the Commonwealth of Kentucky to any person until that person shall assure, by affidavit, that all contractors and subcontractors employed, or that will be employed, under the provisions of the contract shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.
- (b) *An agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a contract to a person that is a foreign entity required by Section 1 of this Act to obtain a certificate of authority from the Secretary of State under KRS 14A.9-030 unless the person produces the required certificate of authority within fourteen (14) days of the bid or proposal opening.*
- (2) Any person who fails to comply with the assurances *or to produce the certificate of authority from the Secretary of State* required under subsection (1) of this section, upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars (\$4,000), or an amount equal to the sum of uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.
- (3) The penalty imposed in subsection (2) of this section shall be enforced by the county attorney for the county in which the violation occurred.

Signed by Governor March 16, 2011.

CHAPTER 81

(SB 40)

AN ACT relating to influenza vaccinations for minors.

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

➔Section 1. KRS 315.010 is amended to read as follows:

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

- (1) "Administer" means the direct application of a drug to a patient or research subject by injection, inhalation, or ingestion, whether topically or by any other means;
- (2) "Association" means the Kentucky Pharmacists Association;
- (3) "Board" means the Kentucky Board of Pharmacy;
- (4) "Collaborative care agreement" means a written agreement between a specifically identified individual practitioner and a pharmacist who is specifically identified, whereby the practitioner outlines a plan of cooperative management of a specifically identified individual patient's drug-related health care needs that fall within the practitioner's statutory scope of practice. The agreement shall be limited to specification of the drug-related regimen to be provided and any tests which may be necessarily incident to its provisions; stipulated conditions for initiating, continuing, or discontinuing drug therapy; directions concerning the monitoring of drug therapy and stipulated conditions which warrant modifications to dose, dosage regimen, dosage form, or route of administration;
- (5) "Compound" or "compounding" means the preparation or labeling of a drug pursuant to or in anticipation of a valid prescription drug order including, but not limited to, packaging, intravenous admixture or manual combination of drug ingredients. "Compounding," as used in this chapter, shall not preclude simple reconstitution, mixing, or modification of drug products prior to administration by nonpharmacists;

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

- (b) A graduate of an approved college or school of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;
 - (c) A qualified applicant awaiting examination for licensure as a pharmacist or the results of an examination for licensure as a pharmacist; or
 - (d) An individual participating in a residency or fellowship program approved by the board for internship credit;
- (17) "Pharmacy" means every place where:
- (a) Drugs are dispensed under the direction of a pharmacist;
 - (b) Prescription drug orders are compounded under the direction of a pharmacist; or
 - (c) A registered pharmacist maintains patient records and other information for the purpose of engaging in the practice of pharmacy, whether or not prescription drug orders are being dispensed;
- (18) "Pharmacy technician" means a natural person who works under the immediate supervision, or general supervision if otherwise provided for by statute or administrative regulation, of a pharmacist for the purpose of assisting a pharmacist with the practice of pharmacy;
- (19) "Practice of pharmacy" means interpretation, evaluation, and implementation of medical orders and prescription drug orders; responsibility for dispensing prescription drug orders, including radioactive substances; participation in drug and drug-related device selection; administration of medications or biologics in the course of dispensing or maintaining a prescription drug order; the administration of adult immunizations pursuant to prescriber-approved protocols; ***the administration of influenza vaccines to individuals nine (9) to thirteen (13) years of age pursuant to prescriber-approved protocols with the consent of a parent or guardian***; the administration of immunizations to individuals fourteen (14) to seventeen (17) years of age pursuant to prescriber-approved protocols with the consent of a parent or guardian; the administration of immunizations to a child as defined in KRS 214.032, pursuant to protocols as authorized by KRS 315.500; drug evaluation, utilization, or regimen review; maintenance of patient pharmacy records; and provision of patient counseling and those professional acts, professional decisions, or professional services necessary to maintain and manage all areas of a patient's pharmacy-related care, including pharmacy-related primary care as defined in this section;
- (20) "Practitioner" has the same meaning given in KRS 217.015(35);
- (21) "Prescription drug" means a drug which:
- (a) Under federal law is required to be labeled with either of the following statements:
 - 1. "Caution: Federal law prohibits dispensing without prescription";
 - 2. "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian";
 - 3. "Rx Only"; or
 - 4. "Rx"; or
 - (b) Is required by any applicable federal or state law or administrative regulation to be dispensed only pursuant to a prescription drug order or is restricted to use by practitioners;
- (22) "Prescription drug order" means an original or new order from a practitioner for drugs, drug-related devices or treatment for a human or animal, including orders issued through collaborative care agreements. Lawful prescriptions result from a valid practitioner-patient relationship, are intended to address a legitimate medical need, and fall within the prescribing practitioner's scope of professional practice;
- (23) "Pharmacy-related primary care" means the pharmacists' activities in patient education, health promotion, assistance in the selection and use of over-the-counter drugs and appliances for the treatment of common diseases and injuries as well as those other activities falling within their statutory scope of practice;
- (24) "Society" means the Kentucky Society of Health-Systems Pharmacists;
- (25) "Supervision" means the presence of a pharmacist on the premises to which a pharmacy permit is issued, who is responsible, in whole or in part, for the professional activities occurring in the pharmacy; and

- (26) "Wholesaler" means any person who legally buys drugs for resale or distribution to persons other than patients or consumers.

➔Section 2. KRS 315.205 is amended to read as follows:

Upon the request of an individual or his or her parent or guardian, a pharmacist who administers an immunization to an individual who is fourteen (14) to seventeen (17) years of age *or an influenza vaccine to an individual who is nine (9) to thirteen (13) years of age*, as authorized in KRS 315.010(19), shall provide notification of the immunization to the individual's primary care provider.

Signed by Governor March 16, 2011.

CHAPTER 82

(SB 50)

AN ACT relating to the capture and transportation of carbon dioxide.

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

➔SECTION 1. A NEW SECTION OF SUBCHAPTER 27 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *For the purposes of this section, "carbon dioxide transmission pipeline" has the same meaning as in Section 2 of this Act.*
- (2) *If a carbon dioxide transmission pipeline company has received a construction certificate from the Kentucky State Board on Electric Generation and Siting under Section 6 of this Act and is unable to contract or agree with the owner after a good-faith effort to do so, the company may condemn the lands and material for the use and occupation of the lands that are necessary for:*
 - (a) *Constructing, maintaining, utilizing, operating, and gaining access to a carbon dioxide transmission pipeline and all necessary machinery, equipment, pumping stations, appliances, and fixtures for use in connection with a carbon dioxide transmission pipeline; and*
 - (b) *Obtaining all necessary rights of ingress and egress to construct, examine, alter, repair, maintain, operate, or remove a carbon dioxide transmission pipeline and all of its component parts.*
- (3) *The proceedings for condemnation shall be as provided in the Eminent Domain Act of Kentucky.*
- (4) *Carbon dioxide transmission pipelines, and the routing, construction, maintenance, and operation of them are, as a matter of legislative determination, declared to be a public use essential to the fulfillment of the purposes of this chapter.*

➔Section 2. KRS 154.27-010 is amended to read as follows:

As used in this subchapter:

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

alternative transportation fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce alternative transportation fuel for sale.

- (b) The alternative fuel facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels;
- (4) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- (5) "Approved company" means a corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity approved for incentives for an eligible project;
- (6) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (7) "Base amount" means the tons of coal, thousand (1000) cubic foot units (Mcf) of natural gas, or gallons of natural gas liquids purchased and used or severed and used by the approved company as feedstock for an eligible project during the twelve (12) months prior to the month in which the approved company first begins receiving incentives under KRS 143.024 or 143A.025, and 154.27-060, that were subject to the tax imposed by KRS 143.020 or 143A.020;
- (8) "Biomass resources" has the same meaning as in KRS 152.715;
- (9) (a) "Capital investment" means:
 - 1. Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 - 2. The cost of acquiring land or rights in land and any cost incident thereto, including recording fees;
 - 3. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project which is not paid by the contractor or otherwise provided;
 - 4. All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 - 5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project; and
 - 6. All other costs of a nature comparable to those described in this subsection.
- (b) "Capital investment" does not include costs described in paragraph (a) of this subsection that are paid for with funds received from the federal government or that are reimbursed by the federal government;
- (10) "Carbon capture ready" means planning for or anticipating capture of carbon dioxide in a manner to facilitate continued operation of the facility in compliance with applicable federal requirements;
- (11) ***"Carbon dioxide transmission pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a point of sale, storage, or other carbon management applications;***
- (12) "Center for Applied Energy Research" means the University of Kentucky Center for Applied Energy Research;
- ~~(13)~~~~(12)~~ "Commonwealth" means the Commonwealth of Kentucky;
- ~~(14)~~~~(13)~~ "Construction period" means the period beginning with the activation date of the eligible project and ending on a date set forth in the tax incentive agreement, which shall be no later than five (5) years from the activation date;
- ~~(15)~~~~(14)~~ "Department" means the Department of Revenue;
- ~~(16)~~~~(15)~~ "Eligible project" means:

- (a) An alternative fuel facility or a gasification facility meeting the investment requirements of KRS 154.27-020;
 - (b) An energy-efficient alternative fuel facility meeting the investment requirements of KRS 154.27-020;~~{~~
~~or~~
 - (c) A renewable energy facility meeting the investment requirements of KRS 154.27-020; *or*
 - (d) *A carbon dioxide transmission pipeline meeting the investment requirements of Section 3 of this Act;*
- (17)~~{(16)}~~ "Energy-efficient alternative fuel facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2010, and that, after the new construction, retrofit, or upgrade, will produce for sale energy-efficient alternative fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall produce for sale energy-efficient alternative fuels;
- (18)~~{(17)}~~ "Energy-efficient alternative fuels" means homogeneous fuels that:
- (a) Are produced from processes designed to densify feedstock coal, waste coal, or biomass resources; and
 - (b) Have an energy content that is greater than the feedstock coal, waste coal, or biomass resource;
- (19)~~{(18)}~~ "Estimated labor component" means the projected percentage of the total capital investment attributable to labor;
- (20)~~{(19)}~~ (a) "Facility" means a single location within the Commonwealth at which machinery and equipment are used in a manufacturing process that transforms raw materials into a product with commercial value.
- 1. The facility shall include the physical plant structure where the manufacturing process occurs and machinery and equipment within the physical plant structure.
 - 2. The facility may include:
 - a. On-site machinery and equipment used exclusively for processing coal or other raw materials for use in the manufacturing process at the facility;
 - b. For an alternative fuel facility or gasification facility, on-site power station operations, if those operations are primarily used to produce electricity for the facility;
 - c. On-site refining operations, if those operations are used exclusively to refine and blend fuels produced by the facility; and
 - d. The in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, if the exclusive purpose of the pipeline is to transport carbon dioxide from the facility to a point of sale, storage, or other carbon management applications.
 - (b) "Facility" shall not include any mining operations, or drilling and production operations for natural gas;
- (21)~~{(20)}~~ "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- (22)~~{(21)}~~ (a) "Gasification facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale:
- 1. Alternative transportation fuels;
 - 2. Synthetic natural gas;
 - 3. Chemicals;
 - 4. Chemical feedstocks; or
 - 5. Liquid fuels;
- from coal, waste coal, coal-processing waste, or biomass resources, through a gasification process. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce one (1) or more of the products set forth in this paragraph.

- (b) The gasification facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels;

~~(23)(22)~~ "Kentucky gross profits" has the same meaning as in KRS 141.0401;

~~(24)(23)~~ "Kentucky gross receipts" has the same meaning as in KRS 141.0401;

~~(25)(24)~~ "Post-construction incentives" means the incentives available under KRS 154.27-060 and 154.27-080;

~~(26)(25)~~ "Renewable energy facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded after August 30, 2007, and that, after the new construction, retrofit, or upgrade, utilizes:

- (a) Wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources to generate electricity in excess of one (1) megawatt for sale to unrelated entities; or
- (b) Solar power to generate electricity in excess of fifty (50) kilowatts for sale to unrelated entities.

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

~~(27)(26)~~ "Resident" has the same meaning as in KRS 141.010;

~~(28)(27)~~ "Retrofit" means a modification or addition to an existing facility that results in the production of a new and different product or uses a new or different process to produce the same product at the facility. Modifications or additions to a facility that maintain, restore, mend, or repair a facility shall not be considered a retrofit of the facility, and shall not be considered part of the capital investment if undertaken at the same time as a retrofit;

~~(29)(28)~~ "Synthetic natural gas" has the same meaning as in KRS 152.715;

~~(30)(29)~~ "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.27-040;

~~(31)(30)~~ "Termination date" means a date established by the tax incentive agreement that is no more than twenty-five (25) years from the activation date; and

~~(32)(31)~~ "Upgrade" means an investment in an existing facility that results in an increase in the productivity of the facility. Increased productivity shall be measured in relation to the type of products that are required to be produced by that facility to be an eligible project.

➔Section 3. KRS 154.27-020 is amended to read as follows:

- (1) This subchapter shall be known as the "Incentives for Energy Independence Act."
- (2) The General Assembly hereby finds and declares that it is in the best interest of the Commonwealth to induce the location of innovative energy-related businesses in the Commonwealth in order to advance the public purposes of achieving energy independence, creating new jobs and new investment, and creating new sources of tax revenues that but for the inducements to be offered by the authority to approved companies would not exist.
- (3) The purpose of this subchapter is to assist the Commonwealth in moving to the forefront of national efforts to achieve energy independence by reducing the Commonwealth's reliance on imported energy resources. The provisions of this subchapter seek to accomplish this purpose by providing incentives for companies that, in a carbon capture ready manner, construct, retrofit, or upgrade facilities for the purpose of:
 - (a) Increasing the production and sale of alternative transportation fuels;
 - (b) Increasing the production and sale of synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels, from coal, biomass resources, or waste coal through a gasification process;
 - (c) Increasing the production and sale of energy-efficient alternative fuels; or
 - (d) Generating electricity for sale through alternative methods such as solar power, wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources.
- (4) To qualify for the incentives provided in this subchapter, the following requirements shall be met:

- (a) For an alternative fuel facility or gasification facility that uses oil shale, tar sands, or coal as the primary feedstock, the minimum capital investment shall be one hundred million dollars (\$100,000,000);
 - (b) For an alternative fuel facility or gasification facility that uses biomass resources as the primary feedstock, the minimum capital investment shall be twenty-five million dollars (\$25,000,000);
 - (c) For an energy-efficient alternative fuel facility, the minimum capital investment shall be twenty-five million dollars (\$25,000,000);
 - (d) For an alternative fuel facility located in Kentucky that is newly constructed on or after August 1, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 1, 2010, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels using natural gas or natural gas liquids as the primary feedstock, the minimum capital investment shall be one million dollars (\$1,000,000); provided that the authority may approve a maximum of five (5) projects that meet the requirements of this paragraph;~~and~~
 - (e) For a renewable energy facility, the minimum capital investment shall be one million dollars (\$1,000,000); *and*
 - (f) *For a carbon dioxide transmission pipeline, the minimum capital investment shall be fifty million dollars (\$50,000,000).*
- (5) The incentives under the Incentives for Energy Independence Act are as follows:
- (a) An advance disbursement of post-construction incentives for which an approved company has been approved, the maximum amount of which is based upon the estimated labor component of the total capital investment of the eligible project, and the utilization of Kentucky residents during the construction period as set forth in KRS 154.27-090;
 - (b) Sales and use tax incentives of up to one hundred percent (100%) of the taxes paid on purchases of tangible personal property made to construct, retrofit, or upgrade an eligible project, as set forth in KRS 139.517 and 154.27-070;
 - (c) Up to eighty percent (80%) of the severance taxes paid on the purchase or severance of:
 - 1. Coal that is subject to the tax imposed under KRS 143.020 and that is specifically used by an alternative fuel facility, energy-efficient alternative fuel facility, or a gasification facility as feedstock for an eligible project, as set forth in KRS 143.024 and 154.27-060; or
 - 2. Natural gas or natural gas liquids that are subject to the tax imposed under KRS 143A.020 and that are specifically used in an alternative fuel facility described in subsection (4)(d) of this section as feedstock for an eligible project, as set forth in KRS 143A.025 and 154.27-060;
 - (d) Up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.040 or 141.020, and the limited liability entity tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the eligible project, as set forth in KRS 141.421 and 154.27-080; and
 - (e) Authorization for the approved company to impose a wage assessment of up to four percent (4%) of the gross wages of each employee subject to the Kentucky income tax:
 - 1. Whose job was created as a result of the eligible project;
 - 2. Who is employed by the approved company to work at the facility; and
 - 3. Who is on the payroll of the approved company or an affiliate of the approved company;
 as set forth in KRS 154.27-080.
- (6) The maximum recovery from all incentives approved under this subchapter for an eligible project shall not exceed fifty percent (50%) of the capital investment in the eligible project.
- (7) The incentives available to an approved company shall be negotiated with and approved by the authority.
- (8) If a newly constructed facility that qualifies for incentives under this subchapter is later upgraded or retrofitted in a manner that would qualify for incentives under this subchapter, the retrofit or upgrade shall be a separate eligible project, and the minimum investment requirements and carbon capture readiness requirements, if required, shall be met for the retrofit or upgrade to qualify for incentives under this subchapter.

- (9) The General Assembly finds that the authorities granted by this subchapter are proper governmental and public purposes for which public moneys may be expended.

➔Section 4. KRS 278.495 is amended to read as follows:

- (1) As used in this section:~~[-]~~

(a) *"Carbon dioxide transmission pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a point of sale, storage, or other carbon management applications; and*

(b) "Master meter system" means a pipeline system for distributing gas within a definable area, such as, but not limited to, a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer, who either purchases the gas directly through a meter or by other means, such as through rents.

- (2) Notwithstanding any other provision of law, the commission shall have the authority to regulate the safety of natural gas facilities which are:

- (a) Owned or operated by any public utility, county, or city, and used to distribute natural gas at retail; or
(b) Comprising a master meter system.

The commission may exercise this authority in conjunction with, and pursuant to, its authority to enforce any minimum safety standard adopted by the United States Department of Transportation pursuant to 49 U.S.C. sec. 60101 et seq., or any amendments thereto, and may promulgate administrative regulations consistent with federal pipeline safety laws in accordance with provisions of KRS Chapter 13A as are necessary to promote pipeline safety in the Commonwealth. In exercising this authority, however, the commission shall consider the impact of any action it takes on small businesses engaged in the installation and servicing of gas lines, master meter systems, or related equipment and shall act so as to ~~ensure~~~~assure~~ that no unfair competitive advantage is given to utilities over such small businesses.

➔Section 5. KRS 278.700 is amended to read as follows:

As used in KRS 278.700 to 278.716, unless the context requires otherwise:

- (1) "Board" means the Kentucky State Board on Electric Generation and Transmission Siting created in KRS 278.702;
- (2) "Merchant electric generating facility" means, except for a qualifying facility as defined in subsection (7) of this section, an electricity generating plant, together with associated facilities, that:
- (a) Is capable of operating at a capacity of ten megawatts (10MW) or more; and
- (b) Sells the electricity it produces in the wholesale market, at rates and charges not regulated by the Public Service Commission;
- (3) "Person" means any individual, corporation, public corporation, political subdivision, governmental agency, municipality, partnership, cooperative association, trust, estate, two (2) or more persons having a joint or common interest, or any other entity, and no portion of KRS 224.10-280, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 shall apply to a utility owned by a municipality unless the utility is a merchant plant as defined in this section;
- (4) "Commence to construct" means physical on-site placement, assembly, or installation of materials or equipment which will make up part of the ultimate structure of the facility. In order to qualify, these activities must take place at the site of the proposed facility or must be site-specific. Activities such as site clearing and excavation work will not satisfy the commence to construct requirements;
- (5) "Nonregulated electric transmission line" means an electric transmission line and related appurtenances for which no certificate of public convenience and necessity is required; which is not operated as an activity regulated by the Public Service Commission; and which is capable of operating at or above sixty-nine thousand (69,000) volts;
- (6) "Residential neighborhood" means a populated area of five (5) or more acres containing at least one (1) residential structure per acre;~~[-and]~~

- (7) "Qualifying facility" means a cogeneration facility as defined in 16 U.S.C. sec. 796(18)(b) which does not exceed a capacity of one hundred fifty megawatts (150MW) that is located on site at a manufacturer's plant and that uses steam from the cogeneration facility in its manufacturing process, or an industrial energy facility as defined in KRS 224.01-010 that does not generate more than one hundred fifty megawatts (150MW) for sale and has received all local planning and zoning approvals; **and**
- (8) ***"Carbon dioxide transmission pipeline" means the in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, that is used exclusively for the purpose of transporting carbon dioxide to a point of sale, storage, or other carbon management applications.***

➔Section 6. KRS 278.714 is amended to read as follows:

- (1) No person shall commence to construct a nonregulated electric transmission line ***or a carbon dioxide transmission pipeline*** without a construction certificate issued by the board. An application for a construction certificate shall be filed at the offices of the Public Service Commission along with an application fee as set forth in subsection (5) of this section. ***The board may hire a consultant to review the transmission line or carbon dioxide pipeline and provide recommendations concerning the adequacy of the application and proposed mitigation measures. The board may direct the consultant to prepare a report recommending changes in the route of the carbon dioxide pipeline or the route of the electric transmission line. Any consultant expenses or fees shall be borne by the applicant.***
- (2) A completed application shall include the following:
- (a) The name, address, and telephone number of the person proposing construction of the nonregulated ***electric*** transmission line ***or the carbon dioxide transmission pipeline***;
 - (b) A full description of the proposed route of the ***electric*** transmission line ***or the carbon dioxide transmission pipeline*** and its appurtenances. The description shall include a map or maps showing:
 1. The location of the proposed line ***or pipeline*** and all proposed structures that will support it;
 2. The proposed right-of-way limits;
 3. Existing property lines and the names of persons who own the property over which the line ***or pipeline*** will cross; and
 4.
 - a. The distance of the proposed ***electric transmission*** line from residential neighborhoods, schools, and public and private parks within one (1) mile of the proposed facilities; ***or***
 - b. ***The distance of the proposed carbon dioxide transmission pipeline from residential neighborhoods, schools, and parks, either private or public within one thousand (1,000) feet of the proposed facilities;***
 - (c) ***With respect to electric transmission lines***, a full description of the proposed line and appurtenances, including the following:
 1. Initial and design voltages and capacities;
 2. Length of line;
 3. Terminal points; and
 4. Substation connections;
 - (d) A statement that the proposed ***electric*** transmission line and appurtenances will be constructed and maintained in accordance with accepted engineering practices and the National Electric Safety Code;
 - (e) ***With respect to both electric transmission lines and carbon dioxide transmission pipelines***, evidence that public notice has been given by publication in a newspaper of general circulation in the general area concerned. Public notice shall include the location of the proposed ***electric transmission*** line ***or carbon dioxide pipeline***, shall state that the proposed line ***or pipeline*** is subject to approval by the board, and shall provide the telephone number and address of the Public Service Commission; and
 - (f) Proof of service of a copy of the application upon the chief executive officer of each county and municipal corporation in which the proposed ***electric transmission*** line ***or carbon dioxide transmission pipeline*** is to be located, and upon the chief officer of each public agency charged with the duty of planning land use in the general area in which the line ***or pipeline*** is proposed to be located.

- (3) *With respect to electric transmission lines*, within ninety (90) days of receipt of the application, or one hundred twenty (120) days if a local public hearing is held, the board shall, by majority vote, grant or deny the construction certificate either in whole or in part. Action to grant the certificate shall be based on the board's determination that the proposed route of the line will minimize significant adverse impact on the scenic assets of Kentucky and that the applicant will construct and maintain the line according to all applicable legal requirements. In addition, the board may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric transmission facilities in the Commonwealth. If the board determines that locating the transmission line will result in significant degradation of scenic factors or if the board determines that the construction and maintenance of the line will be in violation of applicable legal requirements, the board may deny the application or condition the application's approval upon relocation of the route of the line, or changes in design or configuration of the line.
- (4) A public hearing on an application to construct a nonregulated electric transmission line may be held in accordance with the provisions of KRS 278.712.
- (5) *The board shall convene a local public information meeting upon receipt of a request by not less than three (3) interested persons that reside in the county or counties in which the carbon dioxide pipeline is proposed to be constructed. If the board convenes the local public information meeting, the meeting will be in the county seat of one (1) of the counties, as determined by the board, in which the proposed carbon dioxide pipeline will be located. The meeting shall provide an opportunity for members of the public to be briefed and ask the party proposing the carbon dioxide pipeline questions about the pipeline.*
- (6) Pursuant to KRS 278.706(3) and (5), the board shall promulgate administrative regulations to establish an application fee for a construction certificate for:
- (a) A nonregulated transmission line~~[in accordance with KRS 278.706(3)]~~; and
 - (b) A carbon dioxide transmission pipeline.
- (7) *With respect to carbon dioxide transmission lines*, within ninety (90) days of receipt of the application or one hundred twenty (120) days if a local public information meeting is held, the board shall, by majority vote, grant or deny the construction certificate either in whole or in part. Action to grant the certificate shall be based on the board's determination that the proposed route of the pipeline will minimize significant adverse impact on the scenic assets of Kentucky and that the applicant will construct and maintain the line according to all applicable legal requirements. In addition, the board may consider the interstate benefits expected to be achieved by the proposed carbon dioxide transmission pipeline in the Commonwealth. If the board determines that locating the transmission line will result in significant degradation of scenic factors or if the board determines that locating the carbon dioxide transmission line will be in violation of applicable legal requirements, the board may deny the application or condition the application's approval upon relocation of the route of the pipeline.

Signed by Governor March 16, 2011.

CHAPTER 83

(SB 63)

AN ACT relating to diabetes.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

The Department for Medicaid Services, the Department for Public Health, the Office of Health Policy, and the Personnel Cabinet shall collaborate to identify goals and benchmarks while also developing individual entity plans to reduce the incidence of diabetes in Kentucky, improve diabetes care, and control complications associated with diabetes.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

The Department for Medicaid Services, the Department for Public Health, the Office of Health Policy, and the Personnel Cabinet shall submit a report to the Legislative Research Commission by January 10 of each odd-numbered year on the following:

- (1) *The financial impact and reach diabetes of all types is having on the entity, the Commonwealth, and localities. Items included in this assessment shall include the number of lives with diabetes impacted or covered by the entity, the number of lives with diabetes and family members impacted by prevention and diabetes control programs implemented by the entity, the financial toll or impact diabetes and its complications places on the program, and the financial toll or impact diabetes and its complications places on the program in comparison to other chronic diseases and conditions;*
- (2) *An assessment of the benefits of implemented programs and activities aimed at controlling diabetes and preventing the disease. This assessment shall also document the amount and source for any funding directed to the agency or entity from the Kentucky General Assembly for programs and activities aimed at reaching those with diabetes;*
- (3) *A description of the level of coordination existing between the entities on activities, programmatic activities and messaging on managing, treating, or preventing all forms of diabetes and its complications;*
- (4) *The development or revision of detailed action plans for battling diabetes with a range of actionable items for consideration by the General Assembly. The plans shall identify proposed action steps to reduce the impact of diabetes, pre-diabetes, and related diabetes complications. The plan shall also identify expected outcomes of the action steps proposed in the following biennium while also establishing benchmarks for controlling and preventing relevant forms of diabetes; and*
- (5) *The development of a detailed budget blueprint identifying needs, costs, and resources required to implement the plan identified in subsection (4) of this section. This blueprint shall include a budget range for all options presented in the plan identified in subsection (4) of this section for consideration by the General Assembly.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO READ AS FOLLOWS:

The requirements of Sections 1 and 2 of this Act shall be limited to the diabetes information, data, initiatives, and programs within each agency prior to the effective date of this Act, unless there is unobligated funding for diabetes in each agency that may be used for new research, data collection, reporting, or other requirements of Sections 1 and 2 of this Act.

Signed by Governor March 16, 2011.

CHAPTER 84

(SB 64)

AN ACT relating to the Kentucky Center for African-American Heritage.

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

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

- (1) *The Kentucky Center for African-American Heritage is hereby created to educate the public and to preserve and research the cultural heritage of African-Americans by establishing a center to showcase the contributions of Kentucky African-Americans to the Commonwealth, the nation, and the world. In addition to exhibit space, the center shall provide performance space for activities, such as but not limited to plays, poetry readings, and concerts.*
- (2) *The Kentucky Center for African-American Heritage shall be governed by a board of directors who represent various African-American heritage interests. The board shall also reflect significant membership from the African-American community. On the effective date of this Act, the board of directors of the African-American Heritage Foundation, Inc., the secretary of the Tourism, Arts and Heritage Cabinet or his or her designee, and the chair of the Kentucky African-American Heritage Commission shall be the initial board of directors of the center, and shall serve a four (4) year term. Upon the expiration of the four (4) year term of the initial board of directors, the membership of the board of directors shall be as follows:*

- (a) *The secretary of the Tourism, Arts and Heritage Cabinet or the secretary's designee;*
 - (b) *The chair of the Kentucky African-American Heritage Commission;*
 - (c) *One (1) member from an institution of higher learning;*
 - (d) *One (1) member who is an expert in African-American history;*
 - (e) *One (1) member from the arts community;*
 - (f) *Four (4) members with expertise in Kentucky, United States, or world history with an emphasis on the African-American experience. Of the four (4) members required by this paragraph, there shall be one (1) from central Kentucky, one (1) from northern Kentucky, one (1) from western Kentucky, and one (1) from eastern Kentucky;*
 - (g) *One (1) member at large with expertise in Kentucky, United States, or world history with an emphasis on the African-American experience;*
 - (h) *Five (5) members from the metro Louisville area. The mayor of Louisville shall submit five (5) separate lists of three (3) names for each of the appointments provided for in this paragraph. One (1) member shall be appointed from each list of names. At least one (1) of the members appointed from the mayor's lists shall have experience in Kentucky, United States, or world history with an emphasis on the African-American experience; and*
 - (i) *Ten (10) members from the public at large.*
- (3) *Members listed in paragraphs (c) to (i) of subsection (2) of this section shall be appointed by the Governor. Twelve (12) of the Governor's initial appointees shall serve a two (2) year term. Eleven(11) of the Governor's initial appointees shall serve a four (4) year term. Subsequent appointments by the Governor shall be for four (4) year terms, and members may be reappointed for subsequent terms. Any vacancy shall be filled by appointment of the Governor for the remainder of the unexpired term.*
 - (4) *Board members shall serve without compensation, but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.*
 - (5) *The board shall elect by a majority vote a chair, a vice chair, and any other officers deemed necessary.*
 - (6) *The board shall meet at least three (3) times per year. Notice of the time and location of each meeting shall be provided in writing to each member at least ten (10) days in advance of the meeting.*
 - (7) *A majority of the members shall constitute a quorum.*
 - (8) *Committees may be formed at the direction of the chair.*
 - (9) *The Kentucky Center for African-American Heritage may seek and accept grants or raise funds from any available source, public or private, to accomplish its responsibilities and achieve its objectives.*
 - (10) *The Kentucky Center for African-American Heritage shall be attached for administrative purposes to the Tourism, Arts and Heritage Cabinet, whose responsibilities shall include but are not limited to designating a staff person to coordinate board needs and providing other staff and services requested by the board to achieve its objectives under Section 2 of this Act.*

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

The objectives of the Kentucky Center for African-American Heritage, through the programs and activities of the center, shall be to:

- (1) *Educate the public and school-age children on the cultural, historical, political, and artistic contributions that African-Americans have made to the Commonwealth;*
- (2) *Cooperate with the Kentucky Heritage Council, the Kentucky African-American Heritage Commission, and the Kentucky General Assembly on matters relating to Kentucky African-American heritage;*
- (3) *Promote Kentucky African-American heritage by working with educational, arts, and humanities organizations;*
- (4) *Recognize and sanction projects that advance wider knowledge of Kentucky African-Americans' contributions to, and influence and impact on, life in Kentucky; and*
- (5) *Support the mission of the Kentucky African-American Heritage Commission.*

Signed by Governor March 16, 2011.

CHAPTER 85

(SB 66)

AN ACT relating to the Eastern Kentucky Exposition Center Corporation.

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

➔Section 1. KRS 154.40-030 is amended to read as follows:

- (1) The corporation shall be governed by a board of directors consisting of seven (7) members appointed *as follows:*

- (a) *Three (3) members appointed* by the Governor;
- (b) *Two (2) members appointed by the county judge/executive of Pike County; and*
- (c) *Two (2) members appointed by the mayor of Pikeville.*

Initial appointments shall be for a term expiring November 1, 2003. Thereafter, members shall serve terms of four (4) years beginning November 1, 2003. After a membership term expires, members shall serve until new members are appointed to replace them.

- (2) A member may be removed by *his or her appointing authority as set forth in subsection (1) of this section,*~~[the Governor]~~ for misfeasance or malfeasance and after being afforded notice, an opportunity for a hearing under KRS Chapter 13B, and a finding of facts. A copy of charges, transcripts of the records of hearings, and findings of fact shall be filed with the Secretary of State.
- (3) Members of the board shall serve without compensation, but shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties. The reimbursement shall be in accordance with administrative regulations promulgated under KRS Chapter 13A by the Finance and Administration Cabinet.

Signed by Governor March 16, 2011.

CHAPTER 86

(SB 70)

AN ACT relating to environmental protection.

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

➔Section 1. KRS 224.1-530 is amended to read as follows:

- (1) *Notwithstanding any provision of law or administrative regulation to the contrary,* the numerical values contained in *the most current version of* the document titled "*Regional Screening Level (RSL) Table*"~~["Region 9 Preliminary Remediation Goals,"]~~ published by the United States Environmental Protection Agency's Region 3 *as of the effective date of this Act*~~[9]~~, are hereby established as screening levels and shall be used by the cabinet in conformance with the guidance set out in the *Risk-Based Concentration Table User's Guide*~~[Region 9 Preliminary Remediation Goals]~~. It is not the intent of this section to establish these levels as the cleanup standards for individual contaminants that may be present at any site.
- (2) Within one (1) year from June 21, 2001, the cabinet shall promulgate regulations establishing standards under KRS 224.01-400 and 224.01-405 with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products, that are protective of human health, safety, and the environment.
- (3) Within one (1) year from June 21, 2001, the cabinet shall promulgate a regulation defining tiered remediation management options that account for the following:

- (a) Current and proposed land use;
 - (b) Zoning, if applicable, of the property and surrounding properties; and
 - (c) The nature and extent of the contamination.
- (4) ***The cabinet may promulgate administrative regulations that adopt and incorporate updated versions of the Regional Screening Level (RSL) Table to be used under this section.***
- (5) Nothing in this section shall affect or impair the ability of the cabinet to implement and enforce the provisions of KRS 224.01-400 and 224.01-405.
- ~~(6)-(5)~~ Nothing in this section shall be construed to limit the options available to the applicant under KRS 224.01-400(18) to 224.01-400(21).

Signed by Governor March 16, 2011.

Legislative Research Commission Note. As enacted, Section 1 of this Act directed that “KRS 224.1-530” be amended. The correct citation for that statute is “KRS 224.01-530,” and the Reviser of Statutes has corrected that manifest clerical or typographical error in this publication.

CHAPTER 87

(SB 71)

AN ACT relating to the practice of diabetes education and making an appropriation therefor.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 8 of this Act, unless the context requires otherwise:

- (1) ***"Board" means the Kentucky Board of Licensed Diabetes Educators;***
- (2) ***"Diabetes education" means a collaborative process through which people with or at risk for diabetes gain the knowledge and skills needed to modify behavior and successfully self-manage the disease and its related conditions; and***
- (3) ***"Licensed diabetes educator" means a health care professional who has met the requirements of Sections 6, 7, and 8 of this Act and who focuses on training or educating people with or at risk for diabetes and related conditions to change their behavior to achieve better clinical outcomes and improved health status.***

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) ***No person shall use the title "licensed diabetes educator" or hold himself or herself out as a "licensed diabetes educator" unless he or she is licensed pursuant to Sections 1 to 8 of this Act.***
- (2) ***Nothing in Sections 1 to 8 of this Act shall apply to persons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes, including but not limited to physicians, nurses, pharmacists, dietitians, and nutritionists or students in accredited training programs in those professions, and nothing in Sections 1 to 8 of this Act shall be construed to limit, interfere with, or restrict the practice, descriptions of services, or manner in which they hold themselves out to the public.***
- (3) ***Nothing in Sections 1 to 8 of this Act shall be construed to alter, amend, or interfere with the practice of those who provide health care services, including but not limited to physicians, nurses, pharmacists, dietitians, and nutritionists.***
- (4) ***Nothing in Sections 1 to 8 of this Act shall apply to activities and services of an accredited institution of higher education as part of a program of studies.***

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) ***There is hereby created the Kentucky Board of Licensed Diabetes Educators consisting of five (5) members who shall be appointed by the Governor as follows:***

- (a) *One (1) member shall be a licensed medical physician with experience in the delivery of diabetes education appointed from a list of three (3) names submitted by the State Board of Medical Licensure;*
- (b) *One (1) member shall be a registered nurse with experience in diabetes education appointed from a list of three (3) names submitted by the Kentucky Board of Nursing;*
- (c) *One (1) member shall be a pharmacist experienced in diabetes education licensed under KRS Chapter 315 appointed from a list of three (3) names submitted by the Kentucky Board of Pharmacy;*
- (d) *One (1) member shall be a licensed dietitian or certified nutritionist with experience in diabetes education appointed from a list of three (3) names submitted by the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists; and*
- (e) *One (1) member shall be a citizen at large who is not employed in the health care field.*

One (1) of the members appointed under paragraph (b), (c), or (d) of this subsection shall have completed either the credentialing program of the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators.

- (2) (a) *The Governor shall initially appoint one (1) member and the citizen at large to terms of four (4) years, two (2) members to terms of three (3) years, and one (1) member to a term of two (2) years.*
- (b) *All reappointments to the board shall be for a term of four years.*
- (c) *No member shall serve more than two (2) consecutive terms and shall serve on the board until his or her successor is appointed.*
- (3) *The board shall organize annually and elect one (1) of its members as chair and one (1) of its members as secretary. A quorum of the board shall consist of three (3) members. The board shall meet at least semiannually and upon the call of the chair, or at the request of two (2) or more members to the secretary of the board.*
- (4) *The board shall be placed for administrative purposes under the Office of Occupations and Professions of the Public Protection Cabinet.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

The board shall:

- (1) *Promulgate administrative regulations in accordance with KRS Chapter 13A to carry out and enforce the provisions of Sections 1 to 8 of this Act, including creating a code of ethics, standards of practice, and continuing education requirements for licensed diabetes educators, based upon policies and positions adopted by the American Association of Diabetes Educators;*
- (2) *Issue initial licenses and license renewals to individuals. A license shall not be issued to a partnership, unincorporated association, corporation, or similar business organization;*
- (3) *Investigate alleged violations brought to its attention, conduct investigations, and schedule and conduct administrative hearings in accordance with KRS Chapter 13B to enforce the provisions of Sections 1 to 8 of this Act and administrative regulations promulgated pursuant to Sections 1 to 8 of this Act. In conducting investigations the board is authorized to:*
 - (a) *Administer oaths;*
 - (b) *Receive evidence;*
 - (c) *Interview persons;*
 - (d) *Require the production of books, papers, documents, or other evidence; and*
 - (e) *Institute civil and criminal proceedings against violators of Sections 1 to 8 of this Act. The Attorney General, Commonwealth's attorneys, and county attorneys shall assist the board in prosecuting violations of Sections 1 to 8 of this Act;*
- (4) *Keep a record of its proceedings and a register of all persons licensed as diabetes educators including the name of the licensee, the license number, date of issue, and last known place of business. The list shall be available to anyone upon request and payment of a fee not to exceed the cost of the publication;*

- (5) *Collect or receive all moneys owed pursuant to the provisions of Sections 5, 6, and 8 of this Act and deposit all moneys into the fund established by Section 5 of this Act; and*
- (6) *Reimburse members of the board for actual travel expenses incurred for attending the meetings of the board.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) *All licensing amounts and other moneys received by the board pursuant to the provisions of this section and Sections 6 and 8 of this Act shall be deposited in the State Treasury to the credit of a revolving fund which is hereby established. Amounts in the fund shall be used for the purposes set forth in Sections 1 to 8 of this Act.*
- (2) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year to be used for the purposes established by the board.*
- (3) *Any interest earnings of the fund shall become part of the fund and shall not lapse.*
- (4) *The expenses of the board shall be paid from this revolving fund.*
- (5) *Moneys deposited in the fund shall be used and are hereby appropriated for the purposes specified in Sections 1 to 8 of this Act.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

An applicant for licensure as a diabetes educator shall:

- (1) *File a written application on forms provided by the board;*
- (2) *Provide evidence to the board showing successful completion of one (1) of the following:*
 - (a) *The American Association of Diabetes Educators' "Core Concepts Course" with demonstrable experience in the care of people with diabetes under supervision that meets requirements specified in administrative regulations promulgated by the board;*
 - (b) *The credentialing program of the American Association of Diabetes Educators or the National Certification Board for Diabetes Educators; or*
 - (c) *An equivalent credentialing program as determined by the board;*
- (3) *Pay licensing amounts as promulgated by the board through administrative regulation with the following restrictions:*
 - (a) *Initial licensing shall not exceed one hundred dollars (\$100);*
 - (b) *Annual renewal shall not exceed one hundred dollars (\$100);*
 - (c) *Biennial renewal shall not exceed two hundred dollars (\$200); and*
 - (d) *Late renewal shall not exceed one hundred fifty dollars (\$150);*
- (4)
 - (a) *Licenses shall be renewed annually or biennially if the board requires biennial license renewal by administrative regulation.*
 - (b) *Licenses not renewed within thirty (30) days after the renewal date shall pay a late penalty as promulgated by the board in administrative regulation; and*
 - (c) *Licenses not renewed within ninety (90) days of the renewal date shall lapse and may only be reinstated with payment of a late renewal penalty and initial licensing amount as promulgated by the board in administrative regulation.*
- (5) *Notwithstanding subsections (1) to (4) of this section, prior to July 1, 2012, a person who the board finds to have successfully achieved a core body of knowledge and skills in the biological and social sciences, communication, counseling, and education, by training or instruction, as well as experience in the care of people with diabetes under supervision that meets the requirements specified in administrative regulations promulgated by the board, may be issued an initial license by the board upon payment of an initial licensing fee, completion of a written application on forms provided by the board, and submission of any other information requested by the board.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) *When renewing a license, each licensee shall provide to the board documentation of the successful completion of fifteen (15) hours of board-approved continuing education credits. A maximum of fifteen (15) additional hours may be carried over into the next renewal period.*
- (2) *Waivers or extensions of continuing education may be approved at the discretion of the board.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

- (1) *The board may deny or refuse to renew a license, may suspend or revoke a license, may issue an administrative reprimand, or may impose probationary conditions or fines not to exceed five hundred dollars (\$500) when the licensee has engaged in unprofessional conduct that has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct shall include the following:*
 - (a) *Obtaining or attempting to obtain a license by fraud, misrepresentation, concealment of material facts, or making a false statement to the board;*
 - (b) *Being convicted of a felony in any court if any act for which the licensee or applicant for license was convicted is determined by the board to have a direct bearing on whether the person is trustworthy to serve the public as a licensed diabetes educator. "Conviction" as used in this paragraph, shall include a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere in a court of law;*
 - (c) *Violating any lawful order or administrative regulation promulgated by the board;*
 - (d) *Violating any provision of Sections 1 to 8 of this Act or administrative regulation promulgated by the board;*
 - (e) *Evidence of gross negligence or gross incompetence in the practice of diabetes education; and*
 - (f) *Violating the standards of practice or the code of ethics as promulgated by administrative regulations.*
- (2) *All administrative hearings for the disciplinary action against a license or certificate holder shall be conducted in accordance with KRS Chapter 13B.*

➔Section 9. In recognition of the serious problem diabetes presents to the general health of the Commonwealth, and in recognition of the dedication and commitment of health care professionals throughout the state working in the care and education of diabetic patients, World Diabetes Day shall be recognized on the fourteenth day of November each year to draw attention to issues of importance to diabetes professionals and patients and to keep diabetes firmly in the public spotlight.

Signed by Governor March 16, 2011.

CHAPTER 88

(SB 79)

AN ACT relating to the operation of motor vehicles and declaring an emergency.

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

➔Section 1. KRS 186.050 is amended to read as follows:

- (1) The annual registration fee for motor vehicles, including taxicabs, airport limousines, and U-Drive-Its, primarily designed for carrying passengers and having provisions for not more than nine (9) passengers, including the operator, and pickup trucks and passenger vans which are not being used on a for-hire basis shall be eleven dollars fifty cents (\$11.50).
- (2) Except as provided in KRS 186.041 and 186.162, the annual registration fee for each motorcycle shall be nine dollars (\$9).
- (3) (a) All motor vehicles having a declared gross weight of vehicle and any towed unit of ten thousand (10,000) pounds or less, except those mentioned in subsections (1) and (2) of this section and those engaged in hauling passengers for hire, operating under certificates of convenience and necessity, are

classified as commercial vehicles and the annual registration fee, except as provided in subsections (4) to (14) of this section, shall be eleven dollars and fifty cents (\$11.50).

- (b) All motor vehicles except those mentioned in subsections (1) and (2) of this section, and those engaged in hauling passengers for hire, operating under certificates of convenience and necessity, are classified as commercial vehicles and the annual registration fee, except as provided in subsections (3)(a) and (4) to (14) of this section, shall be as follows:

| Declared Gross Weight of Vehicle and Any Towed Unit | Registration Fee |
|--|---------------------|
| 10,001-14,000 | 30.00 |
| 14,001-18,000 | 50.00 |
| 18,001-22,000 | 132.00 |
| 22,001-26,000 | 160.00 |
| 26,001-32,000 | 216.00 |
| 32,001-38,000 | 300.00 |
| 38,001-44,000 | 474.00 |
| 44,001-55,000 | 669.00 |
| 55,001-62,000 | 1,007.00 |
| 62,001-73,280 | 1,250.00 |
| 73,281-80,000 | 1,410.00 |

- (4) (a) **1.** Any farmer owning a truck having a gross weight of ***twenty-six thousand (26,000)***~~thirty-eight thousand (38,000)~~ pounds or less may have it registered as a farmer's truck and obtain a license for eleven dollars and fifty cents (\$11.50). The applicant's signature upon the certificate of registration and ownership shall constitute a certificate that he is a farmer engaged in the production of crops, livestock, or dairy products, that he owns a truck of the gross weight of ***twenty-six thousand (26,000)***~~thirty-eight thousand (38,000)~~ pounds or less, and that during the next twelve (12) months the truck shall not be used in for-hire transportation and may be used in transporting persons, food, provender, feed, machinery, livestock, material, and supplies necessary for his farming operation, and the products grown on his farm.
- 2.** *Any farmer owning a truck having a gross weight of twenty-six thousand one (26,001) pounds to thirty-eight thousand (38,000) pounds may have it registered as a farmer's truck and obtain a license for eleven dollars and fifty cents (\$11.50). The applicant's signature upon the certificate of registration and ownership shall constitute a certificate that he is a farmer engaged in the production of crops, livestock, or dairy products, that he owns a truck of the gross weight between twenty-six thousand one (26,001) pounds and thirty-eight thousand (38,000) pounds, and that during the next twelve (12) months the truck shall not be used in for-hire transportation and may be used in transporting persons, food, provender, feed, machinery, livestock, material, and supplies necessary for his farming operation, and the products grown on his farm.*
- (b) Any farmer owning a truck having a declared gross weight in excess of thirty-eight thousand (38,000) pounds shall not be required to pay the fee set out in subsection (3) of this section and, in lieu thereof, shall pay forty percent (40%) of the fee set out in subsection (3) of this section and shall be exempt from any fee charged under the provisions of KRS 281.752. The applicant's signature upon the registration receipt shall be considered to be a certification that he is a farmer engaged solely in the production of crops, livestock, or dairy products, and that during the current registration year the truck will be used only in transporting persons, food, provender, feed, and machinery used in operating his farm and the products grown on his farm.
- (c) An initial applicant for, or an applicant renewing, his or her registration pursuant to this subsection, may at the time of application make a voluntary contribution to be deposited into the agricultural program trust fund established in KRS 246.247. The recommended voluntary contribution shall be set at ten dollars (\$10) and automatically added to the cost of registration or renewal unless the individual

registering or renewing the vehicle opts out of contributing the recommended amount. The county clerk shall collect and forward the voluntary contribution to the cabinet for distribution to the Department of Agriculture.

- (5) Any person owning a truck or bus used solely in transporting school children and school employees may have the truck or bus registered as a school bus and obtain a license for eleven dollars fifty cents (\$11.50) by filing with the county clerk, in addition to other information required, an affidavit stating that the truck or bus is used solely in the transportation of school children and persons employed in the schools of the district, that he has caused to be printed on each side of the truck or bus and on the rear door the words "School Bus" in letters at least six (6) inches high, and of a conspicuous color, and the truck or bus will be used during the next twelve (12) months only for the purpose stated.
- (6) Any church or religious organization owning a truck or bus used solely in transporting persons to and from a place of worship or for other religious work may have the truck or bus registered as a church bus and obtain a license for eleven dollars and fifty cents (\$11.50) by filing with the county clerk, in addition to other information required, an affidavit stating that the truck or bus will be used only for the transporting of persons to and from a place of worship, or for other religious work, and that there has been printed on the truck or bus in large letters the words "Church Bus," with the name of the church or religious organization owning and using the truck or bus, and that during the next twelve (12) months the truck or bus will be used only for the purpose stated.
- (7) Any person owning a motor vehicle with a gross weight of fourteen thousand (14,000) pounds or less on which a wrecker crane or other equipment suitable for wrecker service has been permanently mounted may register the vehicle and obtain a license for eleven dollars fifty cents (\$11.50) by filing with the county clerk, in addition to other information required, an affidavit that a wrecker crane or other equipment suitable for wrecker service has been permanently mounted on such vehicle and that during the next twelve (12) months the vehicle will be used only in wrecker service. If the gross weight of the vehicle exceeds fourteen thousand (14,000) pounds, the vehicle shall be registered in accordance with subsection (3) of this section. The gross weight of a vehicle used in wrecker service shall not include the weight of the vehicle being towed by the wrecker.
- (8) Motor vehicles having a declared gross weight in excess of eighteen thousand (18,000) pounds, which when operated in this state are used exclusively for the transportation of property within the limits of the city named in the affidavit hereinafter required to be filed, or within ten (10) miles of the city limits of the city if it is a city of the first, second, third, or fourth class, or within five (5) miles of its limits if it is a city of the fifth or sixth class, or anywhere within a county containing an urban-county government, shall not be required to pay the fee as set out in subsection (3) of this section, and in lieu thereof shall pay seventy-five percent (75%) of the fee set forth in subsection (3) of this section and shall be exempt from any fee charged under the provisions of KRS 281.752. Nothing in this section shall be construed to limit any right of nonresidents to exemption from registration under any other provisions of the laws granting reciprocity to nonresidents. Operations outside of this state shall not be considered in determining whether or not the foregoing mileage limitations have been observed. When claiming the right to the reduced fee, the applicant's signature on the certificate of registration and ownership shall constitute a certification or affidavit stating that the motor vehicle when used within this state is used only for the transportation of property within the city to be named in the affidavit and the area above set out and that the vehicle will not be used outside of a city and the area above set out during the current registration period.
- (9) Motor vehicles having a declared gross weight in excess of eighteen thousand (18,000) pounds, which are used exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility, where such mill or processing facility is located at a point not more than fifty (50) air miles from the harvest area or which are used exclusively for the transportation of concrete blocks or ready-mixed concrete from the point at which such concrete blocks or ready-mixed concrete is produced to a construction site where such concrete blocks or ready-mixed concrete is to be used, where such construction site is located at a point not more than thirty (30) air miles from the point at which such concrete blocks or ready-mixed concrete is produced shall not be required to pay the fee as set out in subsection (3) of this section, and in lieu thereof, shall pay seventy-five percent (75%) of the fee set out in subsection (3) of this section and shall be exempt from any fee charged under the provisions of KRS 281.752. The applicant's signature upon the certificate of registration and ownership shall constitute a certification that the motor vehicle will not be used during the current registration period in any manner other than that for which the reduced fee is provided in this section.
- (10) Any owner of a commercial vehicle registered for a declared gross weight in excess of eighteen thousand (18,000) pounds, intending to transfer same and desiring to take advantage of the refund provisions of KRS

186.056(2), may reregister such vehicle and obtain a "For Sale" certificate of registration and ownership for one dollar (\$1). Title to a vehicle so registered may be transferred, but such registration shall not authorize the operation or use of the vehicle on any public highway. No refund may be made under the provisions of KRS 186.056(2) until such time as the title to such vehicle has been transferred to the purchaser thereof. Provided, however, that nothing herein shall be so construed as to prevent the seller of a commercial vehicle from transferring the registration of such vehicle to any purchaser thereof.

- (11) The annual registration fee for self-propelled vehicles containing sleeping or eating facilities shall be twenty dollars (\$20) and the multiyear license plate issued shall be designated "Recreational vehicle." The foregoing shall not include any motor vehicle primarily designed for commercial or farm use having temporarily attached thereto any sleeping or eating facilities, or any commercial vehicle having sleeping facilities.
- (12) The registration fee on any vehicle registered under this section shall be increased fifty percent (50%) when the vehicle is not equipped wholly with pneumatic tires.
- (13)
 - (a) The Department of Vehicle Regulation is authorized to negotiate and execute an agreement or agreements for the purpose of developing and instituting proportional registration of motor vehicles engaged in interstate commerce, or in a combination of interstate and intrastate commerce, and operating into, through, or within the Commonwealth of Kentucky. The agreement or agreements may be made on a basis commensurate with, and determined by, the miles traveled on, and use made of, the highways of this Commonwealth as compared with the miles traveled on and use made of highways of other states, or upon any other equitable basis of proportional registration. Notwithstanding the provisions of KRS 186.020, the cabinet shall promulgate administrative regulations concerning the registration of motor vehicles under any agreement or agreements made under this section and shall provide for direct issuance by it of evidence of payment of any registration fee required under such agreement or agreements. Any proportional registration fee required to be collected under any proportional registration agreement or agreements shall be in accordance with the taxes established in this section.
 - (b) Any owner of a commercial vehicle who is required to title his motor vehicle under this section shall first title such vehicle with the county clerk pursuant to KRS 186.020 for a state fee of one dollar (\$1). Title to such vehicle may be transferred; however title without proper registration shall not authorize the operation or use of the vehicle on any public highway. Any commercial vehicle properly titled in Kentucky may also be registered in Kentucky, and, upon payment of the required fees, the department may issue an apportioned registration plate to such commercial vehicle.
 - (c) Any commercial vehicle that is properly titled in a foreign jurisdiction, which vehicle is subject to apportioned registration, as provided in paragraph (a) of this subsection, may be registered in Kentucky, and, upon proof of proper title and payment of the required fees, the department may issue an apportioned registration plate to the commercial vehicle. The department shall promulgate administrative regulations in accordance with this section.
- (14) Any person seeking to obtain a special license plate for an automobile that has been provided to him pursuant to an occupation shall meet both of the following requirements:
 - (a) The automobile shall be provided for the full-time exclusive use of the applicant; and
 - (b) The applicant shall obtain permission in writing from the vehicle owner or lessee on a form provided by the cabinet to use the vehicle and for the vehicle to bear the special license plate.
- (15) An applicant for any motor vehicle registration issued pursuant to this section shall have the opportunity to make a donation of two dollars (\$2) to promote a hunger relief program through specific wildlife management and conservation efforts by the Department of Fish and Wildlife Resources in accordance with KRS 150.015. If an applicant elects to make a contribution under this subsection, the two dollar (\$2) donation shall be added to the regular fee for any motor vehicle registration issued pursuant to this section. One (1) donation may be made per issuance of each registration. The fee shall be paid to the county clerk and shall be transmitted by the State Treasurer to the Department of Fish and Wildlife Resources to be used exclusively for the purpose of wildlife management and conservation activities in support of hunger relief. The county clerk may retain up to five percent (5%) of the fees collected under this subsection for administrative costs associated with the collection of this donation. Any donation requested under this subsection shall be voluntary and may be refused by the applicant at the time of issuance or renewal of a license plate.

➔Section 2. KRS 281.600 is amended to read as follows:

- (1) The Department of Vehicle Regulation shall exercise all administrative functions of the state in relation to motor **carrier** transportation as defined in this chapter, and shall apply, as far as practicable, the administrative and judicial interpretations of the Federal Motor Carrier Act. It shall have the right to regulate motor carriers as provided in this chapter and, to that end, may establish reasonable requirements with respect to continuous and adequate service of transportation, systems of accounts, records and reports, preservation of records, and safety of operation and equipment. It may issue subpoenas, subpoenas duces tecum and orders of personal attendance of witnesses, and production of pertinent records for any proceeding before it, and permit the taking of depositions, all in accord with the Rules of Civil Procedure, and it shall have the power to promulgate administrative regulations as it may deem necessary to carry out the provisions of this chapter. The department shall have the authority to promulgate regulations regarding safety requirements for motor vehicles and the method of operation, including the adoption of any of the federal motor carrier safety regulations and any motor vehicle operating contrary to safety regulations shall be in violation of this section.
- (2) The provisions established by the Federal Highway Administration in Title 49, Part 393 of the United States Code of Federal Regulations shall not apply to:
 - (a) A motor vehicle or its towed unit having a fertilizer spreader attachment permanently mounted thereon, having a gross weight not to exceed thirty-six thousand (36,000) pounds, and used only for the transportation of bulk fertilizer; or
 - (b) A farm-wagon-type tank trailer of not more than two thousand (2,000) gallon capacity used during liquid fertilizer season as a field storage tank supplying fertilizer to a field applicator, and moved on a public highway for the purpose of bringing fertilizer from a local source of supply to a farm or field, or from one (1) farm or field to another, provided that the vehicle is being operated solely in intrastate transportation.
- (3) ***The provisions established by the Federal Highway Administration in Title 49, Part 391, Part 393, and Part 396 of the United States Code of Federal Regulations shall not apply to a motor vehicle registered under subsection (4)(a)1. of Section 1 of this Act, or its towed unit, if:***
 - (a) ***The vehicle is not engaged in interstate commerce;***
 - (b) ***The vehicle is engaged in farming or agricultural related activities; and***
 - (c) ***The gross vehicle weight rating of the vehicle or the gross vehicle combination weight rating of the vehicle and its towed unit is twenty-six thousand (26,000) pounds or less.***
- ~~(4)(3)~~ The Department of Kentucky State Police shall exercise all administrative functions of the state pertaining to the motor carrier safety management audit program. This program shall be administered according to the provisions of the Federal Motor Carriers Safety Act and the federal regulations promulgated under that Act.

➔Section 3. KRS 281.730 is amended to read as follows:

 - (1) A motor carrier shall not require or permit any driver or chauffeur operating a motor vehicle for hire under a certificate or permit to remain continuously on duty for a longer period than twelve (12) hours, and when any driver or chauffeur has been continuously on duty for twelve (12) hours he shall have at least eight (8) consecutive hours off duty. A motor carrier shall not require or permit any driver or chauffeur to remain on duty for a longer period than sixteen (16) hours in the aggregate in any twenty-four (24) hour period, and when a driver or chauffeur has been on duty sixteen (16) hours in the aggregate in any twenty-four (24) hour period he shall have at least ten (10) consecutive hours off duty. The period of release from duty required by this section shall be given at places and under circumstances that allow rest and relaxation from the strain of the duties of the employment to be obtained. A period off duty shall not be deemed to break the continuity of service unless it is for at least three (3) consecutive hours and is given at a place and under circumstances that allow rest and relaxation from the strain of the duties of the employment to be obtained. In case of an unforeseen emergency not resulting from the negligence of the carrier or his agents, servants, or employees, the driver or chauffeur may complete his run or tour of duty, if the run or tour of duty but for the delay caused by the emergency could reasonably have been completed without a violation of this section. The department may require reports as it deems necessary for the enforcement of this section.
 - (2) The provisions of this section shall not apply to matters relating to the wages, hours, working conditions, and conditions of employment of the employees of motor carriers when the employees are employed and working under and pursuant to a collective bargaining agreement entered into between their employer and the

employees' collective bargaining agent or representative, for and on behalf of the employees; provided that the collective bargaining agent or representative is a bona fide labor organization.

- (3) Notwithstanding the above provisions, the secretary of the Transportation Cabinet may adopt by reference or set forth in its entirety the provisions of 49 C.F.R. sec. 395 in effect as of July 15, 1986, or as amended with respect to any motor vehicle registered in Kentucky.
- (4) The provisions of subsections (1) to (3) of this section pertaining to the maximum driving and on-duty time shall not apply to transporters of agricultural commodities or farm supplies for agricultural purposes if the transportation is limited to an area within a one hundred (100) air mile radius from the source of the commodities or distribution point for the farm supplies and is during Kentucky's planting and harvesting seasons. For the purposes of this subsection, Kentucky's planting ~~season shall mean March 1 to November 23 of each year,~~ and ~~Kentucky's~~ harvesting ~~seasons~~ ~~season~~ shall mean **January 1 to December 31** ~~June 1 to December 15~~ of each year.
- (5) The provisions of subsection (4) of this section shall be void if the Secretary of the United States Department of Transportation determines through a rulemaking proceeding that Section 345(a)(1.) of the National Highway System Designation Act of 1995 presents a hazard to the traveling public.

➔Section 4. KRS 189.270 is amended to read as follows:

- (1) The department may issue permits for the operation of motor vehicles, manufactured homes, recreational vehicles, boats, or any other vehicle transporting a nondivisible load, whose gross weight including load, height, width, or length exceeds the limits prescribed by this chapter or which in other respects fail to comply with the requirements of this chapter. Permits may be issued by the department for stated periods, special purposes, and unusual conditions, and upon terms in the interest of public safety and the preservation of the highways as the department may require.
- (2) Except as provided in subsection (7) of this section, the department may, at the request of an applicant, issue a single-trip permit regardless of the type of vehicle or equipment being transported that exceeds the weight or dimension limits established by this chapter if the load being transported is a nondivisible load. A single-trip permit shall cost sixty dollars (\$60) for each overweight or overdimensional permit requested.
- (3) Except as provided in subsection (7) of this section, the department may, at the request of an applicant, issue an annual permit regardless of the type of vehicle or equipment being transported that exceeds the weight or dimension limits established by this chapter if the load being transported is a nondivisible load. The vehicle shall not exceed sixteen (16) feet in width exclusive of usual and ordinary overhang, one hundred twenty (120) feet in length including a towing vehicle and trailer combination, thirteen (13) feet six (6) inches in height, or one hundred sixty thousand (160,000) pounds. Except as provided in subsections (4) and (7) of this section, an annual permit for loads less than fourteen (14) feet in width shall cost two hundred fifty dollars (\$250). An annual permit for loads exceeding fourteen (14) feet in width shall cost five hundred dollars (\$500).
- (4) An annual permit to transport farm equipment less than fourteen (14) feet in width shall cost eighty dollars (\$80). An annual permit to transport farm equipment that exceeds fourteen (14) feet in width from a dealership to a farm, ~~or~~ from a farm to a dealership, **or from a dealership to a dealership** shall cost one hundred fifty dollars (\$150).
- (5) Permits issued under this section shall be for nondivisible loads and shall be valid statewide; however, the department may, as a condition of issuing an annual or single-trip permit, limit the overweight or overdimensional vehicle to specified routes, exclude certain highways, or even cancel an applicant's permit if an unreasonable risk of accident or an unreasonable impedance of the flow of traffic would result from the presence of the overweight or overdimensional vehicle. A person who applies for, and accepts, a permit issued under this section is acknowledging that the Kentucky Transportation Cabinet is not guaranteeing safe passage of vehicles by issuing the permit. A person who applies for, and accepts, a permit issued under this section agrees to measure all clearances of highway structures, both laterally and vertically, prior to passage of the person's vehicles along the routes specified in the permit. A person who applies for, and accepts, a permit issued under this section is classified as a bare licensee whose duty is to assume sole risk involved in using Kentucky's highways without warranty of accuracy.
- (6) Subject to the limitations of subsection (11) of this section, the department shall promulgate administrative regulations under KRS Chapter 13A to establish requirements for escort vehicles, safety markings, and other safety restrictions governing the operation of an overweight or overdimensional vehicle. The department shall provide each applicant for an annual or single-trip permit issued under this section a copy of all restrictions associated with the overweight or overdimensional permit at no charge to the applicant. The department shall

be prohibited from raising the permit fee established in subsections (2) and (3) of this section by levying additional fees for an overweight or overdimensional permit through the administrative regulation process.

- (7) The cabinet shall not issue an annual permit under this section if the person applying for the permit is eligible for an annual permit issued under KRS 189.2715 or 189.2717.
- (8) The department may require the applicant to give bond, with approved surety, to indemnify the state or counties against damage to highways or bridges resulting from use by the applicant. The operation of vehicles in accordance with the terms of the permit issued under this section shall not constitute a violation of this chapter if the operator has the permit, or an authenticated copy of it, in his possession.
- (9) Any person transporting a parade float which exceeds the dimensional limits on a highway over which it is transported shall be required to obtain a permit as required in subsection (2) of this section. If the float is being used in conjunction with a parade to be held within the boundaries of the Commonwealth, a fee shall not be assessed by the department to issue the permit.
- (10) A person shall not operate any vehicle in violation of the terms of the permit issued under this section.
- (11) (a) The cabinet shall not promulgate administrative regulations pursuant to this section that restrict the time or days of the week when a permit holder may operate on the highway, except that travel may be limited from 6 a.m. to 9 a.m. and 3 p.m. to 6 p.m. Monday through Friday. In addition to the restrictions established in this paragraph, any manufactured home being transported by permit issued under this section shall not travel on any highway after daylight hours Monday through Saturday, or at any time on Sunday.
- (b) The cabinet shall allow a permit holder who has obtained a permit to transport equipment to a work site to return to the permit holder's place of business immediately after work is completed at the job site, subject to the limitations of paragraph (a) of this subsection.

➔Section 5. KRS 281.010 is amended to read as follows:

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

- (1) The term "person" means any individual, firm, partnership, corporation, company, association or joint stock association, and includes any trustee, assignee, or personal representative thereof;
- (2) The term "cabinet" means the Kentucky Transportation Cabinet;
- (3) The term "department" means the Department of Vehicle Regulation;
- (4) The term "city" means a municipality incorporated under the laws of this state;
- (5) The term "state" means the Commonwealth of Kentucky;
- (6) The term "highway" means all public roads, highways, streets, and ways in this state, whether within a municipality or outside of a municipality;
- (7) The term "certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by motor vehicle and irregular route common carriers, a nonprofit bus certificate issued under this chapter authorizing operation thereunder, or a certificate of compliance;
- (8) The term "permit" means a permit issued under this chapter to contract carriers by motor vehicle of persons and to persons engaging in the business of U-drive-it;
- (9) The term "interstate commerce" ***shall have the same meaning as set out in the United States Code of Federal Regulations, 49 C.F.R. Part 390.5***~~means commerce between any place in a state and any place in another state~~;
- (10) The term "intrastate commerce" ***shall have the same meaning as set out in the United States Code of Federal Regulations, 49 C.F.R. Part 390.5***~~means commerce between any place in this state and any other place in this state~~;
- (11) The term "passenger" means an individual or group of people; and
- (12) The term "property" means general or specific commodities including hazardous and nonhazardous materials.

➔Section 6. Whereas the registration date for farm vehicles will take place before the regular effective date for legislation from the 2011 Regular Session, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 16, 2011.

Legislative Research Commission Note. The Reviser of Statutes has corrected the title of this Act to include "and declaring an emergency" at the end to reflect the change made to the title in HCA 1 which was inadvertently left unchanged when the bill was engrossed and enrolled.

CHAPTER 89

(SB 82)

AN ACT relating to city classification.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Guthrie is such to justify its being classified as a city of the fourth class; and

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Junction City is such to justify its being classified as a city of the fourth class;

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Greensburg, in Green County, is such as to justify its being classified as a city of the fourth class; and

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Midway, in Woodford County, is such as to justify its being classified as a city of the fourth class;

NOW, THEREFORE,

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

➔Section 1. The City of Guthrie, in Todd County, is transferred from the fifth to the fourth class of cities.

➔Section 2. The City of Junction City, in Boyle County, is transferred from the fifth class of cities to the fourth class of cities.

➔Section 3. The City of Greensburg, in Green County, is transferred from the fifth class to the fourth class of cities.

➔Section 4. The City of Midway, in Woodford County, is transferred from the fifth class to the fourth class of cities.

Signed by Governor March 16, 2011.

CHAPTER 90

(SB 103)

AN ACT relating to TVA and Breaks Interstate Park peace officers.

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

➔Section 1. KRS 61.886 is amended to read as follows:

(1) *As used in KRS 61.886 to 61.892:*

(a) *"Commission" means the Breaks Interstate Park Commission created in KRS 148.220; and*

(b) *"TVA" means the Tennessee Valley Authority.*

(2) The Tennessee Valley Authority *or the Breaks Interstate Park Commission*, ~~hereinafter called "TVA,"~~ may apply to the Governor for the appointment and commissioning of peace officers ~~and TVA policemen~~. Such persons shall be selected from a list submitted by TVA *or the commission* to the Governor. The Governor,

upon such application being made and upon the payment to him *or her* of a one (1) time fee of five dollars (\$5) for each officer to be appointed, shall appoint, for annually renewable terms of one (1) year, such persons or as many thereof as he *or she* deems proper to be such peace officers ~~and policemen~~ and shall give commissions to those appointed. Appointments and annual renewals of appointments under this subsection shall be subject to approval by the sheriff of each county in which the peace officer will normally operate, not including counties into which he *or she* may pursue and arrest persons under KRS 61.887.

- (3)~~(2)~~ Such commissions shall be recorded in the office of *Secretary of State*~~the county court clerk of the several counties in which such officer performs any duties as a TVA peace officer~~. No person shall be eligible for appointment and commission as a TVA *or commission* peace officer unless he *or she* has established to the satisfaction of the Governor that, except for county residency requirements, he *or she* possesses the qualifications prescribed for nonelective peace officers by KRS 61.300 and, in addition, that he *or she* ~~is~~*has been* a resident of Kentucky, or an adjoining state in which TVA *or the commission* operates, *and has been* for at least two (2) years at the time of his *or her* appointment.

➔Section 2. KRS 61.887 is amended to read as follows:

- (1) Each TVA *or commission* officer appointed and commissioned pursuant to KRS 61.886 to 61.892 throughout every county in the Commonwealth in which TVA *or the commission* operates or owns or controls property, including leasehold interests:~~;~~
- (a) Shall have and exercise the powers of sheriffs ~~and constables~~ in making arrests for public offenses committed upon, about, or against such property or on public roads and the rights-of-way passing through or over such property;
 - (b) *Shall have and exercise the powers of sheriffs in making arrests in any situation in which a person is placed in imminent danger of death or serious injury;*
 - (c) *Shall have authority to carry weapons for the reasonable purposes of his or her office and in performance of his or her assigned duties;* ~~and~~
 - (d) While in pursuit of a person fleeing ~~from the property~~ after committing an act *described in paragraph (a) or (b) of this subsection* ~~of violence or destruction of the property~~, may pursue the person and make arrest anywhere in the Commonwealth; ~~may serve process in criminal and penal prosecutions for such offenses;~~ and
 - (e) Shall be subject to all the liabilities of sheriffs ~~or constables~~. ~~Such power to arrest persons committing public offenses committed upon or about such property, roads, or rights of way shall exist whether such persons are found on or off such property, roads, or rights of way. Such TVA officers shall also have authority to carry weapons for the reasonable purposes of their offices and in performance of their assigned duties.~~
- (2) *TVA officers appointed and commissioned pursuant to KRS 61.886 to 61.892 may, throughout any county in the Commonwealth in which TVA operates or owns or controls property, including leasehold interests, have and exercise the powers of sheriff in that county if the sheriff of that county provides prior written authorization to the TVA defining the extent of supplemental authority being granted. Any supplemental authority granted pursuant to this subsection shall expire with the officer's commission granted under Section 1 of this Act and may be renewed, as provided in this subsection, upon renewal of the commission authorized under Section 1 of this Act.*
- (3) *When county-wide authority has not been granted under subsection (2) of this section, a sheriff of a county in which the TVA has property, the chief of police of a city within the county, or the commissioner of the Department of Kentucky State Police may extend peace officer authority within the city or county, as appropriate, during a disaster or other emergency.*

➔Section 3. KRS 61.888 is amended to read as follows:

When TVA *or the commission* no longer needs the services of a person appointed and commissioned as a TVA *or commission* peace officer pursuant to this section, notice to that effect, signed by the general manager of TVA, *the chairperson of the commission*, ~~or by~~ the person having responsibility for general supervision of the work of such officer, ~~shall~~*may* be filed in the *office of the Secretary of State*~~several offices in which the commission of such officer is recorded~~. The *Secretary of State*~~county clerk~~ shall note the fact upon the margin of the record ~~where the commission is recorded~~, and thereupon the power of the person to act as a TVA *or commission* peace officer shall cease ~~as to any particular county in which such notice is filed and recorded~~.

➔Section 4. KRS 61.889 is amended to read as follows:

Each TVA **or commission** peace officer appointed pursuant to KRS 61.886 to 61.892 shall, before he **or she** enters upon the discharge of the duties of his **or her** office, execute bond in the sum of fifty thousand dollars (\$50,000), with good security, conditioned upon the faithful performance of his **or her** duty as such officer, and take and subscribe an oath of office and the oath required by Section 228 of the Constitution of Kentucky. ~~[- The bond shall be executed before the county judges/executive of the several counties in which he performs any duties as a TVA peace officer, and the bond shall be approved, and the oath administered, by the county judge/executive.]~~ The bond and oath shall be entered of record by the **Secretary of State** ~~[- county clerks of the several counties in which executed]~~, and the execution of the bond and the taking of the oath shall be endorsed upon the commission of the person so qualifying. In lieu of such individual bonds, a duly executed bond covering all TVA **or commission** peace officers appointed and commissioned pursuant to this section, as principals, with TVA as surety, in the amount of fifty thousand dollars (\$50,000) for each such officer and conditioned for the faithful performance of **his or her** ~~[- their]~~ duties may be filed by TVA **or the commission** with the Secretary of State of the Commonwealth in which event individual bonds shall not be required. ~~[- Certified copies of such bonds shall be recorded with the county clerks of the several counties where such officers record their commissions and take their oaths.]~~

Signed by Governor March 16, 2011.

CHAPTER 91

(SB 108)

AN ACT relating to courts.

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

➔Section 1. KRS 24A.120 is amended to read as follows:

District Court shall have exclusive jurisdiction in:

- (1) Civil cases in which the amount in controversy does not exceed **five** ~~[- four]~~ thousand dollars **(\$5,000)** ~~[- (\$4,000)]~~, exclusive of interest and costs, except matters affecting title to real estate and matters of equity; however, nothing herein shall prohibit execution levy on real estate in enforcement of judgment of District Court;
- (2) Matters involving probate, except matters contested in an adversary proceeding. Such adversary proceeding shall be filed in Circuit Court in accordance with the Kentucky Rules of Civil Procedure and shall not be considered an appeal; and
- (3) Matters not provided for by statute to be commenced in Circuit Court shall be deemed to be nonadversarial within the meaning of subsection (2) of this section and therefore are within the jurisdiction of the District Court.

➔Section 2. KRS 24A.230 is amended to read as follows:

- (1) The small claims division shall have jurisdiction, concurrent with that of the District Court, in all civil actions, other than libel, slander, alienation of affections, malicious prosecution and abuse of process actions, when the amount of money or damages or the value of the personal property claimed does not exceed **two** ~~[- one]~~ thousand five hundred dollars **(\$2,500)** ~~[- (\$1,500)]~~ exclusive of interest and costs.
- (2) The division may also be used in civil matters when the plaintiff seeks to disaffirm, avoid, or rescind a contract or agreement for the purchase of goods or services not in excess of **two** ~~[- one]~~ thousand five hundred dollars **(\$2,500)** ~~[- (\$1,500)]~~ exclusive of interest and costs.
- (3) The division shall have authority to grant appropriate relief, except no prejudgment actions for attachment, garnishment, replevin or other provisional remedy may be filed in the division.

➔Section 3. KRS 24A.290 is amended to read as follows:

The defendant may file with the clerk a counterclaim against the plaintiff in an amount not in excess of **two thousand five hundred dollars (\$2,500)** ~~[- fifteen hundred dollars (\$1,500)]~~ exclusive of interest and costs, if the counterclaim arose out of the same transaction or occurrence that is the subject matter of the plaintiff's claim, and if the counterclaim does not require for its adjudication the presence of third parties over whom the division cannot acquire

jurisdiction. Any counterclaim shall be filed with the clerk, and a copy delivered to the plaintiff at least five (5) days prior to the time of the hearing. If the defendant's counterclaim is in excess of the jurisdictional limits of the division, then the provisions of KRS 24A.310(1) shall apply.

➔Section 4. Any case which has been filed in a Circuit Court or District Court prior to the effective date of this Act and the change in jurisdictional amounts shall remain in the court in which the case was originally filed, until the disposition of the case.

Signed by Governor March 16, 2011.

CHAPTER 92

(SB 112)

AN ACT relating to occupational and physical therapy.

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

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

- (1) *An insurer shall not impose a copayment or coinsurance amount charged to the insured for services rendered for each date of service by an occupational therapist licensed under KRS Chapter 319A or a physical therapist licensed under KRS Chapter 327 that is greater than the copayment or coinsurance amount charged to the insured for the services of a physician or an osteopath licensed under KRS Chapter 311 for an office visit.*
- (2) *An insurer shall state clearly the availability of occupational and physical therapy coverage under its plan and all related limitations, conditions, and exclusions.*

Signed by Governor March 16, 2011.

CHAPTER 93

(SB 114)

AN ACT relating to health benefit plan wellness programs.

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

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

- (1) *An insurer issuing a group or individual health benefit plan may offer a voluntary wellness or health improvement program that allows for rewards or incentives to encourage participation or to reward members for participation, including but not limited to:*
 - (a) *Merchandise;*
 - (b) *Gift cards;*
 - (c) *Debit cards;*
 - (d) *Premium discounts or rebates;*
 - (e) *Contributions toward a member's health savings account;*
 - (f) *Modification to copayment, deductible, or coinsurance amounts; or*
 - (g) *Any combination of the incentives authorized by paragraphs (a) through (f) of this subsection.*

- (2) *Any reward or incentive established under this section shall not be deemed an inappropriate inducement to obtain or retain insurance, in violation of KRS 304.12-090 and 304.12-110, if disclosed in the policy or certificate of coverage.*
- (3) *The health plan member may be required to provide verification, such as a statement from his or her physician, that a medical condition makes it unreasonably difficult or medically inadvisable for the member to participate in the wellness or health improvement program.*
- (4) *Nothing in this section shall prohibit an insurer from offering incentives or rewards to members for adherence to a voluntary wellness or health improvement program, if otherwise allowed by state or federal law.*

Signed by Governor March 16, 2011.

CHAPTER 94

(SB 130)

AN ACT relating to comprehensive universities.

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

➔Section 1. KRS 164.295 is amended to read as follows:

- (1) The six (6) state universities:

- (a)~~{(1)}~~ Shall provide, upon approval of the Council on Postsecondary Education, associate and baccalaureate programs of instruction;

- (b)~~{(2)}~~ Shall provide, upon approval of the Council on Postsecondary Education, graduate programs of instruction at the master's-degree level in education, business, and the arts and sciences, specialist degrees, and programs beyond the master's-degree level to meet the requirements for teachers, school leaders, and other certified personnel; **and**

- (c)~~{(3)}~~ Shall provide research and service programs directly related to the needs of their primary geographical areas.~~{ }~~

- (2)~~{(4)}~~ **A comprehensive university** may provide:

- (a) Programs of a community college nature in their own community comparable to those listed for the Kentucky Community and Technical College System, as provided in KRS 164.580; ~~and~~

~~{(5) — May provide, }~~

- (b) Upon approval of the Council on Postsecondary Education, **an** advanced practice doctoral ~~program{programs}~~ in nursing in compliance with KRS 314.111 and 314.131; **and**

- (c) **Upon approval of the Council on Postsecondary Education, a maximum of three (3) advanced practice doctoral programs including a program approved under paragraph (b) of this subsection and an Ed.D. program approved under paragraph (b) of subsection (1) of this section.**

- (3) **The Council on Postsecondary Education in consultation with the Advisory Conference of Presidents pursuant to KRS 164.021 shall develop criteria and conditions upon which an advanced practice doctoral degree program may be approved. The criteria shall include but not be limited to a determination of the academic and workforce needs for a program, consideration of whether the program can be effectively delivered through a collaborative effort with an existing program at another public university within the Commonwealth, and the capacity of a university to effectively offer the program. A university requesting approval of an advanced practice doctoral program shall be required to provide assurance that funding for the program will not impair funding of any existing program at any other public university. The university shall make an annual report to the council indentifying the full cost of and all funding sources for each approved doctoral program and the performance of each approved program. Nothing in this subsection shall prohibit the council from approving a doctoral program under consideration at a comprehensive university prior to the effective date of the administrative regulations required by subsection (4) of this**

section, provided that the council determines that the conditions and criteria set out in this subsection have been met.

- (4) *The council shall promulgate administrative regulations setting forth the agreed on criteria and conditions identified under subsection (3) of this section.*
- (5) *The council shall submit the approval process to the Interim Joint Committee on Education by October 15, 2011.*
- (6) *The council shall, with the unanimous consent of the members of the Advisory Conference of Presidents pursuant to KRS 164.021, make a recommendation to the Interim Joint Committee on Education as to whether any portion of subsection (2) of this section should be amended.*
- (7) *A comprehensive university shall not:*
 - (a) *Offer the terminal degrees of Doctor of Philosophy, Doctor of Musical Arts, or first professional degrees in the fields of architecture, medicine, dentistry, pharmacy, law, or engineering. The existing school of law at Northern Kentucky is exempted from requirements of this paragraph.*
 - (b) *Describe itself in official publications or in marketing materials as a research university or research institution. Nothing in this paragraph shall be construed as precluding a comprehensive university from conducting basic, applied, or translational research.*

Signed by Governor March 16, 2011.

CHAPTER 95

(SB 135)

AN ACT relating to the enforcement of local government ordinances.

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

➔Section 1. KRS 65.8821 is amended to read as follows:

Each code enforcement board shall have the power to:

- (1) Adopt rules and regulations to govern its operation and the conduct of its hearings that are consistent with the requirements of KRS 65.8801 to 65.8839 and ordinances of the local government *or local governments creating the board.*
- (2) Conduct hearings, *or assign a hearing officer to conduct a hearing*, to determine whether there has been a violation of any local government ordinance that the board has jurisdiction to enforce. *Any member of the code enforcement board, including the chairman, may be assigned to conduct hearings on behalf of the board. All hearing officers, including members of a code enforcement board who serve as hearing officers, shall receive training related to the conduct of administrative hearings in accordance with procedures set out in KRS 13B.080.*
- (3) Subpoena alleged violators, witnesses, and evidence to its hearings. Subpoenas issued by the board may be served by any code enforcement officer.
- (4) Take testimony under oath. The chairman of the board, *or an assigned hearing officer*, shall have the authority to administer oaths to witnesses prior to their testimony before the board on any matter.
- (5) Make findings and issue orders that are necessary to remedy any violation of a local government ordinance that the board has jurisdiction to enforce.
- (6) Impose civil fines as authorized by ordinance on any person found to have violated any ordinance that the board has jurisdiction to enforce.

➔Section 2. KRS 65.8825 is amended to read as follows:

- (1) Enforcement proceedings before a code enforcement board shall be initiated by the issuance of a citation by a code enforcement officer.

- (2) When a code enforcement officer, based upon personal observation or investigation, has reasonable cause to believe that a person has committed a violation of a local government ordinance, the officer is authorized to issue a citation *by*:
- (a) *Personal service to the alleged violator;*
 - (b) *Leaving a copy of the citation with any person eighteen (18) years of age or older who is on the premises, if the alleged violator is not on the premises at the time the citation is issued; or*
 - (c) *Posting a copy of the citation in a conspicuous place on the premises and mailing a copy of the citation by regular first-class mail of the United States Postal Service to the owner of record of the property if no one is on the premises at the time the citation is issued*~~to the offender~~.

When authorized by ordinance, a code enforcement officer may, in lieu of immediately issuing a citation, give notice that a violation shall be remedied within a specified period of time. If the person to whom the notice is given fails or refuses to remedy the violation within the time specified, the code enforcement officer is authorized to issue a citation.

- (3) The citation issued by the code enforcement officer shall be in a form prescribed by the local government and shall contain, in addition to any other information required by ordinance or rule of the board:
- (a) The date and time of issuance;
 - (b) The name and address of the person to whom the citation is issued;
 - (c) The date and time the offense was committed;
 - (d) The facts constituting the offense;
 - (e) The section of the code or the number of the ordinance violated;
 - (f) The name of the code enforcement officer;
 - (g) The civil fine that will be imposed for the violation if the person does not contest the citation;
 - (h) The maximum civil fine that may be imposed if the person elects to contest the citation;
 - (i) The procedure for the person to follow in order to pay the civil fine or to contest the citation; and
 - (j) A statement that if the person fails to pay the civil fine set forth in the citation or contest the citation, within the time allowed, the person shall be deemed to have waived the right to a hearing before the code enforcement board to contest the citation and that the determination that a violation was committed shall be final.
- (4) After issuing a citation to an alleged violator, the code enforcement officer shall notify the code enforcement board by delivering the citation to the administrative official designated by ordinance or by the board.
- (5) When a citation is issued, the person to whom the citation is issued shall respond to the citation within seven (7) days of the date the citation is issued by either paying the civil fine set forth in the citation or requesting, in writing, a hearing before the code enforcement board to contest the citation. If the person fails to respond to the citation within seven (7) days, the person shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be considered final. In this event, the board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.

➔Section 3. KRS 65.8828 is amended to read as follows:

- (1) When a hearing before the code enforcement board ~~is~~~~has been~~ requested, the code enforcement board, through its clerical and administrative staff, shall schedule a hearing. Not less than seven (7) days before the date set for the hearing, the code enforcement board shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice may be given by certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. Any person requesting a hearing ~~before the code enforcement board~~ who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the board shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.

- (2) Each case *that is the subject of a hearing*~~[before a code enforcement board]~~ may be presented by an attorney selected by the local government or by a member of the administrative staff of the local government. An attorney may either be counsel to the code enforcement board or may represent the local government by presenting cases *at the hearing*~~[before the code enforcement board]~~, but in no case shall an attorney serve in both capacities.
- (3) All testimony shall be under oath and shall be recorded. The code enforcement board, *or assigned hearing officer* shall take testimony from the code enforcement officer, the alleged offender, and any witnesses to the alleged violation offered by the code enforcement officer or the alleged offender. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.
- (4) *If a code enforcement board conducts the hearing, or upon the receipt of recommendations of a hearing officer pursuant to this subsection, then*~~[At the hearing,]~~ the code enforcement board shall determine, based on the evidence presented, whether a violation was committed. *If a hearing officer conducts the hearing, the hearing officer shall make written findings of fact, conclusions of law, and a recommended order for consideration by the board.* When the board determines that no violation was committed, an order dismissing the citation shall be entered. When the board determines that a violation has been committed, the board shall issue an order upholding the citation and may order the offender to pay a civil fine in an amount up to the maximum authorized by ordinance, or may order the offender to remedy a continuing violation within a specified time to avoid the imposition of a fine, or both, as authorized by ordinance.
- (5) Every final order of a code enforcement board shall be reduced to writing, which shall include the *findings and conclusions of the board, and the* date the order was issued.~~[, and]~~ A copy of the order shall be furnished to the person named in the citation. If the person named in the citation is not present at the time a final order of the board is issued, the order shall be delivered to that person by certified mail, return receipt requested; by personal delivery; or by leaving a copy of the order at that person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the order.

➔Section 4. KRS 65.8815 is amended to read as follows:

- (1) The board shall, upon the initial appointment of its members, and annually thereafter, elect a chair from among its members, who shall be the presiding officer and a full voting member of the board. In the absence of the chair, the remaining members of the board shall select one (1) of their number to preside in place of the chair and exercise the powers of the chair.
- (2) Meetings of the code enforcement board shall be held as specified in the ordinance creating the board.
- (3) The presence of *at least a majority of the board's entire membership shall constitute a quorum*~~[two (2) or more members shall constitute a quorum on a three (3) member board, the presence of three (3) or more members shall constitute a quorum on a five (5) member board, and the presence of four (4) or more members shall constitute a quorum on a seven (7) member board]~~. The affirmative vote of a majority of the members constituting a quorum shall be necessary for any official action to be taken. Any member of a code enforcement board who has any direct or indirect financial or personal interest in any matter to be decided shall disclose the nature of the interest and shall disqualify himself from voting on the matter and shall not be counted for purposes of establishing a quorum.
- (4) Minutes shall be kept for all proceedings of the code enforcement board and the vote of each member on any issue decided by the board shall be recorded in the minutes.
- (5) All meetings and hearings of the code enforcement board shall be open to the public.
- (6) The local government legislative body shall provide clerical and administrative personnel as reasonably required by its code enforcement board for the proper conduct of its duties.

➔Section 5. KRS 82.615 is amended to read as follows:

- (1) Any person who receives notice of a parking violation shall respond to such notice as provided in this section within seven (7) days of the date of the notice, by either paying the fine set forth in the notice or requesting a hearing pursuant to KRS 82.620.
- (2) If the owner of a vehicle cited for a parking violation has not responded to the notice within seven (7) days as provided in subsection (1) of this section, the local government shall send a second notice by *regular first-class mail of the United States Postal Service*~~[certified mail]~~ to the last known address of the registered owner of the vehicle as listed on the certificate of title. Such notice shall state that if the owner of the vehicle does

not respond to the notice by either paying the fine or by requesting in writing a hearing pursuant to KRS 82.620, within seven (7) days of the receipt of the notice, the owner shall be deemed to have waived his right to a hearing and the determination that a violation was committed shall be considered final. Any person who fails to request a hearing or pay the fine within the seven (7) days shall be deemed to have refused to pay the fine levied by the citation.

- (3) The registered owner of a vehicle at the time the violation occurred shall be liable for all fines, fees and penalties which he has refused to pay.

➔Section 6. KRS 82.700 is amended to read as follows:

As used in KRS 82.700 to 82.725:

- (1) *"Abatement costs" means a local government's costs for and associated with cleaning, preventing unauthorized entry to, or demolishing all or a portion of a structure or premises, or taking any other action with regard to a structure or premises to maintain and preserve public health, safety, and welfare in accordance with the portion of a local government's nuisance code pertaining to the condition of and maintenance of structures or premises, adopted pursuant to KRS 82.700 to 82.725 or KRS 381.770;*
- (2) "Local government" means a consolidated local government, *county, urban-county government, charter county government, unified local government*, or a city of ~~any~~*the first, second, third, or fourth* class;
- ~~(3)(2)~~ "Hearing board" means a body established by ordinance and empowered to conduct hearings pursuant to KRS 82.710 and composed of one (1) or more persons appointed by the mayor, *county judge/executive, or chief executive officer* of the local government. "Hearing board" also means any hearing officers appointed by the board. Any action of a hearing officer shall be deemed to be the action of the board;~~and~~
- (4) *"Owner" means a person, association, corporation, partnership, or other legal entity having a legal or equitable title in real property;*
- ~~(5)(3)~~ "Nuisance code" means an ordinance or ordinances enacted by a local government pursuant to KRS 82.705 ~~or~~*and* 381.770; *and*
- (6) *"Premises" means a lot, plot, or parcel of land, including any structures upon it.*

➔Section 7. KRS 82.715 is amended to read as follows:

- (1) Any person who violates the nuisance code shall be cited for the violation and shall receive notice of the violation. The form of the notice shall be designed by the local government in a manner reasonably calculated to inform the person of the nature of the violation, the penalties for violation, the procedure to be followed by him to respond to the notice, and that the determination shall be final unless contested pursuant to the hearing procedures provided under KRS 82.710.
- (2) The notice of violation shall represent a determination that a violation has been committed, and that determination shall be final unless contested.
- (3) The owner of the property at the time the violation occurred shall be liable for all fines, fees, *abatement costs*, and penalties assessed for the violation.
- (4) An appeal from the hearing board's determination may be made to the District Court of the county in which the city is located within *thirty (30)*~~seven (7)~~ days of the board's determination. The appeal shall be initiated by the filing of a complaint and a copy of the board's order in the same manner as any civil action under the Rules of Civil Procedure. The action shall be tried de novo and the burden shall be upon the local government to establish that a violation occurred. If the court finds that a violation occurred, the owner shall be ordered to pay to the local government all fines, fees, and penalties occurring as of the date of the judgment. If the court finds a violation did not occur, the local government shall be ordered to dismiss the notice and the plaintiff shall be authorized to recover his costs.
- (5) A judgment of the District Court may be appealed to the Circuit Court in accordance with the Rules of Civil Procedure.

➔Section 8. KRS 82.720 is amended to read as follows:

- (1) The local government shall possess a lien on property for all fines, penalties, charges, *abatement costs*, and fees imposed pursuant to KRS 82.700 to 82.725. The lien shall be superior to and have priority over all other liens on the property, except state, county, school board, and city taxes.

- (2) Nothing in KRS 82.700 to 82.725 shall otherwise affect the rights or obligations between the owner of the property and those persons who claim a security interest in the property.

➔SECTION 9. A NEW SECTION OF KRS 82.700 TO 82.725 IS CREATED TO READ AS FOLLOWS:

The provisions of KRS 82.700 to 82.725 shall not be enforced by a county government upon any property situated in an unincorporated portion of the county that is assessed as agricultural land for tax purposes by the property valuation administrator.

➔Section 10. KRS 381.770 is amended to read as follows:

- (1) As used in this section:
- (a) "Automobile collector" means a person who collects and restores motor vehicles; and
 - (b) "Ordinary public view" means a sight line within normal visual range by a person on a public street or sidewalk adjacent to real property;~~[-and]~~
 - (c) "Parts car" means an automobile that is not intended to be operated along streets and roads, but is used to provide parts for the restoration of other automobiles; ***and***
 - (d) ***"Imminent danger" means a condition which could cause serious or life-threatening injury or death at any time.***
- (2) Except as provided in subsection (3) of this section, it shall be unlawful for the owner, occupant or person having control or management of any land within a city, county, consolidated local government, urban-county, or unincorporated area to permit a public nuisance, health hazard, or source of filth to develop thereon through the accumulation of:
- (a) Junked or wrecked automobiles, vehicles, machines, or other similar scrap or salvage materials, excluding inoperative farm equipment;
 - (b) One (1) or more mobile or manufactured homes as defined in KRS 227.550 that are junked, wrecked, or nonoperative and which are not inhabited;
 - (c) Rubbish; or
 - (d) The excessive growth of weeds or grass.
- (3) The provisions of paragraph (a) of subsection (2) of this section shall not apply to:
- (a) Junked, wrecked, or nonoperative automobiles, vehicles, machines, or other similar scrap or salvage materials located on the business premises of a licensed automotive recycling dealer as defined under the provisions of KRS 190.010(8);
 - (b) Junked, wrecked, or nonoperative motor vehicles, including parts cars, stored on private real property by automobile collectors, whether as a hobby or a profession, if these motor vehicles and parts cars are stored out of ordinary public view by means of suitable fencing, trees, shrubbery, or other means; and
 - (c) Any motor vehicle as defined in KRS 281.011 that is owned, controlled, operated, managed, or leased by a motor carrier.
- (4) It shall be unlawful in any city, county, consolidated local government, or urban-county for the owner of a property to permit any structure upon the property to become unfit and unsafe for human habitation, occupancy, or use or to permit conditions to exist in the structure which are dangerous or injurious to the health or safety of the occupants of the structure, the occupants of neighboring structures, or other residents of the city, county, consolidated local government, or urban-county.
- (5) Any city, county, consolidated local government, or urban-county may establish by ordinance reasonable standards and procedures for the enforcement of this section. The procedures shall comply with all applicable statutes, administrative regulations, or codes. Proper notice shall be given to property owners before any action is taken pursuant to this section; and, prior to the demolition of any unfit or unsafe structure, the right to a hearing shall be afforded the property owner.
- (6) ***Unless imminent danger exists on the subject property that necessitates immediate action, the city, county, consolidated local government, or urban-county government shall send, within fourteen (14) days of a final determination after hearing or waiver of hearing by the property owner, a copy of the determination to any lien holder of record of the subject property by first-class mail with proof of mailing. The lien holder of record may, within forty-five (45) days from receipt of that notice, correct the violations cited or elect to pay***

all fines, penalty charges, and costs incurred in remedying the situation as permitted by subsection (7) of this section.

- (7) A city, county, consolidated local government, or urban-county shall have a lien against the property for the reasonable value of labor and materials used in remedying the situation. The affidavit of the responsible officer shall constitute prima facie evidence of the amount of the lien and the regularity of the proceedings pursuant to this statute, and shall be recorded in the office of the county clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest thereafter until paid. The lien created shall take precedence over all other ~~subsequent~~ liens, except state, county, school board, and city taxes, *except as provided in subsection (8) of this section. The lien ~~and~~ may be enforced by judicial proceeding.*
- (8) *The lien provided in subsection (7) of this section shall not take precedence or priority over a previously recorded lien if:*
- (a) *The city, county, consolidated local government, or urban-county government failed to provide the lien holder a copy of the determination in accordance with subsection (6) of this section; or*
 - (b) *The lien holder received a copy of the determination as required by subsection (6) of this section, and the lien holder corrected the violations or paid the fines, penalty charges, and costs incurred in remedying the violation.*
- (9)~~(7)~~ In addition to the remedy prescribed in subsection (5) of this section or any other remedy authorized by law, the owner of a property upon which a lien has been attached pursuant to this section shall be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and the city, county, or urban-county may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed. *The failure of a city, county, consolidated local government, or urban-county government to comply with subsection (6) of this section, and the failure of a lien to take precedence over previously filed liens as provided in subsection (8) of this section, shall not limit or restrict any remedies that the city, county, consolidated local government, or urban-county government has against the owner of the property.*
- (10)~~(8)~~ The provisions of subsections (5), (7)~~(6)~~, and (9)~~(7)~~ of this section shall not apply to an owner, occupant, or person having control or management of any land located in an unincorporated area if the owner, occupant, or person is not the generator of the rubbish or is not dumping or knowingly allowing the dumping of the rubbish and has made reasonable efforts to prevent the dumping of rubbish by other persons onto the property.

Signed by Governor March 16, 2011.

CHAPTER 96

(SB 139)

AN ACT relating to liens.

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

➔Section 1. KRS 376.100 is amended to read as follows:

The owner or claimant of property against which a lien has been asserted, or any **contractor or** other person contracting with the owner or claimant of such property for the furnishing of any improvements or services for which a lien is created by this chapter **or any subcontractor or other person in privity with the contractor**, may, at any time before a judgment is rendered enforcing the lien, execute before the county clerk in which the lien was filed a bond for double the amount of the lien claimed with good sureties to be approved by the clerk, conditioned upon the obligors satisfying any judgment that may be rendered in favor of the person asserting the lien. The bond shall be preserved by the clerk, and upon its execution the lien upon the property shall be discharged. The person asserting the lien may make the obligors in the bond parties to any action to enforce his claim, and any judgment recovered may be against all or any of the obligors on the bond.

➔Section 2. KRS 376.212 is amended to read as follows:

- (1) Any ***contractor or other*** person contracting with the public authority for the furnishing of any improvements or services for which a lien is created by KRS 376.210 ***or any person in privity with the contractor or other person*** may, at any time before a judgment is rendered enforcing the lien, execute before the county clerk in the county in which the lien was filed a bond for double the amount of the lien claimed.
- (2) The bond executed under subsection (1) of this section shall be subject to the following conditions:
 - (a) The bond shall be approved by the clerk only if the bond is secured by:
 1. Cash;
 2. A letter of credit from a bank; or
 3. Surety insurance as defined by KRS 304.5-060 that is issued by a licensed insurer; and
 - (b) The bond shall require that the obligor satisfy any judgment that may be rendered in favor of the person asserting the lien.
- (3) The bond shall be preserved by the clerk, and upon its execution, the lien provided by KRS 376.210 shall be discharged.
- (4) The person asserting the lien may make the obligors on the bond parties to any action to enforce his claim, and any judgment received may be against any of the obligors on the bond.

Signed by Governor March 16, 2011.

CHAPTER 97

(SB 150)

AN ACT relating to the licensure of journeyman heating, ventilation, and air conditioning mechanics.

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

➔Section 1. KRS 198B.662 is amended to read as follows:

- (1) ~~Upon application made prior to July 1, 1995, and payment of a fee as determined by the board, any person who has been actively engaged and lawfully established as a heating, ventilation, and air conditioning contractor in this Commonwealth for not less than three (3) years immediately prior to July 1, 1994, or any person holding a valid heating, ventilation, and air conditioning license or similar license, issued by a city, county, or urban county government of this Commonwealth prior to July 1, 1994, may be issued a master heating, ventilation, and air conditioning contractor's license which shall entitle him to practice heating, ventilation, and air conditioning contracting, subject to approval of the board, in any jurisdiction in the Commonwealth. The prescribed fee and proof of eligibility required by the board shall accompany the application.~~
- (2) ~~Upon application made prior to July 1, 1995, and payment of a fee as determined by the board, any person who has been actively engaged and lawfully qualified as a journeyman heating, ventilation, and air conditioning mechanic in this Commonwealth under the supervision of a heating, ventilation, and air conditioning contractor for not less than three (3) years immediately prior to July 1, 1994, may be issued a journeyman heating, ventilation, and air conditioning mechanic's license, subject to approval of the board.~~
- (3) ~~After July 1, 1995, }All applicants for a} master heating, ventilation, and air conditioning contractor's license or a} journeyman heating, ventilation, and air conditioning mechanic's license shall be required to comply with KRS 198B.658, unless an applicant can demonstrate that he or she was actively engaged in the occupation of journeyman heating, ventilation, and air conditioning mechanic prior to July 1, 1995.~~
- (2) *Notwithstanding KRS 198B.658, the board shall issue a journeyman heating, ventilation, and air conditioning mechanic's license to an applicant who:*
 - (a) *Can demonstrate not less than three (3) years' experience in the practice of heating, ventilation, and air conditioning trades prior to July 1, 1995;*

- (b) *Has passed an examination prescribed by the board to determine competency to install, maintain, and repair heating, ventilation, and air conditioning systems, heating and cooling service, burner service, and hydronic systems; and*
- (c) *Has paid a fee as determined by the board.*

~~[(4) Upon application made prior to July 1, 1994, and payment of a fee as determined by the board, any person who has been actively engaged in the practice of heating, ventilation, and air conditioning contracting in the public schools or has been actively engaged in the routine maintenance of heating, ventilation, or air conditioning in the public schools, for not less than eight (8) years immediately prior to July 1, 1994, may be issued a masters heating, ventilation, and air conditioning contractor's license, subject to the approval of the board.]~~

Signed by Governor March 16, 2011.

CHAPTER 98

(HB 26)

AN ACT relating to wastewater.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly finds that regionalization of utility services can benefit Kentuckians by sharing the capital and operating costs of facilities among many users while protecting and enhancing the water quality of the Commonwealth's watersheds, creeks, lakes, and rivers. The General Assembly additionally finds and declares that:*
 - (a) *Continued economic growth in the Commonwealth is dependent upon the expansion of infrastructure to promote industrial, commercial, and residential development;*
 - (b) *Industrial, commercial, institutional, and residential development must be undertaken in a manner consistent with applicable planning, and in a manner that safeguards the waters of the Commonwealth from pollution;*
 - (c) *The challenges of improving and safeguarding the quality of the Commonwealth's watersheds, creeks, streams, lakes, and rivers through improvements in wastewater infrastructure and expanded wastewater treatment capacity favor a cooperative, regional approach;*
 - (d) *The Base Realignment and Closure (BRAC) Commission has realigned the mission at Fort Knox, a one hundred nine thousand (109,000) acre military reservation located in three (3) counties of the Commonwealth, resulting in significant economic expansion in the region encompassing the post;*
 - (e) *The ongoing regional economic expansion in the Fort Knox area of Hardin, Bullitt, and Meade counties resulting from BRAC, and the industrial, commercial and residential development throughout the Salt River Basin, including expansion in the adjacent counties of Oldham and Jefferson, provide a unique opportunity to illustrate the advisability of adopting a regionally integrated approach to wastewater management as a cost-effective and more affordable way to preserve Kentucky's water resources; and*
 - (f) *It is, therefore, the intent of the General Assembly to authorize the creation of a regional wastewater commission in accordance with Sections 1 to 12 of this Act, within the counties of Bullitt, Hardin, Jefferson, Meade, and Oldham, or portions of those counties, for the purposes of preserving water quality and developing infrastructure in the Salt River Basin sufficient to promote and sustain industrial, commercial, and residential development.*
- (2) *Sections 1 to 12 of this Act shall constitute full and complete authority for the creation of a regional wastewater commission and for carrying out the powers and duties of the commission.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 12, and 14 of this Act, the following definitions shall apply:

- (1) *"Commission" means a regional wastewater commission established pursuant to Section 3 of this Act;*
- (2) *"Member entity" means any of the following entities located in the counties of Bullitt, Hardin, Jefferson, Meade, or Oldham, that are participating in or that are eligible to participate in a regional wastewater commission:*
 - (a) *A city that owns a wastewater system;*
 - (b) *An urban-county government that owns a wastewater system;*
 - (c) *A sanitation district created pursuant to KRS Chapters 67 and 220;*
 - (d) *A metropolitan sewer district or a joint sewer agency established under KRS Chapter 76;*
 - (e) *A water district that owns a wastewater system established under KRS Chapter 74; and*
 - (f) *An agency of the federal, state, or local government owning a wastewater system subject to regulation by the Kentucky Division of Water;*
- (3) *"Organizing official" means the chief elected official of the unit of general purpose local government elected by a majority vote of the member entities. The organizing official may be a county judge/executive, a city mayor, or a mayor of an urban-county government or a consolidated local government; and*
- (4) *"Wastewater" means raw, untreated, or partially treated sewage and other polluted waters collected by lateral and main lines from residential, commercial, and industrial customers of wastewater systems owned by or under contract with a member entity of a commission and properly conveyed to designated receiving points for further transportation or treatment. "Wastewater" includes stormwater.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Any two (2) or more member entities owning wastewater systems may jointly:*
 - (a) *Acquire and construct wastewater collection, transportation, and treatment facilities;*
 - (b) *Operate and manage those facilities; and*
 - (c) *Improve and extend those facilities in any manner permitted under law.*
- (2) *The governing body of a member entity owning a wastewater system that wants to form a regional wastewater commission shall adopt a resolution or ordinance electing to participate with other member entities to perform any of the functions authorized under subsection (1) of this section.*
- (3) *Upon the adoption of an ordinance or resolution by the governing body of each member entity or a decision by a local, state, or federal agency owning a wastewater system to participate in a commission, a certified copy of each member entity's action shall be filed with the organizing official.*
- (4) *Prior to the adoption by the governing body of any member entity of a resolution or ordinance proposing participation in a commission, that governing body shall publish notice in accordance with KRS Chapter 424 and shall set a date for a public hearing regarding the creation of the commission and shall give at least thirty (30) days' prior notice of the hearing. The notice shall include at a minimum:*
 - (a) *An explanation of the scope of the geographic area proposed to be served by a commission; and*
 - (b) *A description of the anticipated benefits to the residents in the geographic area served by the member entity of membership by that entity in a commission.*

A resident, sewer customer, or citizen of the Commonwealth affected by a member entity proposing to establish a commission may submit written or oral comments and objections to the member entity, which shall provide a written statement of consideration of comments received.

- (5) *The member entity shall enter an order of decision along with specific findings for the decision. The organizing official among the member entities seeking to form a commission shall establish the commission designating it as a "regional wastewater commission" if, after the public hearing and consideration of all comments and objections received, those member entities have adopted a resolution or ordinance, as appropriate, finding that:*
 - (a) *The establishment of a commission is in the furtherance of the public health, convenience, and benefit to the customers of the member entities proposing the creation of the commission; and*

- (b) *The establishment of a commission can reasonably be expected to result in the improvement of the environment over that which would occur in the absence of the formation of the commission.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *After establishment of a commission, the chief executive officer of each member entity shall appoint one (1) commissioner to represent that member entity. A commissioner shall be a customer, a resident, or an authorized representative of the member entity, and shall be a resident of the county where the member entity that the commissioner is appointed to represent is located. The appointment shall be subject to the approval of the governing body of that member entity.*
- (2) *There shall be no fewer than three (3) commissioners appointed by member entities to a commission, and the commission shall always have an odd number of commissioners. If the total number of commissioners is less than three (3) or is an even number, then the legislative bodies for the geographic areas served by the two (2) member entities shall jointly appoint one (1) additional member. The additional member shall be a resident of either of the service areas of the two (2) member entities.*
- (3) *Commissioners shall serve a term of four (4) years and may be reappointed. Terms shall commence from the first day of the month when the order establishing the commission was entered. Upon the expiration of a commissioner's term, a successor shall be appointed in the manner of the commissioner's original appointment. Each commissioner shall serve until a qualified successor is appointed, and any vacancy shall be filled for the balance of the unexpired term.*
- (4) *Initial commissioners shall serve the following terms:*
 - (a) *One-third (1/3) of the commissioners shall serve for a term of two (2) years;*
 - (b) *One-third (1/3) of the commissioners shall serve for a term of three (3) years; and*
 - (c) *The remaining commissioners shall serve for a term of four (4) years.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Any entity listed in subsection (2) of Section 2 of this Act that did not participate in the initial creation of the commission may elect to participate in the operation and appoint a commissioner to an existing commission. To elect participation, the governing body of the prospective member entity shall follow the process set forth in subsections (2) to (5) of Section 3 of this Act.*
- (2) *After the process set forth in subsections (2) to (5) of Section 3 of this Act is complete, inclusion of the prospective member entity in the existing commission shall be granted if the organizing official finds that such inclusion:*
 - (a) *Satisfies the criteria set forth in subsection (5)(a) and (b) of Section 3 of this Act; and*
 - (b) *Will assist in achievement of the purposes of this Act and will be advantageous both for the customers of the prospective member entity and for the customers of the existing member entities of the commission.*
- (3) *If inclusion is granted, the organizing official shall enter an order authorizing the inclusion of the member entity. The chief executive officer of the member entity shall appoint a commissioner to the commission in accordance with the process and restrictions set forth in Section 4 of this Act.*
- (4) *The term of the newly appointed commissioner shall be determined in accordance with subsection (4) of Section 4 of this Act, but may be adjusted by the commission so that no more than one-third (1/3) of the terms of the commissioners expire each year.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The commission shall organize by appointing a chair from among its members and a secretary and a treasurer, who need not be commissioners. The secretary shall keep a record of all proceedings of the commission. The treasurer shall be the lawful custodian of all funds of the commission and shall make expenditures as authorized by the commission. The secretary and treasurer shall perform other duties pertaining to the affairs of the commission and may receive salaries prescribed by the commission.*
- (2) *The commission shall:*
 - (a) *Adopt bylaws and rules of procedure;*
 - (b) *Establish a regular meeting time, date, and location; and*

- (c) *Decide upon other matters for conduct of its business.*
- (3) *The commission may employ and fix reasonable compensation for a qualified general manager and other personnel comparable to the salary and benefits of the personnel for similarly sized wastewater entities based on regional or national standards. The commission may contract with and fix reasonable compensation for the services of officers, agents, operators, and consultants, including engineers, attorneys, accountants, fiscal agents, and other professional persons.*
- (4) *Each commissioner shall receive the same compensation fixed by agreement among the member entities and paid out of the commission's funds. Reasonable expenses incurred by a commissioner in the course of commission business shall be authorized and verified by the commission and shall be paid with commission funds.*
- (5) *Each commissioner shall have one (1) vote on matters requiring a vote. Each commissioner, secretary, treasurer, and general manager shall be bonded for faithful performance of his or her official duties pursuant to Sections 9, 10, 11, and 12 of this Act. Bond shall be in an amount prescribed by the commission, shall be comparable to bonds required of individuals among the member entities, and the cost of bonding shall be borne by the commission.*
- (6) *Commission meetings and records shall be subject to KRS 61.805 to 61.850 and 61.870 to 61.884, respectively.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *A commissioner may be removed for cause by the chief executive officer of the member entity he or she represents. The chief executive officer shall give the commissioner thirty (30) days' written notice of the hearing. The notice shall identify the charges brought against that commissioner, and the hearing shall be conducted by an impartial hearing officer appointed by the governing body of the member entity. The commissioner may elect to be represented by private legal counsel and shall bear any cost associated with private legal counsel.*
- (2) *After a formal evidentiary hearing under subsection (1) of this section, the hearing officer shall submit written findings to the governing body of the member entity for approval or disapproval. If the governing body approves the charges brought against the commissioner, then the position shall be declared vacant.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Any member entity of the commission may withdraw its participation by submitting an ordinance or resolution, as appropriate, of its governing body to all member entities at least ninety (90) days prior to the effective date of the withdrawal, conditioned solely upon that member having made prior payment in full or making other financial arrangements agreeable to the member entities to meet contract obligations, retire any cost, or pay any portion of any debt or other obligations incurred on its behalf by the commission.*
- (2) *Vacancies on the commission that result from a withdrawal of a member entity shall be filled in the manner prescribed in Section 4 of this Act.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioners shall constitute the managing board of the commission. The commission shall be a public corporation, and a public body corporate and politic, and a local public agency with the powers and duties in its corporate name to:*
- (a) *Execute contracts or be contracted with;*
 - (b) *Sue and be sued;*
 - (c) *Adopt and alter its corporate seal, at its own pleasure;*
 - (d) *Make loans and issue and repay revenue bonds, or other instruments of indebtedness;*
 - (e) *Receive proceeds from loans and grants;*
 - (f) *Purchase, acquire, own, hold, and dispose of all real and personal property necessary for carrying out its corporate purposes; and*
 - (g) *Exercise any powers, duties, and requirements for carrying out its corporate purposes in the manner prescribed in KRS 58.010 to 58.190 and KRS Chapter 224A.*

- (2) *The commission shall have full and complete supervision, management, and control over all of its facilities. The commission shall prescribe standards for the quality and characteristics of the wastewater it accepts into its facilities including standards as are required under state and federal law. All matters relating to the following shall be clearly set forth in commission policy and procedures and promulgated to the governing bodies of all the member entities of the commission:*
 - (a) *Procurement of professional services;*
 - (b) *Construction of facilities;*
 - (c) *Accepting, metering, conveying, and treating influent from all waste streams; and*
 - (d) *Handling of treatment process solids and effluent.*
- (3) *It shall be the role and duty of the commission to:*
 - (a) *Plan for and provide site and technology appropriate facilities and services relating to any type or aspect of wastewater collection, transportation, or treatment to achieve the best benefit for the customers of its member entities;*
 - (b) *Protect and enhance the environmental quality of the watershed in which those facilities and services are located;*
 - (c) *Actively participate in the planning activities of the 2020 water management planning councils established pursuant to KRS Chapter 151, that serve the regions in which the commission has facilities;*
 - (d) *Use the configuration of available and proposed wastewater facilities that is the most cost-effective in safeguarding the waters of the Commonwealth from pollution, and providing wastewater infrastructure appropriate for the customers of the member entities; and*
 - (e) *Assure that any construction or expansion of any wastewater facility proposed by a commission is consistent with the regional facilities plan adopted by the member entities of the commission and approved by either the Division of Water or the United States Environmental Protection Agency.*
- (4) *For the purpose of ensuring proper collection, transportation, and treatment of wastewater and in the furtherance of its purpose, the commission may collect and treat or contract with others to collect and treat any portion of its overall waste load.*
- (5) *The commission's property and income, along with any bonds or financial instruments issued by the commission or income derived from those bonds or financial instruments, shall be exempt from taxation.*
- (6) *The commission shall adopt and comply with KRS 45A.343, 45A.345 to 45A.360, 45A.735, 45A.740, 45A.745, and 45A.750 of the Kentucky Model Procurement Code and conduct all its business and financial activities according to approved governmental fiscal procedure. The commission shall procure the services of a certified public accountant to conduct an audit of all funds and fiscal transactions annually, providing copies of the audit report to the governing bodies of its member entities.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The commission shall provide all services on a wholesale contract basis and shall have no retail customers. The commission shall not be deemed a utility under KRS 278.010(3), but any contract between a commission and a utility that is regulated by the Public Service Commission regarding provision of services that would result in an increase in the rates paid by customers of that utility shall be subject to review and approval by the Public Service Commission in accordance with KRS Chapter 278. Contracts entered into between the commission and its member entities or other parties shall include covenants for the establishment of rates and charges as provided in subsection (5) of this section.*
- (2) *In addition to providing services to its member entities by contract, the commission may contract with cities, city-owned utilities, urban-county governments, consolidated local governments, sanitation districts, metropolitan sewer districts, joint sewer agencies, water districts, and agencies of local, state, and federal government that are not members of the commission. The commission may contract to provide services to wastewater entities in neighboring states that are not members of the commission under terms mutually agreed upon by the respective parties.*
- (3) *The commission shall not enter into a service contract with any entity that is obtaining the same wastewater collection, transportation, or treatment services by agreement with another wastewater service provider that*

has incurred debt obligations or any costs attributable to the agreement that are to be retired in whole or in part from revenue generated from providing the service to the entity unless the wastewater service provider releases the entity from its wastewater service agreement.

- (4) *All services provided by the commission to member entities or other parties shall be set out in contracts that shall contain, at minimum, the following elements:*
- (a) *A comprehensive description of any type of services to be provided;*
 - (b) *A statement of term, with beginning and ending times, dates, and a specific delineation of automatic term extensions of the contract, if any;*
 - (c) *A provision that the commission shall be the exclusive service provider for all or a designated geographic portion of a member entity's wastewater collection system;*
 - (d) *Statements that:*
 - 1. *All service shall be metered at each point of service and that the contractee shall be responsible for initial capital costs and construction of metering stations subject to the commission's specifications;*
 - 2. *The commission shall take ownership and provide security for all metering stations for purposes of management;*
 - 3. *The commission shall arrange for testing of all meters according to manufacturer's recommended schedule;*
 - 4. *Testing and metering station maintenance costs shall be shared equally between the commission and the contractee;*
 - 5. *Metering stations shall be accessible to both parties; and*
 - 6. *Meters shall be read at least monthly or more often according to a mutually agreed upon schedule;*
 - (e) *A statement setting out allowed minimum volumes, if any, and allowed maximum volumes expressed in gallons per minute for each meter;*
 - (f) *Identification of collected wastewater sources and allowed quality of influent to commission facilities at each meter;*
 - (g) *A statement of rates and charges for access to services, for allowed minimum volumes, if any, expressed in dollars per thousand gallons, and for allowed maximum volumes, expressed in dollars per thousand gallons;*
 - (h) *A statement that all rates or charges are subject to adjustment based on periodic cost-of-service analyses and an associated cost-allocation plan funded equitably between the commission and contractees, and a statement that any rates and charges adjustment that may occur in the interim between the times of full cost-of-service analyses with cost-allocation plans, if any, are subject to clauses citing time frames, volumes of influent, or other triggering elements tied to designated indexing method and proper notice;*
 - (i) *A requirement that either party provide immediate notification to the other party regarding changes in volume or the quality of influent, instances of mechanical failure, or other critical circumstance affecting operations when and as changes are known or can be reasonably anticipated;*
 - (j) *A statement regarding any modifications or restrictions in service by either the commission or the contractee during emergencies;*
 - (k) *A statement delineating any special condition binding one (1) or both parties, or citation of a particular action that, if taken by either party or if either party allows a third party to take, will constitute a breach of contract or invoke specifically identified penalties;*
 - (l) *A statement requiring both parties to provide current contact information of the respective parties' agents for both administrative matters and for emergencies; and*
 - (m) *A statement that the commission and the governing body of the contractee agree to meet at least annually to review any contract issues, assess service delivery, and plan for future service needs.*

- (5) *Any contract entered into by the commission to supply designated wastewater services to either a member entity or other party shall provide that charges assessed by the commission and payments made by the entity or party shall be fair, just, and reasonable and shall be sufficient to cover all costs associated with the service. The commission's rates and charges may be modified to compensate for increased operating costs, pursuant to covenants set forth in contract. Contracts for services shall be fully binding on the parties but shall not be construed to be a debt of the commission member entities within the meaning of any statutory or constitutional limitations.*
- (6) *If a commission contracts for management of a wastewater facility owned by a member entity or other party, the commission shall become a signatory on any federal, state, or local wastewater-related permits issued to and held by that member entity or other party.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *The rates and charges to be assessed by the commission to its member entities and other parties shall be the verified cost of providing the services as prescribed in this section, and shall be allocated based on usage and the cost of service. However, if continuity of consumer service or the preservation of water quality is threatened by special circumstances affecting a public wastewater utility, the commission may establish special rates for that entity for a period not to exceed one (1) year so long as benefits to member entities are not jeopardized and nonmembers are not adversely affected in any manner.*
- (2) *The commission shall establish wholesale charges, rates, and terms for its services to its member entities and to any other party to which it provides service under contract that are fair, just, and reasonable and shall be sufficient at all times to:*
 - (a) *Pay the cost of operation and maintenance of any facility that it may own or lease to provide wastewater services contracted to its member entities or other parties;*
 - (b) *Pay the principal and interest on any bonds, loans, or other instruments or obligations secured in the name of the commission; and*
 - (c) *Provide an adequate fund for renewals, replacements, and reserves.*
- (3) *The commission's procedure for establishing or changing rates and charges levied on member entities and other parties that contract for service shall be as follows:*
 - (a) *Every five (5) years, or more often if circumstances warrant, the commission shall procure, pursuant to KRS 45A.343, 45A.345 to 45A.460, 45A.735, 45A.740, 45A.745, and 45A.750 the professional consulting services of an independent accounting firm or individual accountant qualified and experienced in conducting cost-of-service studies. The commission shall invite the governing body of each member entity to designate a special representative to participate in the consultant selection process;*
 - (b) *The firm or individual selected in consultation with the commission's designated engineers, operators, and other knowledgeable individuals shall perform a cost-of-service study to:*
 - 1. *Determine the actual or probable cost of operating and maintaining the commission's respective wastewater facilities;*
 - 2. *Determine the cost of servicing any associated debt obligations and administrative costs;*
 - 3. *Devise a comprehensive cost allocation plan and recommend that the commission establish and levy specific rates for treatment services and appropriate charges for other services to offset these costs; and*
 - 4. *Devise and recommend a standard method of formulary whereby the commission may conduct regular financial analyses internally, based on sound accounting policy, allowing for the application of inflation indices and other equitable methods of determining service rates;*
 - (c) *The commission shall determine and set final rates and charges based on and only after:*
 - 1. *The cost-of-service study and recommendations of the consultant are received;*
 - 2. *Consultation with the governing bodies of member entities during the cost-of-service study; and*
 - 3. *For a rate increase greater than five percent (5%), a vote approving the final rate by a majority of the legislative bodies of the member entities that comprise the wastewater*

commission or in the case of a special district or government agency, by the fiscal court of the county that contains the district or agency, which shall take action thirty (30) days after notice of the proposed final rate. Each legislative body of a member entity, or fiscal court in the case of a special district or government agency, shall have equal weight. Absent a majority vote, rates shall remain provisional and must be reset by the wastewater commission;

- (d) Initial rates and charges and any subsequent changes to rates and charges of five percent (5%) or less shall be approved by the commission, but not more than once in a twelve (12) month period. Increases above five percent (5%) shall remain provisional until action by the legislative bodies pursuant to paragraph (c) of this subsection; and*
- (e) The commission shall provide not less than sixty (60) days' written notice to the governing bodies of the member entities prior to the effective date of any change in rates or charges for service, which shall remain provisional until action by the legislative bodies of the member entities pursuant to paragraph (c) of this subsection.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) For the purpose of acquiring all or part of the facilities necessary to collect, transport, and treat wastewater, the commission may purchase facilities and equipment from member entities and others for mutually agreed upon terms not to exceed the actual value of the facilities and equipment. Notwithstanding any provision of law to the contrary, a member entity of the commission or other entity may convey ownership of the facility or equipment to the commission without an election or voter approval.*
- (2) If a member entity has any outstanding debt obligation related to any facility or equipment proposed to be acquired by the commission, the commission may either make sufficient purchase payment to the owner to cover debt obligations or assume the debt obligations in its name pursuant to a sales agreement and any other instruments deemed appropriate by legal counsel. If the commission makes cash payment to the owner for the equipment or facility, it shall be a condition of sale that any outstanding debt obligation associated with the equipment or facility be retired by the owner at the time of sale.*
- (3) The commission may secure funding from state and federal grants and loan programs, nonprofit associations, and private lending institutions and may issue revenue bonds to acquire, construct, improve, or extend facilities for the collection, transportation, or treatment of wastewater. Loans and bonds shall be payable solely from the revenues derived pursuant to contracts for wastewater collection, transportation, and treatment services with member entities or other entities.*
- (4) For the purpose of securing appropriate sites, facilities, and required funding, the commission shall be vested with all the powers, duties, and responsibilities as delegated and granted to a governmental agency under the terms and provisions of KRS 58.010 to 58.190 and KRS Chapter 224A.*
- (5) A commission shall not assume responsibility for payment of any fines or penalties incurred by a member entity or other party and owed at the time of formation of a commission or contracting with that party, as a result of an agreed order, enforcement action, or other resolution of alleged violation of any provision of the Clean Water Act.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 220 IS CREATED TO READ AS FOLLOWS:

- (1) If the rate increase in a service charge, rate, or user fee is greater than five percent (5%) of the previous charge, rate, or user fee then the increase shall be subject to the provisions of subsections (2) and (3) of this section.*
- (2) In a district consisting of only one (1) county, before a proposed service charge, rate, or user fee may be adopted by the district board of directors of a district, it shall receive the approval of the fiscal court or legislative body of the county having jurisdiction over the district.*
- (3) In a district governed by the provisions of KRS 220.135, or otherwise having jurisdiction in two (2) or more counties, before a proposed service charge, rate, or user fee may be adopted by the district board of directors, it shall receive the approval of a majority of the fiscal courts or legislative bodies of the counties having jurisdiction over a part of the district. Each approval of a fiscal court shall be equally weighted.*
- (4) A service charge, rate, or user fee shall not be increased more than once in a twelve (12) month period.*
- (5) The provisions of this section shall not apply to a district formed under this chapter with fewer than ten thousand (10,000) customer accounts.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *By January 1, 2012, the commissioners of a regional wastewater commission established under the provisions of Sections 1 to 12 of this Act shall provide public access to records relating to expenditures of the commission through display of the records on a Web site.*
- (2) *The Web site shall be in a searchable format and shall provide financial information about expenditures not exempt under the provisions of state or federal law, including:*
 - (a) *The payee name;*
 - (b) *The category or type of expenditure;*
 - (c) *A description of the reason for the expenditure, if available;*
 - (d) *The expenditure amount;*
 - (e) *An electronic link to documents relating to the expenditure, if the documents are available electronically;*
 - (f) *The budget adopted by the commission and subsequent amendments to that budget;*
 - (g) *The completed annual audit results; and*
 - (h) *Any other information deemed relevant by the commission.*
- (3) *Information on the Web site shall be updated at least on a monthly basis and shall be maintained on the Web site for at least three (3) years.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 220 IS CREATED TO READ AS FOLLOWS:

- (1) *By January 1, 2012, each district board of directors of a district shall provide public access to records relating to expenditures of the district through display of the records on a Web site.*
- (2) *The Web site shall be in a searchable format and shall provide financial information about expenditures not exempt under the provisions of state or federal law, including:*
 - (a) *The payee name;*
 - (b) *The category or type of expenditure;*
 - (c) *A description of the reason for the expenditure, if available;*
 - (d) *The expenditure amount;*
 - (e) *An electronic link to documents relating to the expenditure, if the documents are available electronically;*
 - (f) *The budget adopted by the district and subsequent amendments to that budget;*
 - (g) *The completed annual audit; and*
 - (h) *Any other information deemed relevant by the district.*
- (3) *Information on the Web site shall be updated at least on a monthly basis and shall be maintained on the Web site for at least three (3) years.*
- (4) *The provisions of this section shall not apply to sanitation districts with fewer than ten thousand (10,000) customer accounts.*

➔Section 16. KRS 58.010 is amended to read as follows:

As used in KRS 58.010 to 58.140, unless the context requires otherwise:

- (1) "Public project" means any lands, buildings, or structures, works or facilities (a) suitable for and intended for use as public property for public purposes or suitable for and intended for use in the promotion of the public health, public welfare or the conservation of natural resources, including medical office buildings contiguous to hospital facilities, and shall also include the planning of any such lands, buildings, structures, works or facilities; or (b) suitable for and intended for use for the purpose of creating or increasing the public recreational, cultural and related business facilities of a community, including such structures as concert halls, museums, stadiums, theaters and other public facilities, together with related and appurtenant parking garages, offices and office buildings for rental in whole or in part to private tenants, dwelling units and apartment

buildings for rental in whole or in part to private tenants, commercial and retail businesses, stores or other establishments, and any structure or structures or combination of the foregoing, or other structures having as their primary purpose the creation, improvement, revitalization, renewal or modernization of a central business or shopping community, and shall also include existing lands, buildings, structures, works and facilities, as well as improvements or additions to any such lands, buildings, structures, works or facilities.

- (2) "Public project" as defined herein shall include projects intended for use as public property for public purposes by another governmental agency, including the United States government, other than the governmental agency acquiring the land or constructing the building, structure or facility.
- (3) "Governmental agency" means the Commonwealth of Kentucky as such acting by or through any department, instrumentality or agency thereof, or any county, city, agency, or instrumentality, ***including a regional wastewater commission established under Sections 1 to 12 of this Act***, or other political subdivision of the Commonwealth.

➔Section 17. KRS 65.067 is amended to read as follows:

- (1) All officers, officials, and employees of cities, counties, urban-county governments, charter county governments, ***a regional wastewater commission***, and special districts who handle public funds in the execution of their duties shall give a good and sufficient bond to the local governing body for the faithful and honest performance of his or her duties and as security for all money coming into that person's hands or under that person's control. The bond amount shall be based upon the maximum amount of public funds the officer, official, or employee handles at any given time during a fiscal year cycle. The local governing body shall pay the cost of the bond.
- (2) Elected officials who post bond as required by statute, and employees of their offices covered by a blanket or umbrella bond, shall be deemed to have complied with subsection (1) of this section.

➔Section 18. KRS 220.035 is amended to read as follows:

- (1) A fiscal court may:
 - (a) Review and approve, amend, or disapprove proposed district land acquisitions;
 - (b) Review and approve, amend, or disapprove proposed district construction of capital improvements; ***and***
 - (c) ***Except as provided under Section 13 of this Act***, review and approve, amend, or disapprove proposed service charges or user fees ***not more than once in a twelve (12) month period***; and
 - (d) Review and approve, amend, or disapprove the district's proposed budget.
- (2) In order to exercise any or all the powers enumerated in subsection (1) of this section, the fiscal court shall adopt a county ordinance explicitly stating which of the powers the fiscal court intends to exercise and setting forth the procedures by which the sanitation district shall submit plans and documentation for review and approval, amendment, or disapproval. The exercise of such powers shall become effective thirty (30) days following the effective date of the ordinance. In the case of districts lying in two (2) or more counties, no fiscal court shall exercise the powers enumerated in subsection (1) of this section until each fiscal court has adopted conforming ordinances stating the powers to be exercised.
- (3) In the case of districts lying in two (2) or more counties, the votes of the respective fiscal courts shall be weighted in the same manner as appointments to the district board are apportioned pursuant to KRS 220.140.
- (4) In the case of districts governed by the provisions of KRS 220.135, the county judges/executive shall exercise the powers listed in subsection (1) of this section. They shall meet jointly at least once each fiscal year to exercise these powers. Their votes shall be equally weighted. ***Service charges, rates, and user fees for districts with more than ten thousand (10,000) customer accounts shall be approved as set out in Section 13 of this Act***~~[In the case of review and approval of proposed service charges or user fees, a majority of the votes of the county judges/executive shall be required to override the recommendation of the district board of directors].~~
- (5) ***Service charges, rates, and user fees in districts not governed by the provisions of KRS 220.135 or having more than ten thousand (10,000) customer accounts shall be approved as set out in Section 13 of this Act.***

➔Section 19. KRS 224A.011 is amended to read as follows:

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

- (1) "Administrative fee" means a fee assessed and collected by the authority from borrowers under assistance agreements, to be used for operational expenses of the authority;~~[-]~~
- (2) "Applicable interest rate" means the rate of interest which shall be used as part of the repayment criteria for an assistance agreement between a governmental agency and the authority, and shall be determined by the authority pertinent to the source of funds from which the assistance agreement is funded;~~[-]~~
- (3) "Assistance agreement" means the agreement to be made and entered into by and between a governmental agency and the authority, as authorized by this chapter, providing for a lease, loan, services, or grant to the governmental agency or for the purchase of obligations issued by the governmental agency, and for the repayment thereof to the authority by the governmental agency;~~[-]~~
- (4) "Authority" means the Kentucky Infrastructure Authority, which is created by this chapter;~~[-]~~
- (5) "Authority revenues" means the totality of all:
 - (a) Service charges;
 - (b) Utility tax receipts, to the extent not otherwise committed and budgeted by the authority during any fiscal period of the authority;
 - (c) Any gifts, grants, or loans received, to the extent not otherwise required to be applied;
 - (d) Any and all appropriations made to the authority by the General Assembly of the Commonwealth of Kentucky, to the extent not otherwise required to be applied;
 - (e) All moneys received in repayment of and for interest on any loans made by the authority to a governmental agency, except as provided in KRS 224A.111, 224A.1115, and 224A.112, or as principal of and interest on any obligations issued by a governmental agency and purchased by the authority, or as receipts under any assistance agreement;
 - (f) The proceeds of bonds or long-term debt obligations of governmental agencies pledged to the payment of bond anticipation notes issued by the authority on behalf of the said governmental agency to provide interim construction financing; and
 - (g) Payments under agreements with any agencies of the state and federal government;~~[-]~~
- (6) "Borrower or borrowing entity" means any agency of the state or its political subdivisions, any city, or any special district created under the laws of the state acting individually or jointly under interagency or interlocal cooperative agreements to enter into assistance agreements with the authority;~~[-]~~
- (7) "Community flood damage abatement project" means any structural or nonstructural study, plan, design, construction, development, improvement, or other activity to provide for flood control;~~[-]~~
- (8) "Construction" means and includes but is not limited to:
 - (a) Preliminary planning to determine the economic and engineering feasibility of infrastructure projects, the engineering, architectural, legal, fiscal, and economic investigations, and studies necessary thereto, and surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of infrastructure or solid waste projects;
 - (b) The erection, building, acquisition, alteration, remodeling, improvement, or extension of infrastructure or solid waste projects; and
 - (c) The inspection and supervision of the construction of infrastructure or solid waste projects and all costs incidental to the acquisition and financing of same. This term shall also relate to and mean any other physical devices or appurtenances in connection with, or reasonably attendant to, infrastructure or solid waste projects;~~[-]~~
- (9) "Dams" means any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:
 - (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the Energy and Environment Cabinet; or
 - (b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more;~~[-]~~

- (10) "Distribution facilities" means all or any part of any facilities, devices, and systems used and useful in obtaining, pumping, storing, treating, and distributing water for agricultural, industrial, commercial, recreational, public, and domestic use;{+}
- (11) "Energy and Environment Cabinet" means the Kentucky Energy and Environment Cabinet, or its successor, said term being meant to relate specifically to the state agency which is designated as the water pollution agency for the Commonwealth of Kentucky, for purposes of the federal act;{+}
- (12) "Federal act" means the Federal Clean Water Act (33 U.S.C. secs. 1251 et seq.) as said federal act may be amended from time to time in the future, or any other enactment of the United States Congress providing funds that may assist in carrying out the purposes of the authority;{+}
- (13) "Federally assisted wastewater revolving fund" means that fund which will receive federal and state funds or the proceeds from the sale of revenue bonds of the authority for the purpose of providing loans to finance construction of publicly owned treatment works as defined in Section 212 of the federal act and for the implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act;{+}
- (14) "Governmental agency" means any incorporated city or municipal corporation, or other agency, or unit of government within or a department or a cabinet of the Commonwealth of Kentucky, now having or hereafter granted, the authority and power to finance, acquire, construct, or operate infrastructure or solid waste projects. This definition shall specifically apply but not by way of limitation to incorporated cities; counties, including any counties containing a metropolitan sewer district; sanitation districts; water districts; water associations if these associations are permitted to issue interest-bearing obligations which interest would be excludable from gross income under Section 103 of the Internal Revenue Code of 1986 as amended; sewer construction districts; metropolitan sewer districts; sanitation taxing districts; **a regional wastewater commission established under Sections 1 to 12 of this Act**; and any other agencies, commissions, districts, or authorities (either acting alone, or in combination with one another in accordance with any regional or area compact, or intergovernmental cooperative agreements), now or hereafter established in accordance with the laws of the Commonwealth of Kentucky having and possessing the described powers described in this subsection;{+}
- (15) "Industrial waste" means any liquid, gaseous, or solid waste substances resulting from any process of industry, manufacture, trade, or business, or from the mining or taking, development, processing, or recovery of any natural resources, including heat and radioactivity, together with any sewage as is present therein, which pollutes the waters of the state, and specifically, but not by way of limitation, means heat or thermal differentials created in the waters of the state by any industrial processing, generating, or manufacturing processes;{+}
- (16) "Infrastructure project" means any construction or acquisition of treatment works, **facilities related to the collection, transportation, and treatment of wastewater as defined in Section 2 of this Act**, distribution facilities, or water resources projects instituted by a governmental agency or an investor-owned water utility which is approved by the authority and, if required, by the Energy and Environment Cabinet, Public Service Commission, or other agency; solid waste projects; dams; storm water control and treatment systems; gas or electric utility; broadband deployment project; or any other public utility or public service project which the authority finds would assist in carrying out the purposes set out in KRS 224A.300;{+}
- (17) "Infrastructure revolving fund" means that fund which will receive state funds, the proceeds from the sale of revenue bonds of the authority or other moneys earmarked for that fund for the purpose of providing loans or grants to finance construction or acquisition of infrastructure projects as defined in this section;{+}
- (18) "Loan or grant" means moneys to be made available to governmental agencies by the authority for the purpose of defraying all or any part of the total costs incidental to construction or acquisition of any infrastructure project;{+}
- (19) "Market interest rate" means the interest rate determined by the authority under existing market conditions at the time the authority shall provide financial assistance to a governmental agency;{+}
- (20) "Obligation of a governmental agency" means a revenue bond, bond anticipation note, revenue anticipation note, lease, or other obligation issued by a governmental agency under KRS 58.010 et seq. or other applicable statutes;{+}
- (21) "Person" means any individual, firm, partnership, association, corporation, or governmental agency;{+}

- (22) "Pollution" means the placing of any noxious or deleterious substances ("pollutants"), including sewage and industrial wastes, in any waters of the state or affecting the properties of any waters of the state in a manner which renders the waters harmful or inimical to the public health or to animal or aquatic life, or to the use, present or future, of these waters for domestic water supply, industrial or agricultural purposes, or recreational purposes;{+}
- (23) "Prioritization schedules" means the list of wastewater treatment works, distribution facilities and water resources projects which the Energy and Environment Cabinet has evaluated and determined to be of priority for receiving financial assistance from the federally assisted wastewater revolving fund and the federally assisted drinking water revolving fund, or the list of infrastructure projects which the authority has evaluated and determined to be of priority for receiving financial aid from the infrastructure revolving fund. The evaluation by the authority of infrastructure projects for water systems shall be undertaken with input from the appropriate area development district. The evaluation by the authority of infrastructure for broadband deployment projects shall be undertaken with consideration given to input from area development districts, telecommunications businesses, information services, technology industries, governmental entities, and Kentucky-based nonprofit organizations, including ConnectKentucky;{+}
- (24) "Solid waste project" means construction, renovation, or acquisition of a solid waste facility which shall be instituted and owned by a governmental agency;{+}
- (25) "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis;{+}
- (26) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste facility if solid waste generated by a recovered material processing facility is managed in accordance with KRS Chapter 224 and administrative regulations adopted by the cabinet;{+}
- (27) "Revenue bonds" means special obligation bonds issued by the authority as provided by the provisions of this chapter, which are not direct or general obligations of the state, and which are payable only from a pledge of, and lien upon, authority revenues as provided in the resolution authorizing the issuance of the bonds, and shall include revenue bond anticipation notes;{+}
- (28) "Service charge" means any monthly, quarterly, semiannual, or annual charge to be imposed by a governmental agency, or by the authority, for any infrastructure project financed by the authority, which service charge arises by reason of the existence of, and requirements of, any assistance agreement;{+}
- (29) "Sewage" means any of the waste products or excrements, or other discharges from the bodies of human beings or animals, which pollute the waters of the state;{+}
- (30) "Solid waste" means "solid waste" as defined by KRS 224.01-010(31)(a);{+}
- (31) "Solid waste facility" means any facility for collection, handling, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether the facility is associated with facilities generating the waste or otherwise, but does not include a container located on property where the waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility;{+}
- (32) "Solid waste revolving fund" means that fund which shall receive state funds, the proceeds from the sale of revenue bonds of the authority, or other moneys earmarked for the purpose of providing loans or grants to finance solid waste projects defined in this section;{+}
- (33) "State" means the Commonwealth of Kentucky;{+}
- (34) "System" means the system owned and operated by a governmental agency with respect to solid waste projects, treatment works, or infrastructure projects financed as provided by the assistance agreement between the governmental agency and the authority;{+}

- (35) "Treatment works" or "wastewater treatment works" means all or any part of any facilities, devices, and systems used and useful in the storage, treatment, recycling, and reclamation of wastewater or the abatement of pollution, including facilities for the treatment, neutralization, disposal of, stabilization, collecting, segregating, or holding of wastewater, including without limiting the generality of the foregoing, intercepting sewers, outfall sewers, pumping power stations, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof, and any wastewater treatment works, including site acquisition of the land that will be an integral part of the wastewater treatment process, or is used for ultimate disposal of residues resulting from wastewater treatment, together with any other facilities which are deemed to be treatment works in accordance with the federal act;{+}
- (36) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to a predetermined formula or index or in accordance with the standards set forth in KRS 224A.120;{+}
- (37) "Wastewater" means any water or liquid substance containing sewage, industrial waste, or other pollutants or contaminants derived from the prior use of these waters;{+}
- (38) "Water resources" means all waters of the state occurring on the surface, in natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface aquifers, which are available, or which may be made available to agricultural, industrial, commercial, recreational, public, and domestic users;{+}
- (39) "Water resources project" means any structural or nonstructural study, plan, design, construction, development, improvement, or any other activity including programs for management, intended to conserve and develop the water resources of the state and shall include all aspects of water supply, ***facilities to collect, transport, and treat wastewater as defined in Section 2 of this Act***, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures;{+}
- (40) "Waters of the state" means all streams, lakes, watercourses, waterways, ponds, marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural, surface, or underground waters;{+}
- (41) "Utility tax" means the tax which may be imposed by the authority on every purchase of water or sewer service in the Commonwealth of Kentucky;{+}
- (42) "Broadband deployment project" means the construction, provision, development, operation, maintenance, leasing, or improvement of broadband infrastructure, broadband services, or technologies that constitute a part of, or are related to, broadband infrastructure or broadband services, to provide for broadband service in unserved areas of the Commonwealth; ***and***{+}
- (43) "Unserved area" means any place where broadband service is not available.

➔Section 20. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, 278.541 to 278.544, 278.546 to 278.5462, and 278.990, unless the context otherwise requires:

- (1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts;
- (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;
- (3) "Utility" means any person except ***a regional wastewater commission established pursuant to Section 3 of this Act and***, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:
 - (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
 - (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;
 - (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;

- (d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;
 - (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or
 - (f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;
- (4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;
 - (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;
 - (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;
 - (7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;
 - (8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;
 - (9) "Generation and transmission cooperative" or "G&T" means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;
 - (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;
 - (11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;
 - (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;
 - (13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility, but does not include Voice over Internet Protocol (VoIP) service;
 - (14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;
 - (15) "Commission" means the Public Service Commission of Kentucky;
 - (16) "Commissioner" means one (1) of the members of the commission;
 - (17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand, including home energy assistance programs;
 - (18) "Affiliate" means a person that controls or that is controlled by, or is under common control with, a utility;
 - (19) "Control" means the power to direct the management or policies of a person through ownership, by contract, or otherwise;
 - (20) "CAM" means a cost allocation manual which is an indexed compilation and documentation of a company's cost allocation policies and related procedures;
 - (21) "Nonregulated activity" means the provision of competitive retail gas or electric services or other products or services over which the commission exerts no regulatory authority;

- (22) "Nonregulated" means that which is not subject to regulation by the commission;
- (23) "Regulated activity" means a service provided by a utility or other person, the rates and charges of which are regulated by the commission;
- (24) "USoA" means uniform system of accounts which is a system of accounts for public utilities established by the FERC and adopted by the commission;
- (25) "Arm's length" means the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction;
- (26) "Subsidize" means the recovery of costs or the transfer of value from one (1) class of customer, activity, or business unit that is attributable to another;
- (27) "Solicit" means to engage in or offer for sale a good or service, either directly or indirectly and irrespective of place or audience;
- (28) "USDA" means the United States Department of Agriculture;
- (29) "FERC" means the Federal Energy Regulatory Commission;
- (30) "SEC" means the Securities and Exchange Commission;
- (31) "Commercial mobile radio services" has the same meaning as in 47 C.F.R. sec. 20.3 and includes the term "wireless" and service provided by any wireless real time two (2) way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line; and
- (32) "Voice over Internet Protocol" or "VoIP" has the same meaning as in federal law.

Signed by Governor March 17, 2011.

CHAPTER 99

(HB 34)

AN ACT relating to coroners.

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

➔Section 1. KRS 189.910 is amended to read as follows:

- (1) As used in KRS 189.920 to 189.950, "emergency vehicle" means any vehicle used for emergency purposes by:
 - (a) *The Department of Kentucky State Police;*
 - (b) *A public police department;*
 - (c) *The Department of Corrections;*
 - (d) *A sheriff's office;*
 - (e) *A rescue squad;*
 - (f) *An emergency management agency if it is a publicly owned vehicle;*
 - (g) *An ambulance service or medical first-response provider licensed by the Kentucky Board of Emergency Medical Services, for any vehicle used to respond to emergencies or to transport a patient with a critical medical condition;*
 - (h) *Any vehicle commandeered by a police officer;*
 - (i) *Any vehicle with the emergency lights required under Section 2 of this Act used by a paid or volunteer fireman or paid or volunteer ambulance personnel, or a paid or local emergency management director while responding to an emergency or to a location where an emergency vehicle is on emergency call;*

- (j) *An elected coroner granted permission to equip a publicly or privately owned motor vehicle with lights and siren pursuant to Section 2 of this Act; or*
- (k) *A deputy coroner granted permission to equip a publicly or privately owned motor vehicle with lights and siren pursuant to Section 2 of this Act*~~[a fire department; any vehicle used for emergency purposes by the State Police, a public police department, Department of Corrections, or sheriff's office; any vehicle used for emergency purposes by a rescue squad; any publicly owned vehicle used for emergency purposes by an emergency management agency; any vehicle used to respond to emergencies or to transport a patient with a critical medical condition if the vehicle is operated by a Cabinet for Health Services licensed ambulance provider or medical first response provider; any vehicle commandeered by a police officer; or any motor vehicle with the emergency lights required under KRS 189.920 used by a paid or volunteer fireman or paid or volunteer ambulance personnel or a paid or volunteer local emergency management director while responding to an emergency or to a location where an emergency vehicle is on emergency call].~~

- (2) As used in KRS 189.920 to 189.950, "public safety vehicle" means public utility repair vehicle; wreckers; state, county, or municipal service vehicles and equipment; highway equipment which performs work that requires stopping and standing or moving at slow speeds within the traveled portions of highways; and vehicles which are escorting wide-load or slow-moving trailers or trucks.

➔Section 2. KRS 189.920 is amended to read as follows:

- (1) All fire department, rescue squad, or publicly owned emergency management agency emergency vehicles and all ambulances shall be equipped with one (1) or more flashing, rotating, or oscillating red lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and a siren, whistle, or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws.
- (2) All state, county, or municipal police vehicles and all sheriffs' vehicles used as emergency vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and a siren, whistle, or bell, capable of emitting a sound audible under normal conditions from a distance of not less than five hundred (500) feet. This equipment shall be in addition to any other equipment required by the motor vehicle laws.
- (3) By ordinance, the governing body of any city or county may direct that the police or sheriffs' vehicles in that jurisdiction be equipped with a combination of red and blue flashing, rotating, or oscillating lights.
- (4) All public safety vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating yellow lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle. Yellow flashing, rotating, or oscillating lights may also be used by vehicles operated by mail carriers while on duty, funeral escort vehicles, and church buses.
- (5) All Department of Corrections vehicles used as emergency vehicles shall be equipped with one (1) or more flashing, rotating, or oscillating blue lights, visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle. The Department of Corrections vehicles shall not be equipped with or use a siren, whistle, or bell. The equipment prescribed by this subsection shall be in addition to any other equipment required by motor vehicle laws.
- (6) Red flashing lights may be used by school buses.
- (7) No emergency vehicle, public safety vehicle, or any other vehicle covered by KRS 189.910 to 189.950 shall use any light of any other color than those specified by KRS 189.910 to 189.950. Sirens, whistles, and bells may not be used by vehicles other than those specified by KRS 189.910 to 189.950, except that any vehicle may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.
- (8) Vehicles used as command posts at incidents may be equipped with and use when on scene, a green rotating, oscillating, or flashing light. This light shall be in addition to the lights and sirens required in this section.
- (9) A personal vehicle used by a paid or volunteer firefighter, ambulance personnel, or emergency services director who is responding to an emergency shall display the lights required in subsection (1) of this section.

- (10) *An elected coroner may equip a publicly or privately owned motor vehicle, or both with flashing, rotating, or oscillating red and blue lights and a siren meeting the requirements of this section solely for the purpose of responding to a report of the death of a human being subject to the following terms and conditions:*
- (a) *The coroner makes a written request to the legislative body of the county, urban-county, charter county, consolidated local government, or unified local government in which the coroner was elected to equip a publicly or privately owned motor vehicle, or both, with flashing, rotating, or oscillating red and blue lights and a siren meeting the requirements of this section, and that request is approved by the legislative body by ordinance or by court order;*
 - (b) *The coroner may use the lights and siren only while responding to the scene of the report of a death of a human being and shall not, KRS 189.940 to the contrary notwithstanding, exceed the posted speed limit; and*
 - (c) *The permission granted pursuant to this section shall expire upon the coroner leaving office or the legislative body revoking the authorization.*
- (11) *A deputy coroner certified pursuant to KRS Chapter 72 may equip a publicly owned or privately owned motor vehicle, or both, with flashing, rotating, or oscillating red and blue lights and a siren meeting the requirements of this section solely for the purpose of responding to a report of the death of a human being, subject to the following terms and conditions:*
- (a) *The deputy coroner has made a written request to the coroner to equip a publicly owned or privately owned vehicle with flashing, rotating, or oscillating, red and blue lights meeting the requirements of this section and the coroner has approved the request in writing;*
 - (b) *The coroner makes a written request to the legislative body of the county, urban-county, charter county, consolidated local government, or unified local government in which the coroner is elected to permit the deputy coroner to equip a publicly owned motor vehicle or privately owned motor vehicle, or both, and that request has been approved by the legislative body by ordinance or by court order;*
 - (c) *The deputy coroner may use the lights and siren only while responding to the scene of the report of the death of a human being and shall not, KRS 189.940 to the contrary notwithstanding, exceed the posted speed limit; and*
 - (d) *The permission granted pursuant to this section shall expire upon the coroner leaving office or the legislative body revoking the authorization.*

➔Section 3. KRS 189.940 is amended to read as follows:

- (1) *Except as provided in Section 2 of this Act*, the speed limitations set forth in the Kentucky Revised Statutes do not apply to emergency vehicles:
- (a) When responding to emergency calls; or
 - (b) To police vehicles when in pursuit of an actual or suspected violator of the law; or
 - (c) To ambulances when transporting a patient to medical care facilities; and
 - (d) The driver thereof is giving the warning required by subsection (5)(a) and (b) of this section.
- No portion of this subsection shall be construed to relieve the driver of the duty to operate the vehicle with due regard for the safety of all persons using the street or highway.
- (2) The driver of an emergency vehicle, when responding to an emergency call, or of a police vehicle in pursuit of an actual or suspected violator of the law, or of an ambulance transporting a patient to a medical care facility and giving the warning required by subsection (5) of this section, upon approaching any red light or stop signal or any stop sign shall slow down as necessary for safety to traffic, but may proceed past such red or stop light or stop sign with due regard for the safety of persons using the street or highway.
- (3) The driver of an emergency vehicle, when responding to an emergency call, or of a police vehicle in pursuit of an actual or suspected violator of the law, or of an ambulance transporting a patient to a medical care facility and giving warning required by subsection (5) of this section, may drive on the left side of any highway or in the opposite direction of a one-way street provided the normal lanes of traffic are blocked and he does so with due regard for the safety of all persons using the street or highway.

- (4) The driver of an emergency or public safety vehicle may stop or park his vehicle upon any street or highway without regard to the provisions of KRS 189.390 and 189.450, provided that, during the time the vehicle is parked at the scene of an emergency, at least one (1) warning light is in operation at all times.
- (5) The driver of an emergency vehicle desiring the use of any option granted by subsections (1) through (3) of this section shall give warning in the following manner:
 - (a) By illuminating the vehicle's warning lights continuously during the period of the emergency; and
 - (b) By continuous sounding of the vehicle's siren, bell, or exhaust whistle; unless
 - (c) The vehicle is an ambulance and the driver is of the opinion that sounding of the siren, bell, or exhaust whistle would be detrimental to the victim's health. In the event the driver of an ambulance elects not to use the siren, bell, or exhaust whistle he shall not proceed past red lights or drive in the opposite direction on a one-way street or in oncoming lanes of traffic unless no other vehicles are within five hundred (500) feet of the front of the ambulance. The driver shall not extinguish the warning lights during the period of the emergency.
- (6) No driver or operator of any emergency or public safety or other vehicle shall use the warning lights or siren, bell, or exhaust whistle of his vehicle for any purposes or under any circumstances other than those permitted by KRS 189.910 to 189.950.
- (7) KRS 189.910 to 189.950 does not relieve the driver of any emergency or public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

Signed by Governor March 17, 2011.

CHAPTER 100

(HB 250)

AN ACT relating to the Kentucky Board of Home Inspectors.

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

➔Section 1. KRS 198B.030 is amended to read as follows:

- (1) There is hereby created the Kentucky Department of Housing, Buildings and Construction within the Public Protection Cabinet. The Governor shall appoint a commissioner to head the department. The commissioner shall receive for his or her services such compensation as the Governor shall determine.
- (2) The commissioner may employ sufficient staff to carry out the functions of the commissioner's office. Neither the commissioner nor any member of his or her staff shall be employed, either directly or indirectly, in any aspect of the building industry as regulated by this chapter while employed by the Department of Housing, Buildings and Construction.
- (3) The department shall serve as staff for the board of housing, buildings and construction as established by this chapter, and shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of this body. The board shall prescribe the duties of the commissioner in addition to those duties otherwise delegated to him or her by the Governor or secretary, or prescribed for the commissioner by law. The department or commissioner shall submit any proposed administrative regulation to the board and shall not promulgate the administrative regulation without giving the board the opportunity to produce written comments, as required by subsection (8){(9)} of this section. If the board chooses to produce written comments, these comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.
- (4) The department may enter into contracts or agreements with the federal government, its subdivisions and instrumentalities, other agencies of state government or with its subdivisions and instrumentalities, or with private profit or nonprofit organizations in order to effect the purposes of this chapter.
- (5) Subject to the direction of the board of housing, buildings and construction, the commissioner shall cooperate with the agencies of the United States and with the governing bodies and housing authorities of counties, cities, and with not for profit organizations and area development districts in relation to matters set forth in this

chapter, and in any reasonable manner that may be necessary for the state to qualify for, and to receive grants or aid from such agencies. To these ends and subject to the direction of the board, the commissioner shall have the power to comply with each condition and execute such agreements as may be necessary, convenient, or desirable.

- (6) Nothing in this chapter shall preclude any other agency, board, or officer of the state from being designated as the directing or allocating agency, board, or officer for the distribution of federal grants and aid, or the performance of other duties to the extent necessary to qualify for and to receive grants and aid for programs under the administration of the department.
- (7) The commissioner is authorized to receive, for and on behalf of the state, the department, and the board of housing, buildings and construction, from the United States and agencies thereof, and from any and all other sources, grants and aid and gifts made for the purpose of providing, or to assist in providing, any of the programs authorized by this chapter, including expenses of administration. All such funds shall be paid into the state treasury and credited to a trust and agency fund to be used by the department in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth.
- ~~(8) The Kentucky Board of Home Inspectors established in KRS 198B.704 shall be attached to the department for administrative purposes.~~
- ~~(9)~~ (a) If the department has proposed a new or amended administrative regulation that directly and clearly relates to the work of a profession, class of workers, or industry that is under the authority of any board or advisory committee that is created by statute and is controlled, superseded, administratively attached, or affiliated with the department, the department shall not promulgate the proposed administrative regulation without first receiving comments from the affected board or advisory committee, subject to the restrictions of paragraph (b) of this subsection.
 - (b) 1. If a proposed administrative regulation affects a board or advisory committee that qualifies under paragraph (a) of this subsection, the department shall distribute the proposed administrative regulation to the board or advisory committee.
 - 2. The affected board or advisory committee shall be granted a maximum of sixty (60) days to submit its comments on the proposed regulatory change. If the administrative regulation is a new emergency regulation, the affected board or advisory committee shall be granted a maximum of thirty (30) days to submit its comments on the proposed regulatory change.
 - 3. The time limits in this paragraph shall begin from the day the department submits the regulatory change and sets a date for a proposed hearing for the comments of the affected board or advisory committee. If the board or advisory committee is already scheduled to meet at a time that will give it an adequate opportunity to review the regulation and respond, the hearing may be held at that meeting.
 - 4. If a board or advisory committee is not scheduled to meet or meets only at the call of the department, the department shall arrange for the board or advisory committee to meet at a time that will allow the board or advisory committee an adequate opportunity to review and comment on the regulation within the time limit. If the affected board or advisory committee fails to comment within the time limit, the department may proceed with the administrative changes at its discretion.
- (c) To the extent that any other statute relating to the department's authority to promulgate administrative regulations conflicts with this section, this section shall take precedence.
- (d) If a board or advisory committee chooses to produce written comments, those comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.
- (e) The rights and privileges enumerated in this subsection that apply to boards and advisory committees shall also be granted to the Kentucky Board of Housing, Buildings and Construction.
- ~~(9)(10)~~ Any power or limitation relating to administrative regulations promulgated by the department that are subject to subsection ~~(8)(9)~~ of this section shall also apply to administrative regulations promulgated by the commissioner of the department.

➔Section 2. KRS 198B.040 is amended to read as follows:

The Kentucky Board of Housing, Buildings and Construction shall have the following general powers and duties:

- (1) To conduct or cause to be conducted studies to determine the needs of the building industry of Kentucky;
- (2) To conduct or cause to be conducted or participate in studies of the costs of the various factors of building construction and use of buildings and to recommend programs and procedures which will minimize the cost of buildings, including the use of energy, while maintaining safety, durability, and comfort;
- (3) To administer regulatory legislation relating to buildings and construction;
- (4) To assume administrative coordination of the various state construction review programs and to cooperate with various federal, state, and local agencies in the programs as they relate to buildings and construction;
- (5) To assume administration and coordination of various state housing programs to include:
 - (a) Devising and implementing procedures, in conjunction with the Department for Local Government, for attaining and maintaining an accurate count of the housing inventory in Kentucky, including information on the age, physical condition, size, facilities, and amenities of this housing, and housing constructed and demolished each year;
 - (b) Designing programs coordinating the elements of housing finance, production, maintenance, and rehabilitation for the purpose of assuring the availability of safe, adequate housing in a healthful environment for all Kentucky citizens;
 - (c) Establishing or causing to be established public information and educational programs relating to housing, to include informing Kentucky citizens about housing and housing related programs that are available on all levels of government;
 - (d) Designing and administering, or participating in the design and administration of educational programs to prepare low income families for home ownership, and counseling them during their early years as homeowners;
 - (e) Promoting educational programs to assist sponsors in the development and management of low and moderate income housing for sale or rental;
 - (f) Cooperating with various federal, state, and local agencies in their programs as they relate to housing; and
 - (g) Conducting or causing to be conducted studies to determine the housing preferences of Kentucky citizens and the present and future housing requirements of the state;
- (6) To recommend state building industry policies and goals to the Kentucky General Assembly;
- (7) To adopt and promulgate a mandatory uniform state building code, and parts thereof, which shall establish standards for the construction of all buildings, as defined in KRS 198B.010, in the state;
- (8) To promulgate administrative regulations providing for the proper construction of public water purification plants, other than the water treatment equipment and systems in such plants; provided, however, that any such regulations must require that applications for permits to build public water purification plants will be submitted by the department to the Energy and Environment Cabinet for that cabinet's comments. Any such regulations shall require the Energy and Environment Cabinet's comments to be completed and submitted to the department within sixty (60) days;
- (9) To promulgate administrative regulations providing for the proper construction of sewage treatment plants, other than the sewage treatment equipment and systems in such plants; provided, however, that any such regulations must require that applications for permits to build public sewage treatment plants will be submitted by the department to the Energy and Environment Cabinet for that cabinet's comments. Any such regulations shall require the Energy and Environment Cabinet's comments to be completed and submitted to the department within sixty (60) days; and
- (10) To promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.
- (11)
 - (a) As used in this subsection, "main board" means the Kentucky Board of Housing, Buildings and Construction.
 - (b) If the main board has proposed a new or amended administrative regulation that directly and clearly relates to the work of a profession, class of workers, or industry that is under the authority of any board or advisory committee that is created by statute and is controlled, superseded, administratively attached, or affiliated with the main board, the main board shall not promulgate the proposed administrative

regulation without first receiving comments from the affected board or advisory committee, subject to the restrictions of paragraph (c) of this subsection.

- (c) 1. If a proposed administrative regulation affects a board or advisory committee that qualifies under paragraph (b) of this subsection, the main board shall distribute the proposed administrative regulation to the board or advisory committee.
- 2. The affected board or advisory committee shall be granted a maximum of sixty (60) days to submit its comments on the proposed regulatory change. If the administrative regulation is a new emergency regulation, the affected board or advisory committee shall be granted a maximum of thirty (30) days to submit its comments on the proposed regulatory change.
- 3. The time limits in this paragraph shall begin from the day the main board submits the regulatory change and sets a date for a proposed hearing for the comments of the affected board or advisory committee. If the board or advisory committee is already scheduled to meet at a time that will give it an adequate opportunity to review the regulation and respond, the hearing may be held at that meeting.
- 4. If a board or advisory committee is not scheduled to meet or meets only at the call of the main board, the main board shall arrange for the board or advisory committee to meet at a time that will allow the board or advisory committee an adequate opportunity to review and comment on the regulation within the time limit. If the affected board or advisory committee fails to comment within the time limit, the main board may proceed with the administrative changes at its discretion.
- (d) To the extent that any other statute relating to the main board's authority to promulgate administrative regulations conflicts with this section, this section shall take precedence.
- (e) If a board or advisory committee chooses to produce written comments, those comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.
- (12) Any power or limitation relating to administrative regulations promulgated by the Kentucky Board of Housing, Buildings and Construction that are subject to subsection (11) of this section shall also apply to the department and commissioner as described in KRS 198B.030~~(8)(9)~~ and ~~(9)(10)~~.

➔Section 3. KRS 198B.700 is amended to read as follows:

As used in KRS 198B.700 to 198B.738, unless otherwise provided:

- (1) "Applicant" means an individual who applies for a license as a home inspector;
- (2) "Board" means the Kentucky Board of Home Inspectors established in KRS 198B.704;
- (3) "Client" means a person who contracts with a licensed home inspector to obtain a home inspection and subsequent written home inspection report;
- ~~(4) "Department" means the Kentucky Department of Housing, Buildings and Construction;~~
- ~~(5)~~ "Home inspection" means a visual analysis *performed for compensation* for the purpose of providing a professional opinion *and home inspection report* by a licensed home inspector, *regarding*~~off~~ the condition of a residential dwelling and the dwelling's attached garages and carports, any reasonable accessible installed components, and the operation of the dwelling's systems, including any controls normally operated by the owner of the dwelling, for systems and components in the standards of practice established by the board. Home inspection shall not include a code compliance inspection, or an inspection required under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. secs. 5401 et seq., as amended, and rules and regulations issued thereunder, or KRS 227.600 regarding manufactured homes;
- ~~(5)(6)~~ "Home inspection report" means a written report prepared by a licensed home inspector for compensation and issued after a home inspection. The report shall include the following:
 - (a) A report on any system or component inspected that, in the professional opinion of the inspector, is significantly deficient;
 - (b) The inspector's recommendation to repair or monitor deficiencies reported under paragraph (a) of this subsection;

- (c) A list of any systems or components that were designated for inspection in the standards of practice adopted by the board but that were not inspected; and
- (d) The reason a system or component listed under paragraph (c) of this subsection was not inspected;
- ~~(6)(7)~~ "Home inspector" means an individual who performs home inspections for compensation;
- ~~(7)(8)~~ "Licensee" means a person who performs home inspections and who is licensed under KRS 198B.700 to 198B.738 as a home inspector; and
- ~~(8)(9)~~ "Residential dwelling" means a structure consisting of at least one (1) but not more than four (4) units, each designed for occupancy by a single family, whether the units are occupied or unoccupied.

➔Section 4. KRS 198B.702 is amended to read as follows:

KRS 198B.700 to 198B.738 shall apply to an individual who conducts home inspections for compensation, but shall not apply to the following:

- (1) An individual who is acting within the scope of the individual's employment as:
 - (a) A code enforcement official for the state or a political subdivision of the state; or
 - (b) A representative of a state or local housing agency or an individual acting under the authority of the United States Department of Housing and Urban Development;
- (2) An individual who is acting within the scope of the individual's license as a licensed:
 - (a) Architect under KRS Chapter 323;
 - (b) Professional engineer under KRS Chapter 322;
 - (c) Plumbing contractor or journeyman plumber under KRS Chapter 318;
 - (d) Electrician, master electrician, or electrical contractor under KRS Chapter 227A;
 - (e) Liquefied petroleum gas dealers under KRS Chapter 234;~~or~~
 - (f) Master heating, ventilation, and air conditioning contractor, journeyman heating, ventilation, and air conditioning mechanic, or an apprentice heating, ventilation, and air conditioning mechanic under this chapter; **or**
 - (g) ***Fire protection sprinkler contractor, fire protection system certificate holder, or certified fire sprinkler inspector under this chapter;***
- (3) An individual licensed under KRS Chapter 324 as a real estate broker, broker-salesperson, or salesperson and is acting within the scope of the individual's license;
- (4) An individual who is licensed under KRS Chapter 324A as a real estate appraiser and is acting within the scope of the individual's license;
- (5) An individual who holds a license under KRS Chapter 304 as an insurance adjuster and is acting within the scope of the individual's license;
- (6) An individual who holds a permit, certificate, or license to:
 - (a) Use and apply pesticides; or
 - (b) Make diagnostic inspections and reports for wood destroying pests and fungi under KRS Chapter 217B and is acting within the scope of the individual's certificate or license;
- (7) An individual who holds a license from a political subdivision as a tradesperson or home builder and is acting within the scope of the individual's license;
- (8) An individual who holds a current and valid license, certificate, or permit under KRS 227.550 to 227.660 and is acting within the scope of the individual's license, certificate, or permit as a:
 - (a) Manufactured home retailer;
 - (b) Manufactured home certified retailer; or
 - (c) Manufactured home certified installer; or

- (9) *A person not subject to licensure by the Commonwealth who is engaged in providing estimates for remodeling or repair to a residential dwelling*~~[Employees of the Department of Housing, Buildings and Construction or the State Fire Marshall's Office acting in their official capacities as inspectors of buildings and manufactured housing].~~

➔Section 5. KRS 198B.704 is amended to read as follows:

- (1) There is created *an independent agency of state government*~~[a board]~~ to be known as the Kentucky Board of Home Inspectors, *which shall be attached to the Office of Occupations and Professions in the Public Protection Cabinet for administrative purposes.*

- (2) The board shall be composed of *nine (9)*~~[ten (10)]~~ members appointed by the Governor *as follows:*~~[:]~~

(a) Five (5) of the *board* members shall:

1. *Have been actively engaged in performing home inspections in Kentucky for at least five (5) years immediately before the member's appointment to the board, or have completed no less than one hundred (100) fee-paid inspections per year over the last five (5) years; and*
2. *Be licensed by the board as a home inspector; and*

(b) *The other four (4) board members shall be qualified as follows:*

1. *One (1) member shall be a home builder who has been actively engaged in home building in Kentucky for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Home Builders Association of Kentucky;*
2. *One (1) member shall be a licensed real estate salesperson or broker under this chapter who has been actively engaged in selling, trading, exchanging, optioning, leasing, renting, managing, or listing residential real estate in Kentucky for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Kentucky Association of Realtors;*
3. *One (1) member shall represent the public at large and shall not be associated with the home inspection, home building, or real estate business other than as a consumer. This member shall be appointed by the Governor, but shall not be selected from a submitted list of names; and*
4. *One (1) member shall be a licensed manufactured home retailer, certified retailer, or certified installer who has been actively engaged in such an occupation for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Kentucky Manufactured Housing Institute.*

~~[1. Have been actively engaged in performing home inspections in Kentucky for at least five (5) years immediately before the member's appointment to the board, or have completed one hundred (100) fee paid inspections per year over the last five (5) years;~~

~~2. Be licensed by the board as a home inspector; and~~

~~3. Be selected from a list of fifteen (15) names submitted to the Governor, and compiled by a selection committee composed of eight (8) members, two (2) each from the American Society of Home Inspectors, the Kentucky Real Estate Inspectors Association, the National Association of Certified Home Inspectors, and the National Association of Home Inspectors, respectively.~~

~~(b) The other five (5) board members shall be qualified as follows:~~

~~1. One (1) person shall be a home builder who has been actively engaged in home building in Kentucky for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Home Builders Association of Kentucky;~~

~~2. One (1) person shall be a licensed real estate salesperson or broker under KRS Chapter 324 who has been actively engaged in selling, trading, exchanging, optioning, leasing, renting, managing, or listing residential real estate in Kentucky for at least five (5) years immediately before the~~

member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Kentucky Association of Realtors;

3. ~~One (1) person shall represent the public at large and shall not be associated with the home inspection, home building, or real estate business other than as a consumer. This member shall be appointed by the Governor, but shall not be selected from a submitted list of names;~~
4. ~~One (1) person shall be a licensed manufactured home retailer, certified retailer, or certified installer who has been actively engaged in such an occupation for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Kentucky Manufactured Housing Institute; and~~
5. ~~The commissioner of the Department of Housing, Buildings and Construction, or his or her designee shall be a member of the board.~~

~~(3) A board member required to have a license in accordance with subsection (2)(a)3. of this section, shall obtain the requisite license in accordance with KRS 198B.712, on or before July 1, 2006. If a board member does not obtain the requisite license on or before July 1, 2006, the board member shall be considered to have resigned from the board on July 1, 2006, and the Governor shall fill the vacancy in accordance with this section. If a board member resigns for failure to obtain a home inspectors license, the actions of the board member and board before July 1, 2006, shall be valid and viable.~~

~~(3)(4)}~~ The members of the board shall be residents of Kentucky.

~~(4)(5)}~~ ***Each member shall serve a term of three (3) years or until a successor has been duly appointed. Each member serving on July 1, 2011, shall continue to serve through his or her appointed term***~~{The initial terms of office for the nine (9) members appointed to the board by the Governor are as follows:~~

~~(a) Three (3) members for a term of three (3) years;~~

~~(b) Three (3) members for a term of two (2) years; and~~

~~(c) Three (3) members for a term of one (1) year.~~

~~Thereafter, all members shall serve a term of three (3) years, or until a successor has been duly appointed.~~

~~(6) The initial terms begin July 15, 2004.~~

~~(5)(7)}~~ The Governor may remove a board member at any time for incompetence, neglect of duty, or unprofessional conduct.

~~(6)(8)}~~ If a vacancy occurs in the membership of the board, the Governor shall appoint an individual to serve for the remainder of the unexpired term who has like qualifications required of the member who created the vacancy.

~~(7)(9)}~~ A member shall not serve on the board for more than six (6) consecutive years.

~~(8)~~ ***The board shall designate either a board member or a member of the board's administrative staff to serve as secretary to the board.***

~~(9)(10)}~~ Each year the board shall elect a member as chairperson and a member as vice chairperson.

~~(10)(11)}~~ The chairperson and vice chairperson shall serve in their respective capacities for no more than one (1) year consecutively and until a successor is elected.

~~(11)(12)}~~ The chairperson shall preside at all meetings at which the chairperson is present. The vice chairperson shall preside at meetings in the absence of the chairperson and shall perform other duties as the chairperson directs.

~~(12)(13)}~~ If the chairperson and vice chairperson are absent from a meeting of the board when a quorum exists, the members who are present may elect a presiding officer who shall serve as acting chairperson until the conclusion of the meeting or until the arrival of the chairperson or vice chairperson.

~~(13)(14)}~~ The board shall meet at least quarterly each calendar year upon the call of the chairperson or the written request of a majority of the members of the board.

~~(14)(15)}~~ The chairperson shall establish the date, time, and place for each meeting.

~~(15)(16)}~~ A majority of the current members of the board constitutes a quorum.

~~(16)(17)~~ The affirmative vote of a majority of the members ~~[in attendance at a duly constituted meeting of the board]~~ is necessary for the board to take official action.

~~(17)(18)~~ Each member of the board is entitled to a minimum salary of thirty-five dollars (\$35) per diem. Each member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as established under KRS 45.101.

~~(18)(19)~~ A member shall be automatically removed from the board and a vacancy shall be created if a member fails to adhere to a duly adopted code of ethics of the board. Failure to adhere to such a code shall be determined by official action of the board.

➔Section 6. KRS 198B.706 is amended to read as follows:

The board shall:

- (1) Through the promulgation of administrative regulations:
 - (a) Determine the requirements for and prescribe the form of licenses, applications, and other documents that are required by KRS 198B.700 to 198B.738; and
 - (b) Require that a home inspection report include a statement that the home inspection report does not address environmental hazards ***and list all other exclusions with specificity*** ~~[which shall be listed with specificity by the board]~~;
- (2) Grant, deny, suspend, and revoke approval of examinations and courses of study regarding home inspections;
- (3) Issue ***or deny applications for licensure and renewals*** ~~[deny, suspend, place on probation, require additional continuing education, and revoke licenses for violations of KRS 198B.700 to 198B.738]~~;
- (4) Investigate complaints concerning licensees, or persons the board has reason to believe should be licensees, including complaints concerning failure to comply with KRS 198B.700 to 198B.738 or administrative regulations promulgated under KRS 198B.700 to 198B.738, and, when appropriate, take action in accordance with KRS 198B.728 and 198B.730;
- (5) Bring actions in the name of the state in an appropriate court in order to enforce compliance with KRS 198B.700 to 198B.738 or the administrative regulations promulgated under KRS 198B.700 to 198B.738;
- (6) Establish license fees in an amount not to exceed two hundred fifty dollars (\$250) annually;
- (7) Inspect the records of a licensee in accordance with administrative regulations promulgated by the board;
- (8) Conduct or designate a member or other representative to conduct public hearings on any matter for which a hearing is required under KRS 198B.728 and 198B.730 ~~[and exercise all powers granted under KRS Chapter 13B]~~;
- (9) Adopt a seal containing the words "Kentucky Board of Home Inspectors" and, through the board's secretary, certify copies and authenticate all acts of the board;
- (10) Use counsel, consultants, and other persons, enter into contracts, and authorize expenditures that are reasonably necessary or appropriate to administer and enforce KRS 198B.700 to 198B.738 and administrative regulations promulgated thereunder;
- (11) Establish continuing education requirements for licensed home inspectors in accordance with KRS 19B.722 and 198B.724;
- (12) ***Conduct disciplinary actions against licensees to include:***
 - (a) ***Suspension, probation, or permanent revocation of a license;***
 - (b) ***Requiring a licensee to obtain additional continuing education; and***
 - (c) ***Issuance of a written reprimand*** ~~[Maintain the board's office, files, records, and property in the city of Frankfort]~~;
- (13) Require all fee-paid home inspections to be conducted in accordance with the standards of practice of:
 - (a) The American Society of Home Inspectors;
 - (b) The National Association of Home Inspectors; or

- (c) Any other approved standards of practice that are equal to the standards of practice of the organizations in paragraphs (a) and (b) of this subsection *as determined by the board*.

The board may establish standards of practice for home inspectors licensed in Kentucky at a later date, which will supersede any other standards of practice previously adopted by the board and, if adopted by regulation, the standards in paragraphs (a) and (b) of this subsection;

- (14) Exercise all other powers specifically conferred on the board under KRS 198B.700 to 198B.738; and
- (15) Promulgate administrative regulations to carry out the effective administration and the requirements of KRS 198B.700 to 198B.738.

➔Section 7. KRS 198B.710 is amended to read as follows:

- (1) There is established in the State Treasury a revolving fund for the use by the board.
- (2) All fees and other money received by the board in accordance with KRS 198B.706, 198B.712, 198B.714, 198B.722, and 198B.724 shall be deposited in the revolving fund established in subsection (1) of this section.
- (3) No part of this revolving fund shall revert to the general fund.
- (4) The compensation of board members and all of the board's expenses incurred by the board shall be paid from this revolving fund~~[-, including expenses attributable to the assistance set forth in KRS 198B.708 and 198B.732(6)].~~

➔Section 8. KRS 198B.712 is amended to read as follows:

- (1) An individual shall not advertise or claim to be a ~~licensed~~ home inspector and shall not conduct a home inspection for compensation without first obtaining a license as a home inspector.
- (2) An individual shall not advertise as, claim to be, or ***engage in or work at the trade of home inspection***~~operate as a home inspection business~~, unless an owner or employee of that business is a licensed home inspector.
- (3) The board shall deny a license to any applicant who fails to:
- (a) Furnish evidence satisfactory to the board, showing that the individual:
 1. Is at least eighteen (18) years of age;
 2. Has graduated from high school or earned a Kentucky or other state's general educational development (GED) diploma; and
 3. Meets other criteria established by the board ***through promulgation of administrative regulation***;
 - (b) Verify the information submitted on the application form;
 - (c) Complete a board-approved training program or course of study involving the performance of home inspections, and pass an examination prescribed or approved by the board;
 - (d) Submit to the board a certificate of insurance that is acceptable to the board and that:
 1. Is issued by an insurance company or other legal entity authorized to transact insurance business in Kentucky;
 2. Provides for general liability coverage of at least two hundred fifty thousand dollars (\$250,000);
 3. Lists the Kentucky Board of Home Inspectors as ***the***~~the~~ certificate holder of any insurance policy ***satisfying the requirements of***~~issued under~~ this paragraph;
 4. States that cancellation and nonrenewal of the underlying policy is not effective until the board receives at least ten (10) days' prior written notice of the cancellation or nonrenewal; and
 5. Contains any other terms and conditions established by the board; or
 - (e) Pay a licensing fee established in KRS 198B.706.
- (4) An individual applying for a license as a home inspector shall apply on a written or electronic form prescribed and provided by the board.

➔Section 9. KRS 198B.714 is amended to read as follows:

- (1) The licensing requirements for a home inspector may be waived for a person moving to Kentucky from another jurisdiction, and the person may be granted a license as a home inspector if ~~the person meets the following requirements~~:
 - (a) The other jurisdiction grants the same privileges to licensees of Kentucky as Kentucky grants to licensees of that other jurisdiction;
 - (b) The person is licensed in the other jurisdiction;
 - (c) The licensing requirements of the other jurisdiction are **determined by the board to be** substantially similar to the requirements of KRS 198B.700 to 198B.738; and
 - (d) The person states that he or she has studied, is familiar with, and will abide by KRS 198B.700 to 198B.738 and the administrative regulations promulgated by the board.
- (2) A person seeking a license as a home inspector under this section shall:
 - (a) Apply on a form prescribed and provided by the board; and
 - (b) Pay the applicable licensing fee established by the board.

➔Section 10. KRS 198B.722 is amended to read as follows:

- (1) The initial license for a home inspector issued in accordance with KRS 198B.700 to 198B.738, shall expire on the last day of the licensee's birth month in the following year. The board may reduce the license fee on a pro rata basis for initial licenses issued for less than twelve (12) months.
- (2) Renewed licenses shall expire on the last day of the licensee's birth month of each even numbered year after the date of issuance of the renewed license.
- (3) An individual who applies to renew a license as a licensed home inspector shall:
 - (a) Furnish evidence showing successful completion of the continuing education requirements of this section;
 - (b) Pay the renewal fee and late fee, if applicable, established by the board;
 - (c) Show proof of general liability insurance in the amount required by KRS 198B.712(3)(d); and
 - (d) Submit **a recent** ~~an acceptable~~ background check **performed by the Kentucky State Police**.
- (4) Renewal notices shall be sent to each licensee at least sixty (60) days prior to the expiration of the license. The notice shall inform the licensee of the need to renew and the requirement of payment of the renewal fee. ~~If this notice of expiration is not sent by the board, the licensee is not subject to a sanction for failure to renew if, once notice is received from the board, the license is renewed within forty five (45) days of the receipt of the notice.~~
- (5) Renewal and applicable late fees shall be paid with a credit card, a draft, a money order, a cashier's check, a certified or other personal check, or, if payment is made in person, the payment may be made in cash. If the board receives an uncertified personal check for the renewal fee and if the check does not clear the bank, the board may refuse to renew the license.
- (6) ~~Before the end of each license period,~~ Each licensee shall complete the continuing education required by the board **prior to applying for license renewal**. This requirement shall not exceed thirty (30) hours per two (2) year license cycle. ~~This requirement shall be effective beginning January 1, 2005.~~
- (7) The board may, through the promulgation of administrative regulations:
 - (a) Establish an inactive license for licensees who are not actively engaging in the home inspection business but wish to maintain their license;
 - (b) Reduce license and renewal fees for inactive licenses; and
 - (c) Waive the insurance requirements established in KRS 198B.712 for inactive licenses.

➔Section 11. KRS 198B.730 is amended to read as follows:

- (1) The procedures set forth in KRS Chapter 13B shall govern the board's conduct of disciplinary hearings.
- (2) The board may summarily suspend a license for up to ninety (90) days before a final adjudication or during an appeal of the board's determination if the board finds that the licensee would represent a clear and immediate

danger to the public's health, safety, or property if allowed to perform home inspections. The summary suspension may be renewed upon a hearing before the board for up to ninety (90) days.

- (3) If the board:
 - (a) Determines that an individual is not licensed under KRS 198B.700 to 198B.738 and is engaged in or believed to be engaged in activities for which a license is required under KRS 198B.700 to 198B.738, the board shall issue an order to that individual requiring the individual to show cause why the individual should not be ordered to cease and desist from the activities. The show cause order shall set forth a date, time, and place for a hearing at which the individual shall appear and show cause why the individual should not be subject to licensing under KRS 198B.700 to 198B.738;
 - (b) ~~Prior to~~[After] a hearing,~~[determines that the activities in which the individual is engaged are subject to licensing under KRS 198B.700 to 198B.738.]~~ the board may issue a cease and desist order that identifies the individual and describes activities that are the subject of the order.
- (4) A cease and desist order issued under this section shall be enforceable in a Circuit Court of the Commonwealth.

➔Section 12. KRS 198B.732 is amended to read as follows:

- (1) An individual is guilty of a Class B misdemeanor if the individual:
 - (a) Performs or offers to perform home inspections for compensation *in Kentucky* without being licensed as a home inspector and without being exempt from licensing;
 - (b) Presents as the individual's own the license of another;
 - (c) Intentionally gives false or materially misleading information to the board or to a board member in connection with a licensing matter;
 - (d) Impersonates another licensee; or
 - (e) Uses an expired, suspended, revoked, or otherwise restricted license.
- (2) An individual is guilty of a Class A misdemeanor if the individual is convicted of a second or subsequent offense under this section within five (5) years ~~off~~[after] a prior conviction of an offense under this section.
- (3) When entering a judgment for an offense under this section, the court shall impose a service fee of an amount equal to any fee or other compensation earned by the individual in the commission of the offense.
- (4) Each transaction involving unauthorized activities as described in this section shall constitute a separate offense.
- (5) In all actions for the collection of a fee or other compensation for performing home inspections, the party seeking relief shall allege and prove that, at the time that the cause of action arose, the party seeking relief was not in violation of KRS 198B.712.

~~[(6) The Housing, Buildings and Construction Legal Division within the Office of Legal Services in the Public Protection Cabinet shall act as the legal adviser for the board and provide any legal assistance necessary to carry out this section.]~~

➔Section 13. KRS 198B.738 is amended to read as follows:

Home inspectors, when acting in that capacity, are prohibited from indicating orally or in writing that any condition is or is not in compliance with *the Kentucky Residential Code*~~[any building code enforced under KRS Chapter 198B].~~

➔Section 14. KRS 198B.4005 (Effective July 1, 2011) is amended to read as follows:

- (1) The Elevator Advisory Committee is created within the Department of Housing, Buildings and Construction. The committee shall consist of eight (8) members, one (1) of whom shall be the commissioner of the Department of Housing, Buildings and Construction or his or her designee. The Governor shall appoint the remaining seven (7) members of the committee as follows:
 - (a) One (1) representative from a nationally recognized elevator manufacturing company;
 - (b) One (1) representative from an elevator servicing company;
 - (c) One (1) representative from the general public who has no financial interest in the elevator or fixed guideway system industry;

- (d) One (1) representative involved in the installation, maintenance, and repair of elevators or fixed guideway systems;
 - (e) One (1) representative of an accessibility or residential elevator company;
 - (f) One (1) representative of the architectural design, elevator consulting, or engineering profession with experience in elevator design; and
 - (g) One (1) representative of organized labor.
- (2) The commissioner of the Department of Housing, Buildings and Construction shall serve as a member of the committee by virtue of his or her office. The appointed members of the committee shall serve for terms of three (3) years, except that, initially, two (2) members shall be appointed for a one (1) year term, two (2) members shall be appointed for two (2) year terms, and three (3) members shall be appointed for three (3) year terms. No committee member shall be appointed for more than two (2) successive terms, except as provided in subsection (4) of this section. The Governor shall, within the limits of this subsection, set the length of term of each of the initial appointees to the committee.
 - (3) Vacancies occurring on the committee among those members appointed by the Governor shall be filled by seeking nominations as in subsection (1) of this section. A replacement for a committee member shall be appointed immediately upon the expiration of the departing committee member's term of service.
 - (4) If a committee member vacates his or her position on the committee prior to the expiration of the member's term, a replacement member shall be appointed for the period of the unexpired term. If the unexpired term is less than two (2) years, the person selected to fill the unexpired term may subsequently be appointed to two (2) successive three (3) year terms.
 - (5) Members may be removed from the committee by the Governor for unethical conduct, neglect of duty, incompetence, or for failure to attend three (3) or more consecutive meetings of the committee. A dismissed member's remaining term shall be completed by the replacement member appointed by the Governor.
 - (6) The committee shall be given the opportunity to review and comment on relevant administrative regulations that are subject to the requirements of KRS 198B.030(8)(9) and (9)(10) and 198B.040(11) and shall make recommendations to and otherwise advise the department on these matters. The committee shall perform any other duties and responsibilities relating to the development of administrative regulations for elevators and fixed guideway systems as assigned by the commissioner.
 - (7) Those members of the committee who are not salaried governmental employees shall be compensated for their time when attending committee meetings or attending to official duties as directed by the committee at the rate of thirty-five dollars (\$35) per day. All board members shall be compensated for expenses incurred in the conduct of board business.
 - (8) The commissioner or his or her designee shall serve as chair of the Elevator Advisory Committee. The chair shall only vote in the event of a tie among the appointed advisory committee members.
 - (9) No member of the committee shall vote on any matter which will result in his or her direct or indirect financial gain.

➔Section 15. KRS 227.300 is amended to read as follows:

- (1) The commissioner shall promulgate reasonable rules and regulations based on good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as is practicable against fire loss. Such rules and regulations shall be known as the standards of safety. After promulgation of the Uniform State Building Code, no part of the standards of safety shall establish, in whole or in part, any building code other than the Uniform State Building Code, but the commissioner may supplement the Uniform State Building Code with fire safety regulations designed to operate in conjunction with the code.
- (2) In making such rules and regulations the commissioner shall establish minimum fire prevention and protection requirements, including but not limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of the following: structural requirements for the various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; maximum occupancy loads and other requirements for buildings of public assembly; flue and chimney construction; heating devices; boilers and pressure vessels; electrical wiring and equipment; air conditioning, ventilating and other duct systems; refrigeration systems; flammable liquids, oil and gas wells; garages, repair, and service shops; application of flammable finishes,

acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; dry cleaning and dyeing plants; flammable motion picture film; combustible fibers; airports and airport buildings; hazardous chemicals; rubbish; open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

- (3) For the purpose of integrating the need for safety from hazards of fire with the other safety needs of infants or preschool children under institutional care, the commissioner shall allow persons who own, manage, or are employed by institutions which provide care or education for infants or preschool children to participate in drafting the standards of safety as they apply to such institutions. Such participation shall be by representation of professional associations relating to infant and preschool care, and by representation from other individuals licensed to provide infant and preschool care, on a committee chaired by the state fire marshal or his or her designate. Such participation shall occur prior to the publication of proposed regulations in the administrative register pursuant to KRS 13A.050 but shall not limit any individual's right to use those procedures set forth in KRS Chapter 13A concerning comment on or protest of proposed regulations. All professional associations relating to infant and preschool care shall be notified by the commissioner when the drafting of standards of safety relating to such institutions is commenced and all such professional associations shall be regularly notified of the time and place of any meetings conducted by authorized employees of the department for the purpose of drafting such standards.
- (4) The commissioner shall publish guidelines relating to the standards of safety as they apply to day care and preschool child care centers and nurseries which shall indicate the items inspectors from the Division of Fire Prevention will be looking for when they conduct inspections pursuant to the standards of safety. Such guidelines shall be made available to persons who own, operate, or manage such centers or nurseries and shall be designed to enable said persons to anticipate and comply with the requirements of the standards of safety.
- (5) The commissioner shall issue supplemental regulations addressing the temporary change of use in buildings as authorized by KRS Chapter 198B. These regulations shall establish specific standards for such use and shall be designed to operate in conjunction with the Kentucky Building Code.
- (6) Any standards of safety or other regulations promulgated under this section shall be subject to the requirements of KRS 198B.030~~(8)(9)~~ and ~~(9)(10)~~ and 198B.040(11).

➔Section 16. KRS 227.530 is amended to read as follows:

- (1) There is hereby created an Electrical Advisory Committee which shall be attached to the Department of Housing, Buildings and Construction for administrative purposes. The committee shall be constituted as follows:
 - (a) Two (2) members chosen from public utility companies;
 - (b) Two (2) members who are electricians;
 - (c) Two (2) members who are certified electrical inspectors, one (1) of whom shall be employed by a governmental entity and the other who shall be an independent contractor engaged in the business of inspecting electrical installations;
 - (d) Two (2) members who are licensed professional electrical engineers;
 - (e) Two (2) members who are engaged in the business of electrical contracting; and
 - (f) One (1) member who is engaged in the business of electrical contracting and who employs no more than five (5) full-time employees when appointed.
- (2) Committee members shall be appointed by the Governor for four (4) year terms. No committee member shall be appointed for more than one (1) successive term.
- (3) The committee shall meet at least quarterly or upon request of the department for the purpose of considering matters relating to electrical installations and electrical inspections. The committee shall have the opportunity to review and comment on relevant administrative regulations that are subject to the requirements of KRS 198B.030~~(8)(9)~~ and ~~(9)(10)~~ and 198B.040(11) and shall make recommendations to and otherwise advise the department on these matters.
- (4) All committee members shall be compensated for expenses incurred in the conduct of Commonwealth business.

➔Section 17. KRS 227.560 is amended to read as follows:

- (1) There is hereby created the Manufactured Home Certification and Licensure Board which shall issue certificates of acceptability to qualifying manufacturers and licenses to retailers and shall certify installers.
- (2) The board shall consist of the state fire marshal, the secretary of the Transportation Cabinet, the commissioner of the Department for Public Health, or their designees, and seven (7) citizens of the Commonwealth appointed by the Governor, which shall include three (3) manufactured or mobile home retailers, one (1) certified manufactured or mobile home installer, and three (3) members who shall have no interest in the industry to be regulated.
- (3) The state fire marshal, the secretary of the Transportation Cabinet, and the commissioner of the Department for Public Health shall be permanent members of the board, by virtue of their respective offices. The appointed members of the board shall hold office for terms of four (4) years with their terms expiring on September 1 of even-numbered years. Each member shall hold office until his or her successor is appointed and has qualified.
- (4) In the initial appointments to the board, the Governor shall designate three (3) members to serve for two (2) years and three (3) to serve for four (4) years. In the initial appointment of the certified manufactured or mobile home installer to the board, the Governor shall designate the member to serve for a term expiring September 1, 2004.
- (5) All members appointed from the manufactured housing industry shall be required to remain licensed and certified during their term and are subject to removal for chronic absenteeism.
- (6) If a vacancy occurs in the office of one (1) of the members of the board, the position shall be filled by a person appointed by the Governor, and the person so appointed shall serve only to the end of the unexpired term.
- (7) The chairman of the board shall be elected by the board. In the event of the chairman's absence or disability, the members of the board shall elect a temporary chairman by a majority vote of those present at a meeting.
- (8) Each appointed member shall be entitled to fifty dollars (\$50) for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing, or other authorized business. Each member of the board shall also be entitled to reimbursement for travel and other necessary expenses incurred in performing official duties.
- (9) The chairman, or in his absence a temporary chairman selected by the members of the board present at the meeting, shall preside at all meetings of the board. The board shall have regular meetings at times specified by a majority vote of the board. The chairman may call special meetings at any time. He shall call a special meeting on written request by two (2) or more members of the board. A majority of the board shall constitute a quorum to transact business.
- (10) All staff assistance deemed necessary by the board to carry out the functions and duties assigned to it in KRS 227.550 to 227.660 shall be provided by the department and shall function under the supervision of the head of the department.
- (11) The provisions of KRS 198B.030~~(8)(9)~~ and ~~(9)(10)~~ and 198B.040(11) shall not apply to the board.
➔Section 18. KRS 227A.040 is amended to read as follows:
 - (1) The department, with assistance from the Electrical Advisory Committee, shall administer and enforce the provisions of KRS 227A.010 to 227A.140 and shall evaluate the qualifications of applicants for licensure.
 - (2) The department may issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of KRS 227A.010 to 227A.140 or the administrative regulations promulgated under KRS 227A.010 to 227A.140 and KRS Chapter 13A.
 - (3) The department shall conduct hearings under KRS Chapter 13B and keep records and minutes necessary to carry out the functions of KRS 227A.010 to 227A.140.
 - (4) The department, with assistance from the Electrical Advisory Committee, shall evaluate the qualifications of applicants and issue licenses to qualified candidates.
 - (5) The department shall renew licenses.
 - (6) The department may:
 - (a) Refuse to issue or renew a license;
 - (b) Suspend or revoke a license;
 - (c) Impose supervisory or probationary conditions upon a licensee;

- (d) Impose administrative disciplinary fines;
 - (e) Issue written reprimands or admonishments; and
 - (f) Take any combination of the actions permitted in this subsection.
- (7) The department may seek injunctive relief in the Circuit Court of Franklin County, in the county in which the violation occurred, or in the county where the business of the accused is located to stop any unlawful practice in KRS 227A.010 to 227A.140 and administrative regulations promulgated thereunder. The department may also seek injunctive relief for unlicensed persons who inappropriately use the title "electrical contractor," "electrician," or "master electrician."
- (8) The department, with comments and advice from the Electrical Advisory Committee if required by KRS 198B.030(8)~~(9)~~ and (9)~~(10)~~, may promulgate administrative regulations to create a code of ethics and procedures governing the licensure of electrical contractors, electricians, and master electricians.
- (9) The department may enter into reciprocal agreements with other states having licensure, certification, or registration qualifications and requirements substantially equal to those of this state.

➔Section 19. KRS 236.030 is amended to read as follows:

After reasonable notice and opportunity to be heard in accordance with KRS Chapter 13A, the commissioner of housing, buildings and construction, upon advisement and subject to comment by the board under the requirements of KRS 198B.030(8)~~(9)~~ and (9)~~(10)~~ and 198B.040(11), shall, by administrative regulation, fix reasonable standards for the safe construction, installation, inspection, and repair of boilers, pressure vessels, and associated pressure piping in this state. Such administrative regulations shall be enforced by the Department of Housing, Buildings and Construction, Division of Plumbing.

➔Section 20. KRS 318.077 is amended to read as follows:

The committee shall hold hearings, upon adequate notice to affected parties specifying the matters to be considered before the submission to the commissioner of its suggested amendments to the code. No amendment of the code or any other related regulation shall be issued or promulgated by the department without the prior review and comment of the committee under the requirements of KRS 198B.030(8)~~(9)~~ and (9)~~(10)~~ and 198B.040(11). Any person aggrieved by any rule, regulation, or amendment approved by the department, within 30 days after such action has become final, may appeal therefrom to the Circuit Court. For the purposes of this section, "persons aggrieved" shall include any person directly or indirectly injured or threatened with injury on account of any such regulation, rule, or amendment, whether or not such person was a party to the proceedings out of which the order, rule, regulation, or amendment arose.

➔Section 21. KRS 318.130 is amended to read as follows:

In order to administer this chapter, the department shall promulgate and thereafter from time to time may amend a code to be known as the Kentucky State Plumbing Code, regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, and methods and materials to be used therein within this state, using as a minimum standard the basic principles of the National Plumbing Code Coordinating Committee, as evidenced by that committee's final report of 1951 with variations thereof or additions thereto as the committee considers are warranted by local, climatic, or other conditions. The code may also designate the number of plumbing fixtures for public buildings. The department may adopt any other reasonable rule or regulation to administer this chapter if the rule or regulation has been subject to review and comment by the committee under the requirements of KRS 198B.030(8)~~(9)~~ and (9)~~(10)~~ and 198B.040(11). No rules or regulations so approved by the committee shall become effective except upon adoption by the department, in satisfaction of the requirements of KRS Chapter 13A. The department shall furnish to the committee proposed amendments to the code for the committee's review and comment prior to their adoption by the department. The department shall not promulgate any rules or regulations related to this chapter without granting the committee the opportunity to comment on the administrative regulation.

➔Section 22. The following KRS section is repealed:

198B.708 Department to provide board with administrative supports.

Signed by Governor March 17, 2011.

CHAPTER 101**(HB 301)**

AN ACT relating to professional licensure and certification.

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

➔Section 1. The General Assembly recognizes the sacrifices made by members of the Armed Forces and their families in the service of this Commonwealth and the nation as a whole. In recognition of their sacrifice, the General Assembly finds that active duty members of the military or their spouses, who are engaged in professions which require professional licensure or certification, shall be allowed considerations in their licensure or certification requirements as set out in Sections 2 and 3 of this Act in order that they may continue to serve this Commonwealth and the nation as a whole while maintaining their professional licensure or certification.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 12 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other statute to the contrary, any member of the Armed Forces of the United States on active duty who, at the time of activation, was:*
 - (a) *A member in good standing with any administrative body of the state; and*
 - (b) *Was duly licensed or certified to engage in his or her profession or vocation in the Commonwealth, shall be kept in good standing by the administrative body with which he or she is licensed or certified.*
- (2) *While a licensee or certificate holder is an active duty member of the Armed Forces of the United States, the license or certificate referenced in subsection (1) of this section shall be renewed without:*
 - (a) *The payment of dues or fees;*
 - (b) *Obtaining continuing education credits; when*
 1. *Circumstances associated with military duty prevent obtaining training and a waiver request has been submitted to the appropriate administrative body; or*
 2. *The active duty military member performs the licensed or certified occupation as part of his or her military duties as annotated in Defense Department form 214 (DD 214); or*
 - (c) *Performing any other act typically required for the renewal of the license or certificate.*
- (3) *The license or certificate issued under this section shall be continued as long as the licensee or certificate holder is a member of the Armed Forces of the United States on active duty and for a period of at least six (6) months after discharge from active duty.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 12 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other statute to the contrary, an administrative body shall issue a temporary or regular license or certificate within thirty (30) days to the spouse of an active duty member of the Armed Forces of the United States if the spouse of the active duty member meets the statutory requirements of the administrative body and applies to the administrative body in a format promulgated in administrative regulation by the administrative body.*
- (2) *An application for temporary or regular licensure of the spouse of an active duty member of the Armed Forces of the United States shall include but not be limited to the following:*
 - (a) *Proof that the applicant is married to an active duty member of the Armed Forces of the United States;*
 - (b) *Proof that the applicant holds a valid license or certificate for the profession issued by another state, the District of Columbia, or any possession or territory of the United States;*
 - (c) *Proof that the applicant's spouse is assigned to a duty station in this state and that the applicant is also assigned to a duty station in this state pursuant to the spouse's official active duty military orders; and*
 - (d) *An application fee to be established by the administrative body in an amount that is no more than is necessary to offset the cost of issuing the temporary or regular license.*
- (3) *A temporary license issued pursuant to this section shall expire six (6) months after the date of issuance and is not renewable.*

Signed by Governor March 17, 2011.

Legislative Research Commission Note. The Reviser of Statutes has corrected a manifest clerical or typographical error in subsection (3) of Section 3 of this Act by inserting “to” following “pursuant.”

CHAPTER 102

(HB 385)

AN ACT relating to the Energy and Environment Cabinet.

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

➔Section 1. KRS 350.060 is amended to read as follows:

- (1) (a) No person shall engage in surface coal mining and reclamation operations without having first obtained from the cabinet a permit designating the area of land affected by the operation. Permits shall authorize the permittee to engage in surface coal mining and reclamation operations upon the area of land described in his application for a period not to exceed five (5) years. However, if an applicant demonstrates that a specified longer term is reasonably needed to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for the specified longer term, the cabinet may grant a permit for the longer term. No mining shall be permitted beyond the time period obligations of the initial or extended bond coverage.
- (b) Subject to the provisions of KRS 350.010(1) and (2), no person shall knowingly and willfully receive, transport, sell, convey, transfer, trade, exchange, donate, purchase, deliver, or in any way derive benefit from coal removed from any surface mining operation which does not have a permit as required under this section.
- (2) No permit or revision application shall be approved unless the application affirmatively demonstrates, and the cabinet finds in writing on the basis of the information set forth in the application or from information otherwise available, that the permit application is accurate and complete and that all the requirements of this chapter have been complied with.
- (3) A person desiring a permit to engage in surface coal mining operations shall file an application which shall state:
 - (a) The location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;
 - (b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area adjacent to any part of the affected area;
 - (c) The owner or owners of the coal to be mined;
 - (d) The source of the applicant's legal right to mine the coal on the land affected by the permit;
 - (e) The permanent and temporary post office addresses of the applicant, which shall be updated immediately if changed at any point prior to final bond release;
 - (f) Whether the applicant or any person, partnership, or corporation associated with the applicant holds or has held any other permits under this chapter, and an identification of the permits;
 - (g) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the applicant, together with the names and addresses of any individual owning of record ten percent (10%) or more of any class of voting stock of the applicant, and whether the applicant or any person is subject to any of the provisions of subsection (3) of KRS 350.130 and he shall so certify. The permittee shall submit updates of this information as changes occur or as otherwise provided by administrative regulation; however, failure to submit updated information shall constitute a violation of this chapter only upon the permittee's refusal or failure to timely submit the information to the cabinet upon request. Upon receipt of updated information satisfactory to the cabinet, the cabinet shall promptly update its computer system containing the information;

- (h) A listing of any violations of this chapter, Public Law 95-87, and any law, rule, or regulation in effect for the protection of air or water resources incurred by the applicant in connection with any surface coal mining and reclamation operation during the three (3) year period prior to the date of an application. The list shall indicate the final resolution of the violations; and
 - (i) Whether the area of land to be affected by the operation has been previously mined and is in compliance with current reclamation standards, and, if not, identify the needed reclamation work.
- (4) The application for a permit shall be accompanied by an official document, and an affidavit attesting to the document's authenticity, which will evidence what particular business entity the applicant is, whether a foreign or domestic corporation, a partnership, an entity doing business as another, or, if sole proprietorship, an affidavit so stating.
- (5) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of a United States Geological Survey topographic map or other map acceptable to the cabinet on which the applicant has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which the drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.
- (6) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of an enlarged United States Geological Survey topographic map or other map acceptable to the cabinet meeting the requirements of paragraphs (a) to (i) of this subsection. The map shall:
 - (a) Be prepared and certified by a professional engineer registered under the provisions of KRS Chapter 322. The certification shall be in the form as provided in subsection (8) of this section, except that the engineer shall not be required to certify the true ownership of property under paragraph (d) of this subsection;
 - (b) Identify the area to correspond with the application;
 - (c) Show adjacent deep mining;
 - (d) Show the boundaries of surface properties and names of owners of the affected area and adjacent to any part of the affected area;
 - (e) Be of a scale of 1:24,000 or larger;
 - (f) Show the names and locations of all streams, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected within three hundred (300) feet of an as-drilled oil or gas well, but as-drilled locations of oil and gas wells shall be certified only by a licensed surveyor and the well locations shall be entered in coordinates in feet units, using NAD 83, with Single Zone Projection, as those terms are defined in KRS 350.010;
 - (g) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land affected;
 - (h) Show the date on which the map was prepared, the north point, and the quadrangle name; and
 - (i) Show the drainage plan on and away from the area of land affected. The plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.
- (7) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the cabinet of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. This determination shall not be required until the time hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until the information is available and is incorporated into the application.
- (8) All certifications required by this chapter to be made by professional engineers shall be done in the form prescribed by the cabinet and shall be reasonably specific as to the work being certified. The cabinet may reject any document or map as incomplete if it is not properly certified.

- (9) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation; the manner, time, and distance for backfilling; grading work; and a reclamation plan for the affected area, which proposals shall meet the requirements of this chapter and administrative regulations adopted pursuant thereto.
- (10) The application for a permit shall be accompanied by proof that the applicant has public liability insurance coverage satisfactory to the cabinet for the surface mining and reclamation operations for which the permit is sought, or proof that the applicant has satisfied self-insurance requirements as provided by administrative regulations of the cabinet. The coverage shall be maintained in full force and effect during the terms of the permit and any permit renewal, and until reclamation operations are completed.
- (11) A basic fee set by administrative regulation, and bearing a reasonable relationship to the cost of processing the permit application but not to exceed two thousand five hundred dollars (\$2,500), plus a fee set by administrative regulation but not to exceed seventy-five dollars (\$75), for each acre or fraction thereof of the area of land to be affected by the operation, shall be paid before the permit required in this section shall be issued; provided that if the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid in increments and at times corresponding to the approved plan. The applicant shall file with the cabinet a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the sum to be determined by the cabinet for each acre or fraction thereof of the area of land affected, with a minimum bond of ten thousand dollars (\$10,000), conditioned upon the faithful performance of the requirements set forth in this chapter and of the administrative regulations of the cabinet. The cabinet shall forfeit the entire amount of the bond for the permit area or increment in the event of forfeiture. In determining the amount of the bond, the cabinet shall take into consideration the character and nature of the overburden; the future suitable use of the land involved; the cost of backfilling, grading, and reclamation to be required; and the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential. The bond amount shall initially be computed to be sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture. ***Within thirty (30) days of a cabinet determination of a need to change a bond protocol currently in use, the cabinet shall immediately***~~[The cabinet shall]~~ promulgate administrative regulations setting forth bonding requirements including, but not limited to, requirements for the amount, duration, release, and forfeiture of bonds. ***Bond protocols shall not be exempt from KRS 13A.100 and shall be established by promulgating administrative regulations under KRS Chapter 13A. Failure to include the formula for establishing the amount of the bond in any administrative regulation on bonding requirements shall be deemed a failure to comply with the prescriptions of this section and the administrative regulation shall automatically be declared deficient in accordance with KRS Chapter 13A.***
- (12) The cabinet shall promulgate administrative regulations for the permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations consistent with this section. The cabinet shall recognize the distinct differences between the surface effects of underground mining and strip mining, as also provided in KRS 350.151, in promulgating permitting requirements for these operations; provided, that the cabinet shall require that all the areas overlying underground workings be permitted but that the areas overlying underground workings not affected by operations and facilities occurring on the surface shall not be subject to the payment of acreage fees or bond requirements of subsection (11) of this section, KRS 350.070, or KRS 350.151.
- (13) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. An applicant for renewal of a permit shall pay a basic fee set by regulation, not to exceed seven hundred fifty dollars (\$750). The holders of the permit may apply for renewal and the renewal shall be issued, provided that on application for renewal the burden shall be on the opponents of renewal, subsequent to the fulfillment of the public notice requirements of this chapter, unless it is established and written findings by the cabinet are made that:
- (a) The terms and conditions of the existing permit are not being satisfactorily met;
 - (b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter;
 - (c) The renewal requested substantially jeopardizes the applicant's continuing responsibility on existing permit areas;
 - (d) The applicant has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the cabinet might require; or

- (e) Any additional revised or updated information required by the cabinet has not been provided.

Prior to the approval of any renewal of permit, the cabinet shall provide notice to the appropriate public authorities.

- (14) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new areas of surface disturbance shall be subject to the full standards applicable to new applications under this chapter.
- (15) Any permit renewal shall be for a term not to exceed the period of the original permit. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit.
- (16) Notwithstanding any of the provisions of this section, a permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the issuance of the permit. However, the cabinet may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding commencement of operations, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time the construction of the synthetic fuel or generating facility is initiated.
- (17) Each application for a permit or revision for auger mining on a previously mined area shall contain information to describe the area to be affected, to show that the proposed method of operation will result in stable post-mining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities. If the cabinet determines that the affected area cannot be stabilized and reclaimed subsequent to augering or that the operation will result in an adverse impact to the proposed or adjacent area, the permit or revision shall not be issued. The cabinet shall, consistent with all applicable requirements of this chapter, issue a permit or revision if the applicant demonstrates that the proposed coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of a previously mined area. The cabinet shall insure that all reasonably available spoil material will be used to backfill the highwall to the extent practical and feasible; provided, however, that in all cases the holes be properly sealed and backfilled to a minimum of four (4) feet above the coal seam being mined.
- (18) All operations involving the loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter.

➔SECTION 2. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A establishing:*

- (a) *Standards for the operation of laboratories relating to analyses and laboratory tests for wastewater pollution, on behalf of activities subject to 33 U.S.C. sec. 1342, fees for certification and competency evaluations of those laboratories, and issuance of certificates of competency to persons and laboratories meeting the standards established by the agency; and*
- (b) *A certification program for laboratories that submit environmental data as it relates to analyses and laboratory tests for activities subject to 33 U.S.C. sec. 1342. In developing the certification program, the cabinet shall consider, among other things, nationally recognized certification programs and those tailored for individual states.*

- (2) *After one (1) year from the effective date of the administrative regulations described in subsection (1)(a) and (b) of this section, all environmental samples collected pursuant to an approved permit under 33 U.S.C. sec. 1342 shall be submitted to a laboratory that is certified by the cabinet. After that date, any data submitted, on behalf of activities subject to 33 U.S.C. sec. 1342, to any agencies of the cabinet that are generated by an uncertified laboratory shall be deemed invalid.*

Signed by Governor March 17, 2011.

CHAPTER 103**(HB 425)**

AN ACT relating to education.

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

➔Section 1. KRS 163.032 is amended to read as follows:

- (1) The Kentucky Department of Education, with assistance from the Kentucky Personnel Cabinet, shall adopt a salary schedule for teachers in the Kentucky School for the Deaf and the Kentucky School for the Blind. The salary schedule shall be the same as salary schedules in effect in local school districts in counties containing a city of the first class and shall conform to the requirements for a single salary schedule as defined in KRS 157.320, except the salary schedule shall not limit the number of years of experience for a certified employee who transfers to the school.
- (2) (a) Certified teachers in the Kentucky School for the Deaf and the Kentucky School for the Blind shall have the same statutory employment status and benefits as certified teachers in the public schools.
- (b) If a teacher qualifies for and requests a tribunal under KRS 161.790, the Attorney General shall appoint the members.
- (3) ~~The Kentucky Department of Education, with assistance from the Kentucky Personnel Cabinet, shall adopt a salary schedule for administrators at the Kentucky School for the Deaf and the Kentucky School for the Blind which will provide for equitable salaries between teachers and administrators. The salary schedule, which shall be computed prior to July 1 of each year, shall be based on two hundred sixty (260) days per year.~~
- (4) Once a teacher has been selected for hiring at the Kentucky School for the Blind or the Kentucky School for the Deaf, the Department of Education and the Personnel Cabinet shall complete the hiring process within two (2) weeks.
- (4) ~~(5)~~ A certified teacher employed at one (1) of the schools on July 12, 2006, whose job description does not include outreach responsibilities shall not be involuntarily assigned to work on a permanent basis outside the county in which the employing school is located.
- (5) ~~(6)~~ Nothing in KRS 18A.115 or 163.032 shall result in a loss of any leave accrued by a certified teacher employed prior to July 12, 2006, by one (1) of the schools. Accrued leave may be taken in accordance with the policy of the school.
- (6) *The Kentucky Department of Education, with assistance from the Kentucky Personnel Cabinet, shall adopt a salary schedule for administrators for the Kentucky School for the Deaf and the Kentucky School for the Blind. In considering the rate of pay and the requirements of KRS 18A.110(7)(b), the department and the cabinet shall consider rates that are based upon the duties and responsibilities of the positions and that are competitive with rates for similar or comparable services in Kentucky school districts. The salary schedule, which shall be computed prior to September 1 of each year, shall be based on two hundred sixty (260) days per year.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

Notwithstanding KRS 164.020(8), the governing board of a Kentucky public university may adopt a tuition policy whereby any veteran of the Armed Forces of the United States or National Guard who is eligible for Post-9/11 GI Bill benefits who enrolls as a student in the university as a non-Kentucky resident is charged no more than the maximum tuition reimbursement provided under the Post-9/11 GI Bill to public universities for eligible Kentucky residents.

Signed by Governor March 17, 2011.

CHAPTER 104**(HJR 5)**

A JOINT RESOLUTION authorizing and directing a comprehensive study of the effectiveness of the economic development initiatives and incentives of the Commonwealth.

WHEREAS, it is the duty of the members of the General Assembly to represent the people of the Commonwealth who have elected them, with the best interests of the people being of foremost importance; and

WHEREAS, chief among those interests is the most effective use of the discrete and finite public funds, which have been collected through the imposition of taxes upon the people and which may only be appropriated from the state treasury by the laws enacted by the General Assembly serving as the taxpayers' guardian; and

WHEREAS, the selection and appointment of persons of significant experience as cabinet secretaries is critical to the efficient and innovative implementation and management of programs authorized by the General Assembly; and

WHEREAS, in times of economic recession and hardship, the duty of the General Assembly to carefully scrutinize the appropriation and management of the public funds becomes even more paramount; and

WHEREAS, in an effort to develop the economy of the Commonwealth for the benefit of its people and the generations to come, the members of the General Assembly have enacted numerous economic development initiatives and incentive programs and have provided the means by which the secretary of the Cabinet for Economic Development shall be selected and appointed; and

WHEREAS, structuring such initiatives and programs requires careful analysis of the management costs and benefits thereof, access to the information necessary to conduct such analysis, and a delicate balancing of priorities; and

WHEREAS, it is of vital importance for the members of the General Assembly, in executing their duties and responsibilities to the people they represent, to understand the effectiveness of such economic development initiatives and incentive programs in order to appropriate the public funds in the most efficient manner possible for the immediate and lasting benefit of the people;

NOW, THEREFORE,

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

➔Section 1. The Director of the Legislative Research Commission shall engage the services of a consulting firm to conduct a comprehensive study of the effectiveness and efficiency of the economic development initiatives and incentive programs offered by the Commonwealth and administered by the Cabinet for Economic Development, the Tourism, Arts and Heritage Cabinet, and any offices or departments thereof, including but not limited to the following programs:

- (1) Incentives for a New Kentucky;
- (2) Incentives for Energy Independence;
- (3) Kentucky Business Investment;
- (4) Kentucky Reinvestment Act;
- (5) Kentucky Environmental Stewardship Act;
- (6) Kentucky Investment Fund Act;
- (7) Kentucky Economic Development Finance Authority Direct Loans;
- (8) High-tech Investment and Construction Loan Pools;
- (9) Small Business Loans;
- (10) Kentucky Enterprise Initiative Act;
- (11) Kentucky Industrial Revitalization Act;
- (12) Tax Increment Financing projects;
- (13) Industrial Revenue Bond projects;
- (14) Kentucky Tourism Development Act; and
- (15) Bluegrass State Skills Corporation programs.

➔Section 2. The consulting firm shall examine the economic and fiscal impacts associated with each development program, as well as other aspects thereof, including but not limited to the following:

- (1) Amount of funding appropriated to the program;
- (2) Amount of state and local tax revenue foregone as a result of the program;
- (3) Number of jobs actually created or retained as a result of the program;
- (4) Figures demonstrating the levels of compensation paid to employees in the newly created or retained positions, and the levels of benefits provided to these employees;
- (5) Amount of new tax revenues collected due to new or expanded economic activity; and
- (6) Whether the program is actually being administered as intended by the General Assembly.

➔Section 3. The consulting firm shall also examine the reporting and information-sharing requirements in place which either require or allow the Cabinet for Economic Development, the Tourism, Arts and Heritage Cabinet, the Department of Revenue, and other relevant agencies of state government to provide members of the General Assembly and staff of the Legislative Research Commission with the information necessary to evaluate the effectiveness and efficiency of the various economic development initiatives and incentive programs. The study shall also include an analysis of similar requirements in place among Kentucky's sister states, and if the consulting firm determines that more stringent or expansive reporting requirements are advisable in the interests of effective and efficient administration of the programs, its report shall make such recommendations.

➔Section 4. The consulting firm shall also examine the clawback provisions in place in the Commonwealth, as well as those in place among its sister states, which require recipients of economic development incentives to return, reimburse, or otherwise pay back the benefits received under an incentive program if the estimated economic or employment impacts are not actually achieved. If the consulting firm determines that more stringent or expansive clawback requirements are advisable in the interests of effective and efficient use of public funds, its report shall make such recommendations.

➔Section 5. The consulting firm shall also include in its study a thorough, in-depth examination of the process used by the Kentucky Economic Development Partnership Board to select each secretary of the Economic Development Cabinet. The study shall examine how the statutory requirements relating to the selection of the secretary of the Cabinet for Economic Development, as set forth in KRS 154.10-040 and 154.10-050(1), have been developed by the Kentucky Economic Development Partnership Board to recommend candidates to the Governor. The study shall include but not be limited to the chronology of the selection process, which shall include the dates the Kentucky Economic Development Partnership Board met to discuss the selection of the each secretary and the minutes of the meetings, the criteria used to select the national search firm and the instructions and necessary qualifications given to the firm to be used to evaluate potential candidates, and the professional qualifications deemed necessary and appropriate for the secretary of the Cabinet for Economic Development. In addition, the consulting firm shall include in its study a comparison of the salary of each secretary of the Economic Development Cabinet with those of secretaries of cabinets of economic development or their logical equivalents in surrounding states.

➔Section 6. The consulting firm shall transmit a report detailing its findings and recommendations to the Legislative Research Commission, for distribution to the appropriate interim joint committee, on or before December 1, 2011.

➔Section 7. Provisions of this Resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to designate an alternate study completion date.

Signed by Governor March 17, 2011.

CHAPTER 105

(SB 7)

AN ACT relating to records.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 7 IS CREATED TO READ AS FOLLOWS:

- (1) *By January 1, 2012, the Legislative Research Commission shall provide public access to records relating to expenditures of the legislative branch of state government through display of the records on a Web site. The Web site shall provide:*
- (a) *Financial information of expenditures not exempt under the provisions of state or federal law, including:*
 - 1. *The payee name;*
 - 2. *The category, or type, of the expenditure;*
 - 3. *A description of the reason for the expenditure, if available;*
 - 4. *The expenditure amount; and*
 - 5. *A link to the financial document, if the document is electronically available;*
 - (b) *A searchable format;*
 - (c) *Access to the current enacted Legislative Branch Budget; and*
 - (d) *A link to the public access Web site displays of the executive and judicial branches of state government, and of the public institutions of higher education.*
- (2) *Information on the Web site shall be updated at least on a monthly basis. However, information on the Web site which is part of, or contained in, an electronic accounting system utilized by all branches of state government, such as the Enhanced Management Administrative Reporting System (EMARS), shall be updated on a weekly basis.*
- (3) *The Commission shall maintain exclusive control and be considered the sole custodian of all information and records generated by and through activity of the legislative branch of government, notwithstanding the situs of the information and records in another branch of government, and disclosure thereof shall only be by the Commission in accordance with applicable law.*
- (4) *In order to reduce Web site development costs and enhance public access and use of records viewed through Web sites as provided by Sections 1, 2, and 3 of this Act, each branch of state government shall freely share with the other branches of state government the software, software developments, and all applications, data, and information within its control used for Web site design, appearance, content, and operation in compliance with, or in furtherance of, the purposes contemplated by Sections 1, 2, and 3 of this Act.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 26A IS CREATED TO READ AS FOLLOWS:

- (1) *By January 1, 2012, the Administrative Office of the Courts, under the direction of the Chief Justice, shall provide public access to records relating to expenditures of the judicial branch of state government through display of the records on a Web site. The Web site shall provide:*
- (a) *Financial information of expenditures not exempt under the provisions of state or federal law, including:*
 - 1. *The payee name;*
 - 2. *The category, or type, of the expenditure;*
 - 3. *A description of the reason for the expenditure, if available;*
 - 4. *The expenditure amount; and*
 - 5. *A link to the financial document, if the document is electronically available;*
 - (b) *A searchable format;*
 - (c) *Access to the current enacted Judicial Branch Budget; and*
 - (d) *A link to the public access Web site displays of the executive and legislative branches of state government, and of the public institutions of higher education.*
- (2) *Information on the Web site shall be updated at least on a monthly basis. However, information on the Web site which is part of, or contained in, an electronic accounting system utilized by all branches of state government, such as the Enhanced Management Administrative Reporting System (EMARS), shall be updated on a weekly basis.*

- (3) *The Administrative Office of the Courts shall maintain exclusive control and be considered the sole custodian of all information and records generated by and through activity of the judicial branch of government, notwithstanding the situs of the information and records in another branch of government, and disclosure thereof shall only be by the Administrative Office of the Courts in accordance with applicable law.*
- (4) *In order to reduce Web site development costs and enhance public access and use of records viewed through Web sites as provided by Sections 1, 2, and 3 of this Act, each branch of state government shall freely share with the other branches of state government the software, software developments, and all applications, data, and information within its control used for Web site design, appearance, content, and operation in compliance with, or in furtherance of, the purposes contemplated by Sections 1, 2, and 3 of this Act.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

- (1) *By January 1, 2012, the Finance and Administration Cabinet shall provide public access to records relating to expenditures of the executive branch of state government through display of the records on a Web site. The Web site shall provide:*
 - (a) *Financial information of expenditures not exempt under the provisions of state or federal law, including:*
 - 1. *The payee name;*
 - 2. *The category, or type, of the expenditure;*
 - 3. *A description of the reason for the expenditure, if available;*
 - 4. *The expenditure amount; and*
 - 5. *A link to the financial document, if the document is electronically available;*
 - (b) *A searchable format;*
 - (c) *Access to the current enacted Executive Branch Budget; and*
 - (d) *A link to the public access Web site displays of the legislative and judicial branches of state government, and of the public institutions of higher education.*
- (2) *Information on the Web site shall be updated at least on a monthly basis. However, information on the Web site which is part of, or contained in, an electronic accounting system utilized by all branches of state government, such as the Enhanced Management Administrative Reporting System (EMARS), shall be updated on a weekly basis.*
- (3) *The cabinet shall maintain exclusive control and be considered the sole custodian of all information and records generated by and through activity of the executive branch of government, notwithstanding the situs of the information and the records in another branch of government, and disclosure thereof shall only be by the cabinet in accordance with applicable law.*
- (4) *In order to reduce Web site development costs and enhance public access and use of records viewed through Web sites as provided by Sections 1, 2, and 3 of this Act, each branch of state government shall freely share with the other branches of state government the software, software developments, and all applications, data, and information within its control used for Web site design, appearance, content, and operation in compliance with, or in furtherance of, the purposes contemplated by Sections 1, 2, and 3 of this Act.*

➔Section 4. KRS 164A.565 is amended to read as follows:

- (1) The governing board of each postsecondary educational institution making the election authorized in KRS 164A.560 shall as a condition of such election install an accrual basis accounting system conforming with generally accepted accounting principles and procedures established for colleges and universities by the National Association of College and University Business Officers and the American Institute of Certified Public Accountants. The accounting system shall include but not be limited to the following fund structure:
 - (a) An operating fund group (unrestricted current funds), consisting of all moneys not otherwise restricted, available for general operations, including state appropriations, federal funds, and unrestricted institutional receipts. Separate accounting fund groups may be established for auxiliary enterprises, athletics, hospitals, and other similar operations;

- (b) A restricted fund group consisting of appropriations and other receipts restricted as to purpose which shall not be included in the operating fund;
- (c) A loan fund group consisting of gifts, grants, and other funds provided and available for loans to students;
- (d) An endowment fund group consisting of funds, the principal of which is not currently expendable;
- (e) An agency fund group consisting of resources held by the institutions as custodian or fiscal agent for individual students, faculty, staff members, and organizations;
- (f) A plant fund group consisting of:
 - 1. Unexpended plant funds to be used for the acquisition of long-lived assets for institutional purposes (capital construction funds);
 - 2. Funds for renewal, maintenance, and replacement of institutional buildings, equipment, and other properties; and
 - 3. Funds set aside for debt service charges and retirement of indebtedness on institutional plant.
- (2) A record of each general fund appropriation shall be maintained so as to identify the institutional budgets to which such funds are allotted. Any uncommitted state general funds remaining after the close of business on the last day of the fiscal year shall lapse and be returned to the Treasury of the Commonwealth. Each appropriation shall be used for the intended purpose and where questions of intent arise subject to the provisions of KRS 45.750 and 45.800 in the case of capital construction projects and major items of equipment as defined by these sections, the decision of the secretary of finance and administration, based upon budget work papers, shall be final.
- (3) A separate account showing sources of revenue and all expenditures shall be maintained for each capital construction project. At the end of each fiscal year, a report containing a listing of all capital construction projects, with sources of funds, expenditures, and current status for each, shall be submitted to the Capital Projects and Bond Oversight Committee.
- (4) Within thirty (30) days after July 15, 1982, the secretary of the Finance and Administration Cabinet shall submit to the Capital Projects and Bond Oversight Committee a complete record of all funds and project records transferred to institutions under the provisions of KRS 164A.555 to 164A.630.
- (5) Within thirty (30) days after July 15, 1982, the governing boards shall submit to the Capital Projects and Bond Oversight Committee a report containing a complete list of capital construction projects and unexpended plant funds in existence on July 15, 1982. The source of funds, expenditures, and current status of each project shall be shown.
- (6) State general funds appropriated by the General Assembly for capital construction projects and equipment purchases as defined in KRS 45.750 through 45.800 shall not lapse at the end of a fiscal year. They shall be carried forward until the project is completed. Any such unexpended funds remaining after acceptance of the project as complete shall be returned to a surplus account of the capital construction fund for investment until appropriated and allotted as provided in KRS 45.750 through 45.800.
- (7) Long lived assets of the institution, including land, buildings, and capital equipment shall be accounted for in the plant fund group.
- (8) The governing boards of each institution shall make an annual report of the financial activity to the Council on Postsecondary Education. The report shall meet the requirements of the council's system of uniform financial reporting for institutions of higher education.
- (9) ***By January 1, 2012, the governing boards of each institution shall make available, on the institution's Web site:***
 - (a) ***The board-approved operating and capital budgets for the current and prior two (2) fiscal years;***
 - (b) ***The institution's audited financial statements for the previous three (3) fiscal years; and***
 - (c) ***The agendas and actions of all meetings of the governing board for the previous three (3) years.***

➔Section 5. The staff of the Legislative Research Commission shall study the use of the Internet by local governments in Kentucky to provide citizen access to their financial and other information. The study shall examine the existing use of the Internet to publish financial and other data by local governments in Kentucky, the present

ability of those local governments to improve access to information for their citizens, and the resources needed to provide complete transparency. The study shall also survey and evaluate the methods used by other states with successful transparency programs for local governments.

➔Section 6. Staff shall transmit the results of the study to the Legislative Research Commission, for distribution to the appropriate interim joint committee, by December 1, 2011.

➔Section 7. Provisions of Sections 5 and 6 of this Act to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Signed by Governor March 17, 2011.

CHAPTER 106

(SB 119)

AN ACT relating to 911 emergency communications funding.

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

➔SECTION 1. A NEW SECTION OF KRS 65.7621 TO 65.7643 IS CREATED TO READ AS FOLLOWS:

- (1) *The CMRS Board shall gather and report data and information regarding 911 emergency communications funding procedures and costs on or before August 1, 2011, and each August 1 thereafter.*
- (2) *The CMRS Board shall determine the information it needs to evaluate 911 funding, CMRS service charge collections, and expenditures, and each local governmental agency, state governmental agency, wireless or wireline provider of technology capable of transmitting voice traffic for an emergency 911 request to a PSAP, and/or private citizen in possession of that information shall provide the information to the board within the time frames established by the board. The board may hire a consultant to gather and analyze the information required by this section.*
- (3) *Each local governmental agency and state governmental agency having jurisdiction over one (1) or more public safety answering points (PSAPs) shall provide at least the following information to the board:*
 - (a) *For each PSAP for fiscal years 2007-2008, 2008-2009, 2009-2010, and 2010-2011:*
 1. *Wireline 911 fees;*
 2. *CMRS Board fund money dispersed to the PSAP;*
 3. *Direct grants or state matches for federal, state, or private grants; and*
 4. *Gifts or other amounts not otherwise reported in this paragraph; and*
 - (b) *How the revenue described in this paragraph was spent by the PSAPs.*
- (4) *Each wireless or wireline provider of technology capable of transmitting voice traffic for an emergency 911 request to a PSAP shall report to the board the amount of reimbursements received in fiscal years 2007-2008, 2008-2009, 2009-2010, and 2010-2011.*
- (5) *Each local governmental agency, state governmental agency, or wireless or wireline provider of technology capable of transmitting voice traffic for an emergency 911 request to a PSAP that fails to provide the information required by this section shall not be eligible to receive distributions of state funds from the CMRS Board.*
- (6) *The CMRS Board shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish annual reporting requirements so that the board has the information needed to monitor the use of 911 funds and the rate of the 911 service charge.*
- (7) *All information received by the CMRS Board pursuant to this section shall be subject to disclosure under KRS 61.870 to 61.884. Proprietary information given to the board by any wireless or wireline provider of technology capable of transmitting voice traffic for an emergency 911 request to a PSAP pursuant to this*

section shall be subject to the same confidentiality as provided for proprietary information under KRS 65.7639.

- (8) *The CMRS Board shall ensure that the Legislative Research Commission has access to all data collected under this section and shall report this information to the Legislative Research Commission's Interim Joint Committee on Veterans, Military Affairs, and Public Protection by August 1 of each year.*

➔Section 2. (1) The staff of the Legislative Research Commission shall study the funding of 911 emergency communications services in the Commonwealth.

(2) The Legislative Research Commission staff conducting the study under this section shall have the authority to consult with the State Auditor's Office, the CMRS Board, and any provider of emergency 911 services in the Commonwealth, and shall:

(a) Examine the various alternative revenue streams available to fund 911 emergency communications services in the Commonwealth, including service charges from all end-users of voice communications services with access to 911 emergency communication services;

(b) Examine the applicability of the current wireless rate to all end-users of voice communication services to fund 911 emergency communications in the Commonwealth; and

(c) Review the 911 service funding mechanisms implemented in other states.

(3) The study may offer policy options based upon an audit of PSAPs and the information provided by the CMRS Board pursuant to Section 1 of this Act. The policy options may include methods and operational changes to improve cost and operating efficiencies and any cost-saving measures that may be utilized by the PSAPs that will not jeopardize public safety, including the effectiveness of consolidating PSAPs.

(4) The final report of the study shall be submitted to the Legislative Research Commission no later than December 1, 2011.

(5) The provisions of this section to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, or to a statutory committee, and to designate an alternate study completion date.

Signed by Governor March 17, 2011.